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FROM THE SECOND AMENDMENT TO SECTION 3: A COMPARATIVE STUDY OF ARMS RIGHTS AND LICENSING IN THE UNITED STATES AND INDIA

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Abstract

The United States and India stand at opposite ends of the constitutional spectrum on civilian arms. The Second Amendment guarantees an individual right to keep and bear arms, which the Supreme Court of the United States has developed from *District of Columbia v. Heller* (2008) into the text-history-tradition test of *New York State Rifle & Pistol Association v. Bruen* (2022), refined in *United States v. Rahimi* (2024) and applied in *United States v. Hemani* and *Wolford v. Lopez* (2026). The Constitution of India contains no comparable guarantee. Possession is governed by the Arms Act, 1959, the Arms Rules, 2016 and the Arms (Amendment) Act, 2019, and High Courts have consistently treated an arms licence as a statutory privilege rather than a fundamental right under Article 21. This paper compares the two systems doctrinally and empirically. It examines the constitutional foundations, the licensing procedures for acquisition and carry, the grounds of refusal and revocation, and the standard of judicial review in each jurisdiction, drawing on statutes, leading and recent case law, official data and scholarship. It argues that the decisive difference lies in the allocation of the burden of justification: in the United States the State must justify a restriction by historical analogy, whereas in India the applicant must satisfy the licensing authority of a "good reason". It further finds that Indian courts, while denying a fundamental right, have built meaningful procedural safeguards through

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natural justice and Article 14 review. The paper concludes with proposals for India: statutory timelines, structured reasons, a national licence database and sharper enforcement against illicit country-made firearms, which account for most seizures.

Keywords:*Second Amendment; Arms Act, 1959; Article 21; Bruen; firearms licensing; comparative constitutional law.*

I. Introduction

Few questions divide constitutional democracies as sharply as whether a private person may keep a gun as of right. The Second Amendment to the Constitution of the United States declares that the right of the people to keep and bear arms "shall not be infringed".[4] Section 3 of India's Arms Act, 1959 begins from the opposite premise: no person shall acquire, possess or carry a firearm unless he holds a licence.[5] The two jurisdictions also hold the world's two largest civilian stocks of firearms. The Small Arms Survey estimated that, at the end of 2017, civilians in the United States held about 393.3 million firearms (120.5 per 100 residents), and civilians in India about 71.1 million (5.3 per 100 residents), most of them unlicensed.[6]

The contrast is therefore not between an armed and an unarmed society. It is between two legal ideas of the gun. In the United States the firearm is the object of an enumerated individual right. In India it is the object of a discretionary licence, which the Allahabad High Court, sitting as a Full Bench of five judges, characterised as "nothing more than a privilege".[7] The constitutional label determines who bears the burden of justification, how intensely courts review the State, and how far a legislature may go.

Research questions

The paper addresses four questions. First, what is the constitutional status of the right to keep and bear arms in each country? Second, how does an ordinary citizen lawfully acquire and carry a

[4] The Constitution of the United States, amend. II (1791).
[5] The Arms Act, 1959 (Act 54 of 1959), s. 3.
[6] Aaron Karp, *Estimating Global Civilian-Held Firearms Numbers* (Small Arms Survey Briefing Paper, Geneva, June 2018).
[7] *Kailash Nath v. State of U.P.*, AIR 1985 All 291 (FB).

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firearm under each system? Third, how have courts in each country reviewed restrictions, refusals and revocations? Fourth, what can India's regime learn from the American experience, and where does it rightly diverge?

Methodology and scope

The study is doctrinal and comparative, supplemented by official and institutional data. Primary sources are constitutional texts, federal and Indian statutes and rules, and judgments of the Supreme Court of the United States, the Supreme Court of India and Indian High Courts up to September 2026. Secondary sources include peer-reviewed scholarship, Congressional Research Service material, National Crime Records Bureau (NCRB) data and contemporaneous press reports. The paper uses the functional method of comparative law: it compares how each system answers the same practical question (who may be armed, and on whose say-so) rather than comparing labels alone. American state law is discussed only so far as necessary, since fifty separate regimes cannot be surveyed within this length. Indian discussion pays particular attention to Punjab, a State whose history of militancy produced an unusually high density of licensed arms.

Structure

Part II traces Second Amendment jurisprudence from *United States v. Miller* to the 2026 decisions. Part III describes the American licensing architecture. Parts IV and V turn to India's constitutional position, the Arms Act regime and its judicial interpretation. Part VI offers the comparative analysis, and Part VII concludes with suggestions for reform.[8]

II. The United States: From Militia Clause to Individual Right

A. Text and early case law

The Second Amendment (1791) reads: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." For most of

[8] Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (Tony Weir tr., Clarendon Press, Oxford, 3rd edn., 1998), ch. 3.

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its history the prefatory militia clause dominated interpretation. In the nineteenth century the Supreme Court held that the Amendment restrained only the federal government, not the States.[9] In *United States v. Miller* (1939) the Court upheld the National Firearms Act's registration of a short-barrelled shotgun because no evidence showed that such a weapon bore a reasonable relationship to the efficiency of a well-regulated militia.[10] For seven decades lower federal courts read *Miller* as endorsing a "collective" or militia-based right. Scholarship began to challenge that reading in the late 1980s, most influentially Sanford Levinson's essay arguing that the legal academy had neglected the Amendment's individual-rights dimension.[11]

B. *Heller* and *McDonald*: the individual right

District of Columbia v. Heller (2008) settled the question by a 5–4 majority. Justice Scalia held that the Amendment codified a pre-existing individual right to possess and carry weapons for confrontation, unconnected with militia service, and that self-defence in the home lies at its core.[12] The District's ban on handguns in the home, and its requirement that long guns be kept inoperable, were struck down. The Court nevertheless stated that nothing in the opinion cast doubt on "longstanding prohibitions" on possession by felons and the mentally ill, on laws forbidding carriage in sensitive places such as schools and government buildings, or on conditions on commercial sale. It also accepted a historical limitation to weapons "in common use", leaving "dangerous and unusual" weapons outside protection.

Two years later *McDonald v. City of Chicago* incorporated the right against the States through the Fourteenth Amendment.[13] Justice Alito's plurality relied on the Due Process Clause; Justice Thomas would have used the Privileges or Immunities Clause. In *Caetano v. Massachusetts* (2016) the Court summarily vacated a decision upholding a ban on stun guns, confirming that *Heller* protects arms not in existence at the founding.[14]

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[9] *United States v. Cruikshank*, 92 US 542 (1876); *Presser v. Illinois*, 116 US 252 (1886).
[10] *United States v. Miller*, 307 US 174 (1939).
[11] Sanford Levinson, "The Embarrassing Second Amendment" 99 *Yale Law Journal* 637 (1989).
[12] *District of Columbia v. Heller*, 554 US 570 (2008).
[13] *McDonald v. City of Chicago*, 561 US 742 (2010).
[14] *Caetano v. Massachusetts*, 577 US 411 (2016) (per curiam).

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C. *Bruen*: the text-history-tradition test

After *Heller*, the federal courts of appeals converged on a two-step framework: a historical inquiry followed by means-end scrutiny (usually intermediate scrutiny). In *New York State Rifle & Pistol Association v. Bruen* (2022) a 6–3 majority, per Justice Thomas, rejected the second step.[15] Where the Amendment's plain text covers an individual's conduct, the Constitution presumptively protects it, and the government must show that its regulation is consistent with the Nation's historical tradition of firearm regulation. The Court struck down New York's century-old requirement that an applicant for an unrestricted carry licence show "proper cause", that is, a special need for self-protection. It held that the right extends to carrying a handgun in public for self-defence. Justice Kavanaugh, concurring with the Chief Justice, stressed that "shall-issue" licensing based on objective criteria such as background checks, fingerprinting and training remained permissible.

Bruen generated intense criticism and considerable confusion in lower courts. Scholars questioned the competence of judges to act as historians and the selective weight given to particular eras.[16]

D. *Rahimi*: correcting the course

United States v. Rahimi (2024) answered the most pressing post-*Bruen* question. The Fifth Circuit had invalidated 18 U.S.C. § 922(g)(8), which disarms persons subject to domestic-violence restraining orders, for want of a precise historical twin. By 8–1, the Supreme Court reversed.[17] Chief Justice Roberts explained that *Bruen* requires a historical analogue, not a "historical twin"; the question is whether the modern law is "relevantly similar" in why and how it burdens the right. Drawing on founding-era surety and "going armed" laws, the Court held that a person found by a court to pose a credible threat to another's physical safety may be temporarily disarmed. Justice Thomas alone dissented.

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[15] *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 US 1 (2022).
[16] Jacob D. Charles, "The Dead Hand of a Silent Past: *Bruen*, Gun Rights, and the Shackles of History" 73 *Duke Law Journal* 67 (2023).
[17] *United States v. Rahimi*, 602 US 680 (2024).

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E. Statutory and 2025–2026 decisions

Two decisions turned on statutory meaning rather than the Amendment. *Garland v. Cargill* (2024) held that a bump stock does not convert a semi-automatic rifle into a "machinegun" under federal law; *Bondi v. VanDerStok* (2025), by 7–2, upheld the federal rule bringing at least some weapon parts kits and unfinished frames ("ghost guns") within the Gun Control Act's definition of "firearm".[18]

The October 2025 Term produced two significant constitutional rulings. In *United States v. Hemani* (18 June 2026) the Court unanimously affirmed the dismissal of a prosecution under § 922(g)(3), which disarms any "unlawful user" of a controlled substance, as applied to a regular marijuana user against whom no dangerousness was shown. Justice Gorsuch's opinion held that historical "habitual drunkard" laws were not a sufficient analogue, while leaving open prosecutions supported by individualised proof of danger.[19] In *Wolford v. Lopez* (25 June 2026), by 6–3 per Justice Alito, the Court invalidated Hawaii's rule forbidding licensed carriers from bringing handguns onto private property open to the public without the owner's express consent. The Court held that reversing the common-law default of implied consent burdened the right without an adequate historical analogue; it did not disturb restrictions in sensitive places.[20]

F. Assessment

The American right is now firmly individual, extends outside the home, and is protected by a history-based test that places the burden on the State. It is not absolute: *Heller*'s list of presumptively lawful measures, *Rahimi*'s dangerousness principle and the survival of shall-issue licensing show that regulation persists. Critics argue that originalist method obscures normative choices; defenders reply that it disciplines judicial discretion.[21]

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[18] *Garland v. Cargill*, 602 US 406 (2024); *Bondi v. VanDerStok*, No. 23-852 (US Supreme Court, decided Mar. 26, 2025).
[19] *United States v. Hemani*, No. 24-1234 (US Supreme Court, decided June 18, 2026).
[20] *Wolford v. Lopez*, No. 24-1046, 146 S Ct 2032 (2026).
[21] Reva B. Siegel, "Dead or Alive: Originalism as Popular Constitutionalism in *Heller*" 122 *Harvard Law Review* 191 (2008).

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III. The United States: How a Citizen Lawfully Acquires and Carries a Firearm

American firearms law operates in two layers. Federal law sets a floor of prohibitions and transfer procedures; each State adds its own rules on purchase, registration and public carry.

A. The federal layer

The National Firearms Act, 1934 (NFA) subjects machine guns, short-barrelled rifles and shotguns, suppressors, destructive devices and "any other weapons" to registration with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and to a transfer tax; the Gun Control Act, 1968 (GCA) licenses dealers and defines prohibited persons.[22] Since 1986 civilian acquisition of newly manufactured machine guns has been frozen. The NFA's US$200 tax, unchanged since 1934, was reduced to zero for suppressors, short-barrelled rifles and shotguns and "any other weapons" from 1 January 2026, while the registration requirement remains.[23]

The Brady Handgun Violence Prevention Act, 1993 created the National Instant Criminal Background Check System (NICS), operational since November 1998. A federally licensed dealer must run a NICS check before transfer; if the FBI gives no answer within three business days the dealer may lawfully proceed.[24] The Bipartisan Safer Communities Act, 2022 added an enhanced check for buyers aged 18 to 20, requiring NICS to contact State juvenile and mental-health record holders and local police, and allowing up to ten business days where a possibly disqualifying juvenile record is found. That provision sunsets in 2032.[25]

Federal law disqualifies, among others, persons convicted of crimes punishable by more than one year's imprisonment, fugitives, unlawful drug users, persons adjudicated mentally defective or committed, those subject to qualifying domestic-violence restraining orders and those convicted of misdemeanour domestic violence.[26] Dealers may not sell handguns to persons under 21 or

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[22] National Firearms Act, 1934, 26 USC §§ 5801–5872; Gun Control Act, 1968, 18 USC §§ 921–931; Firearm Owners' Protection Act, 1986, 18 USC § 922(o).
[23] H.R. 1, 119th Congress ("One Big Beautiful Bill Act"), signed July 4, 2025; National Shooting Sports Foundation, "New Year Buying Surge Shows 2026 Could Be The Year Of Suppressors" (Jan. 6, 2026).
[24] Brady Handgun Violence Prevention Act, Pub L No 103-159, 107 Stat 1536 (1993); 18 USC § 922(t).
[25] Bipartisan Safer Communities Act, Pub L No 117-159 (2022), s. 12001; Congressional Research Service, "Gun Control: Juvenile Record Checks for 18- to 21-Year-Olds" (IF12154, June 27, 2022).
[26] 18 USC § 922(b)(1), (g).

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long guns to persons under 18. Critically, federal law does not require a background check for a sale between two private individuals who are not "engaged in the business"; a number of States fill that gap with universal-check laws.

B. The State layer: purchase and carry

States differ widely. Some require a purchaser's licence or permit (for example, a firearm identification card), waiting periods, registration or safe-storage compliance; many require nothing beyond the federal check. For public carry, three models existed before 2022:

Model	Meaning	Status after *Bruen*
May-issue	Officials have discretion; applicant must show special need	Invalid as applied to ordinary self-defence; former may-issue States (e.g. New York, New Jersey, California, Maryland, Hawaii) moved to shall-issue
Shall-issue	Licence must issue if objective criteria (age, background check, training) are met	Expressly approved by the *Bruen* concurrence
Permitless ("constitutional") carry	No licence needed for eligible adults	Adopted by 29 States as of 2026

Sources: *Bruen* (2022); USCCA, "Constitutional Carry" (2026).[27]

Post-*Bruen* legislation in former may-issue States expanded lists of "sensitive places" and, in Hawaii and several other States, reversed the default rule on private property. *Wolford* has now invalidated the latter technique, while leaving traditional sensitive places intact.[28]

[27] *Bruen*, *supra* note 12 (Kavanaugh J., concurring); US Concealed Carry Association, "Constitutional Carry" (2026).
[28] *Wolford*, *supra* note 17.

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C. Evaluation

The American process is fast and largely non-discretionary. A first-time buyer at a dealer in a permissive State can usually complete a purchase the same day; even in the strictest States the licensing authority cannot refuse a qualified applicant for lack of need. The cost of this model is visible in public-health data. According to CDC mortality data analysed by Johns Hopkins researchers, 46,728 people died from firearm injuries in the United States in 2023, of whom 27,300 died by suicide (a record) and 17,927 by homicide.[29]

IV. India: Constitutional Position and the Statutory Scheme

A. The colonial inheritance

Modern Indian arms control begins with the Indian Arms Act, 1878, enacted after the 1857 uprising. The Act required licences of Indians while exempting Europeans and favoured classes, and it became a symbol of colonial distrust.[30] Gandhi wrote in his autobiography that history would judge the disarming of a whole nation as among the blackest acts of British rule.[31] When Parliament replaced the 1878 Act with the Arms Act, 1959, it removed racial and class exemptions and introduced a uniform, statute-bound licensing system. Independent India therefore rejected discrimination in licensing, but it did not convert possession into a right.

B. The Constitution: silence, and one telling phrase

The Constitution of India contains no counterpart to the Second Amendment. "Arms, firearms, ammunition and explosives" is a Union subject under Entry 5 of List I of the Seventh Schedule, which explains why a single central statute governs the field.[32] The only express reference to arms in Part III is negative: Article 19(1)(b) guarantees the right "to assemble peaceably and

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[29] Rose Kim, Elizabeth Wagner *et al.*, *Gun Violence in the United States 2023: Examining the Gun Suicide Epidemic* (Johns Hopkins Center for Gun Violence Solutions, Baltimore, 2025).
[30] The Indian Arms Act, 1878 (Act 11 of 1878).
[31] M.K. Gandhi, *An Autobiography or The Story of My Experiments with Truth* (Mahadev Desai tr., Navajivan Publishing House, Ahmedabad, 1927), pt. V.
[32] The Constitution of India, art. 19(1)(b); Seventh Schedule, List I, entry 5.

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without arms". The framers thus contemplated arms in the context of a fundamental freedom and chose to exclude them.

Litigants have repeatedly argued that a right to possess arms for self-defence is implicit in Article 21. The leading answer is the Full Bench decision in *Kailash Nath v. State of U.P.*(1985).[33] Chief Justice M.N. Shukla held that a licence to acquire and possess firearms is a personal privilege, distinct from a licence to trade in arms, and that protection of person and property is mainly the State's function, beyond the ambit of Article 21. The Bench nevertheless held that cancellation or non-renewal of an existing licence carries grave consequences and attracts natural justice; in an emergency the authority may revoke first, but must then grant a post-decisional hearing, on the model of *Maneka Gandhi v. Union of India*.[34]

A single judge took the opposite view in *Ganesh Chandra Bhatt v. District Magistrate, Almora* (1993), holding that the right to carry arms for self-defence is part of Article 21, that grant should be the normal rule for non-prohibited firearms, and that applications should be decided within three months.[35] That reasoning did not survive. A later Full Bench in *Rana Pratap Singh v. State of U.P.* (1995) reaffirmed the privilege view, and in *Amandeep Singh v. State of U.P.* (2023) the Allahabad High Court, relying on both Full Benches, held that the right to carry arms is "certainly not a fundamental right" and directed cancellation of licences of persons carrying arms into court premises.[36]

C. The Arms Act, 1959

The Act's architecture can be summarised as follows:[37]

Provision	Effect
s. 3	No acquisition, possession or carriage of a firearm without a licence; maximum of

[33]*Kailash Nath, supra* note 4.
[34]*Maneka Gandhi v. Union of India*, AIR 1978 SC 597.
[35]*Ganesh Chandra Bhatt v. District Magistrate, Almora*, AIR 1993 All 291.
[36]*Rana Pratap Singh v. State of U.P.*, 1995 SCC OnLine All 979 (FB); *Amandeep Singh v. State of U.P.*, 2023 SCC OnLine All 2762.
[37] The Arms Act, 1959, ss. 3, 7, 9, 13, 14, 15, 17, 18 and 25.

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Provision	Effect
	two firearms per person (since 2019)
s. 7	Prohibited arms and ammunition only with special authorisation of the Central Government
s. 9	Disqualifies persons under 21, persons convicted of specified offences within five years, and persons bound over to keep the peace
s. 13	Licensing authority must call for a police report, then grant or refuse by written order; licence under s. 3 generally requires a "good reason"
s. 14	Mandatory refusal where the authority deems it necessary for public peace or safety, or the applicant is unfit; reasons to be recorded
s. 15	Licence valid for five years (raised from three in 2019)
s. 17	Variation, suspension and revocation on specified grounds, with written reasons
s. 18	Statutory appeal against refusal, suspension or revocation
s. 25	Graded offences, including celebratory gunfire endangering life (s. 25(9))

D. The 2019 Amendment and the Arms Rules, 2016

The Arms (Amendment) Act, 2019 (Act 48 of 2019) reduced the permissible number of licensed firearms from three to two, requiring surplus weapons to be deposited with the police or a licensed dealer within one year. It enhanced punishments for illicit manufacture, trafficking and prohibited-arms offences, created offences for organised crime syndicates and for snatching arms from police or armed forces, and penalised rash or celebratory gunfire with up to two years' imprisonment or a fine up to one lakh rupees, or both.[38] The original Bill had proposed a limit of one firearm; the Government moved an official amendment during passage to allow two. Press

[38] The Arms (Amendment) Act, 2019 (Act 48 of 2019).

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reports at the time noted that Punjab alone held about 3.6 lakh active licences, many issued during the militancy years.[39]

The Arms Rules, 2016 prescribe forms, categories of arms (prohibited and non-prohibited) and the procedure for verification. Rule 12 obliges the licensing authority to consider the police report and the District Magistrate's recommendation and to satisfy itself of the applicant's need. The Rules also allow the Central Government to notify mandatory safety training through accredited trainers.

V. India: The Licensing Process and Its Judicial Interpretation

A. How a citizen obtains a licence

An applicant for a non-prohibited-bore firearm follows these steps:

1. Application in the prescribed form, with fee, to the licensing authority (ordinarily the District Magistrate, or the Commissioner of Police in commissionerate areas).
2. Police verification: the authority must call for the report of the officer in charge of the nearest police station, who reports on antecedents, threat perception and suitability (s. 13(2)).
3. Inquiry and satisfaction: the authority considers the police report and its own inquiry and must be satisfied that the applicant has a good reason and is not disqualified under s. 9 (s. 13(2A), (3); r. 12).
4. Written order granting or refusing the licence, with reasons for refusal recorded and furnished on demand unless contrary to public interest (s. 14).
5. Purchase of the weapon from a licensed dealer and its endorsement on the licence; renewal every five years (s. 15).
6. Remedies: statutory appeal (s. 18) and, ultimately, a writ petition under Article 226.

[39] "LS passes bill seeking jail term for celebratory firing" *The Tribune* (New Delhi), Dec. 9, 2019; "Parliament Passes Stringent Arms (Amendment) Bill: 9 Highlights" *The Quint*, Dec. 10, 2019.

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Every step is discretionary in the sense that need must be shown. The contrast with American "shall-issue" licensing, where objective eligibility compels issue, is the core of this paper's comparison.

B. Judicial themes

1. A privilege, yet reviewable. Indian courts deny a fundamental right but refuse to treat licensing as unreviewable. *Kailash Nath* itself warned that even a refusal is vulnerable if arbitrary, capricious or passed without application of mind. In *Brijesh Kumar Singh v. State of Rajasthan* (2024) the Rajasthan High Court, contrasting the Second Amendment, held that a licence is a creation of statute to be granted on necessity, not on the applicant's whims, and rejected a police officer's request for a second weapon merely because his licensed gun was inconvenient to carry.[40] In *Sunil Kumar v. Joint Commissioner of Police* (2026) the Delhi High Court held that there is no fundamental right to possess firearms, that self-protection alone is not sufficient justification, and that a court cannot substitute its view for a police assessment made under r. 12.[41]

2. Divergence on "need". Other High Courts read the discretion more narrowly. In *Sanjay Kumar Yadav v. State of Bihar* (23 September 2026), the Patna High Court, while reiterating that citizens have no fundamental right to bear arms, laid down that refusal or revocation requires recorded, objective reasons; that a routine FIR is generally insufficient; that a licence cannot be denied solely because the applicant shows no specific or imminent threat; and that safety training cannot be insisted on unless notified by the Central Government under r. 10(3).[42] The Delhi and Patna positions are difficult to reconcile on the role of threat perception, a divergence that only the Supreme Court or statutory guidance can resolve.

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[40] *Brijesh Kumar Singh v. State of Rajasthan* (Rajasthan High Court, Anoop Kumar Dhand J., 2024), reported in *Verdictum*, Nov. 15, 2024.
[41] *Sunil Kumar v. Joint Commissioner of Police*, 2026 LiveLaw (Del) 179.
[42] *Sanjay Kumar Yadav v. State of Bihar*, CWJC No. 14364 of 2024, decided on Sept. 23, 2026 (Patna High Court, Alok Kumar J.).

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3. Revocation and natural justice. Section 17 does not require prior notice. *Kailash Nath* nonetheless read in a post-decisional hearing, and later decisions have quashed cancellations based solely on the registration of an FIR or on generalised apprehension.

4. Criminal liability and possession. The Supreme Court has interpreted "possession" under the arms and anti-terror laws to require conscious possession, combining physical control with knowledge.[43] The right of private defence under ss. 34 to 44 of the Bharatiya Nyaya Sanhita, 2023 (formerly ss. 96 to 106 of the Indian Penal Code) is independent of licence status: a person may lawfully defend life with a weapon, but unlicensed possession remains a separate offence.[44]

5. The illicit market. The Supreme Court in *Rajendra Singh v. State of Uttar Pradesh* (order of 7 November 2024) found a "lackadaisical approach" to enforcing the Act and Rules and directed every State and Union Territory to constitute a committee chaired by the Chief Secretary to prepare an action plan against unlicensed manufacture and trafficking.[45] NCRB data for 2022 recorded 80,118 cases under the Arms Act nationwide; of about 1.04 lakh arms seized, more than 95 per cent were unlicensed, improvised or country-made.[46]

C. Punjab: a case study

Punjab illustrates both the density of licensed arms and the State's capacity to tighten control without any constitutional obstacle. After a series of high-profile killings in 2022, the State Government on 13 November 2022 ordered a review of all arms licences within three months, suspended issue of new licences during the review, and banned the public display of weapons (including on social media) and songs glorifying violence.[47] An affidavit filed by the Director General of Police before the Punjab and Haryana High Court in 2024 disclosed that 34,768 licences had been granted between 2019 and 2024, of which 32,303 were for self-defence, with

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[43] *Gunwantlal v. State of M.P.*, (1972) 2 SCC 194; *Sanjay Dutt v. State through CBI, Bombay (II)*, (1994) 5 SCC 410.
[44] The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 34–44; *Darshan Singh v. State of Punjab*, (2010) 2 SCC 333.
[45] *Rajendra Singh v. State of U.P.*, 2024 LiveLaw (SC) 885 (order dated Nov. 7, 2024).
[46] National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs, New Delhi, 2023), as reported in "Booming gun trade" *The Tribune* (editorial), Nov. 2024.
[47] Government of Punjab, Home Department, order dated Nov. 13, 2022; "Punjab clamps down on gun culture, 274 licences suspended" *Hindustan Times*, Nov. 20, 2022.

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Gurdaspur (4,928) the highest unit; 189 FIRs had been registered for violating the 2022 directions.[48] An order of that kind would face immediate challenge under *Bruen* in the United States; in India it is an ordinary exercise of executive power under the Act.

VI. Comparative Analysis

A. The two regimes side by side

Dimension	United States	India
Source of entitlement	Second Amendment, incorporated against States (*McDonald*)	Statute only (Arms Act, 1959); no right under Art. 19 or 21 (*Kailash Nath*)
Who bears the burden	State must show a historical analogue (*Bruen*, *Rahimi*)	Applicant must show "good reason" (s. 13(3))
Licence to own	No federal licence; NICS check at dealer sale; some States require permits	Mandatory licence for every firearm (s. 3)
Licence to carry	Shall-issue or permitless in all States after *Bruen*	Carriage only as licensed; area validity may be restricted
Numerical cap	None federally	Two firearms per person (2019)
Validity	Varies by State	Five years, renewable (s. 15)
Disqualification	Status categories in 18 U.S.C. § 922(g), subject to as-applied challenge (*Hemani*)	Age under 21, specified convictions, bond-over, unfitness, public safety (ss. 9, 14)
Judicial review	Text-history-tradition test	Arbitrariness, application of mind, natural justice (Art. 14, 226)
Civilian firearms	393.3 million; 120.5 per 100	71.1 million; 5.3 per 100 residents

[48] "Over 34,000 firearm licences issued in Punjab since 2019, govt tells HC" *Hindustan Times* (Chandigarh), Apr. 27, 2024.

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Dimension	United States	India
(2017 est.)	residents	

B. The decisive variable: allocation of the burden

The sharpest analytical point emerges from *Bruen* itself. New York's invalidated "proper cause" requirement asked an applicant to show a special need for self-protection distinguishable from that of the general community. Section 13(3) of the Arms Act, as applied by the Delhi and Rajasthan High Courts, asks substantially the same question. India's ordinary licensing standard is, in other words, precisely the model that the Supreme Court of the United States has held unconstitutional. The difference between the two countries is therefore not one of administrative detail but of constitutional premise: who must justify the gun. In the United States the citizen's claim is presumptively valid and the State must justify interference; in India the State's monopoly over force is presumptively valid and the citizen must justify an exception. This reflects the Weberian conception of the modern State as the holder of a monopoly on the legitimate use of physical force, which the Indian Constitution embraces and the American Second Amendment qualifies.[49]

C. Points of convergence

The gap is narrower at the margins than the labels suggest. First, both systems disarm the dangerous: *Rahimi*'s principle that a person found to pose a credible threat may be temporarily disarmed parallels ss. 9, 14 and 17 of the Arms Act. Second, both now resist disqualification by bare status. *Hemani* rejected disarmament of drug users without proof of danger; the Patna High Court in *Sanjay Kumar Yadav* rejected refusal on the basis of a routine FIR without evidence of misuse. Third, both systems accept sensitive-place restrictions: *Heller* and *Wolford* preserve bans in schools and government buildings, and the Allahabad High Court in *Amandeep Singh* barred arms from court premises. Fourth, both rely on police-run background verification, though in India it is a substantive threat assessment and in the United States a database check.

[49] Max Weber, "Politics as a Vocation" in H.H. Gerth and C. Wright Mills (eds.), *From Max Weber: Essays in Sociology* (Oxford University Press, New York, 1946).

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D. Points of divergence

The divergences remain fundamental. The United States has no general need requirement, no numerical cap and no federal ownership licence, and private sales largely escape checks. India requires a licence for every firearm, caps holdings at two, and subjects each grant to discretionary satisfaction. Most importantly, Indian legislatures and executives can tighten control at will, as Punjab's 2022 order and the 2019 Amendment show, subject only to procedural review; American legislatures face constitutional invalidation if they cannot locate a historical analogue.

E. Outcomes and their limits

Raw outcomes must be read with caution, since violence has many causes. Still, two observations are defensible. The United States combines the world's highest civilian ownership rate with a firearm death toll of 46,728 in 2023, a majority of them suicides.[50] India's principal firearms problem lies not with licensed holders but with illicit, country-made weapons: over 95 per cent of arms seized in 2022 were unlicensed or improvised.[51] For India, the policy lesson is that further restricting lawful licensees yields diminishing returns, while enforcement against illegal manufacture, as the Supreme Court directed in *Rajendra Singh*, promises more.

F. Should India recognise a right?

Scholars of the Second Amendment have argued that even a robust right leaves ample room for regulation and that rights and regulation are complementary.[52] For India, the stronger case is not for a constitutional right to bear arms, which would sit uneasily with Article 19(1)(b), the Union's legislative competence and the experience of insurgency in Punjab and the North-East, but for procedural rights within the licensing regime. Article 14 already prohibits arbitrariness in

[50] Kim *et al.*, *supra* note 26.
[51] NCRB, *supra* note 43.
[52] Joseph Blocher and Darrell A.H. Miller, *The Positive Second Amendment: Rights, Regulation, and the Future of Heller* (Cambridge University Press, Cambridge, 2018).

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State action; what is missing is predictability. Applicants face no statutory timeline, inconsistent standards on threat perception and wide variation between districts.[53]

VII. Conclusion and Suggestions

The United States and India answer the question "who may be armed?" from opposite premises. American constitutional law, after *Heller*, *Bruen* and *Rahimi*, treats the firearm as the object of an individual right and requires the State to justify every restriction by reference to history; the 2026 decisions in *Hemani* and *Wolford* confirm that this burden is real. Indian law treats the firearm as the object of a statutory privilege granted on proof of need, and Indian courts from *Kailash Nath* (1985) to the Delhi, Rajasthan and Patna decisions of 2024–2026 have consistently refused to locate a right to arms in Article 21. The paper's central finding is that the ordinary Indian standard for a licence corresponds closely to the "proper cause" regime struck down in *Bruen*; the two systems differ not in degree but in the allocation of the burden of justification.

The Indian position is constitutionally sound and suited to Indian conditions. It is, however, procedurally under-developed. The following reforms are proposed:

1. **Statutory timelines.** Amend s. 13 or the Rules to require decision on an application within a fixed period (the Allahabad High Court in *Ganesh Chandra Bhatt* suggested three months), with reasons for any delay.
2. **Structured criteria for "good reason".** The Central Government should issue binding guidelines on threat perception, occupational risk and crop protection, resolving the present divergence between High Courts on whether a specific threat must be shown.
3. **Reasoned orders and transparency.** Refusals and revocations should be reasoned, digitally recorded and trackable by the applicant, giving practical effect to ss. 14 and 17 and to the post-decisional hearing required by *Kailash Nath*.
4. **Training.** The Centre should notify mandatory safety training under r. 10(3), so that the requirement is uniform rather than imposed ad hoc by licensing authorities.

[53] *Ganesh Chandra Bhatt*, *supra* note 32; *Sunil Kumar*, *supra* note 38; *Sanjay Kumar Yadav*, *supra* note 39.

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5. **Linking licences to protection orders.** Drawing on *Rahimi* and 18 U.S.C. § 922(g)(8), Parliament could expressly require suspension of arms licences of persons against whom protection orders are passed under the Protection of Women from Domestic Violence Act, 2005, subject to hearing.
6. **Targeting the illicit market.** The State-level committees directed in *Rajendra Singh* should publish their action plans, and the NCRB should report crimes separately by licensed and unlicensed weapons so that policy rests on evidence.
7. **State-specific audit.** States with high licence density, such as Punjab, should institutionalise periodic audits of the kind ordered in November 2022, rather than relying on episodic crackdowns after high-profile crimes.

India need not import the Second Amendment to learn from American experience. The American record shows the costs of treating arms as an unregulated entitlement; the Indian record shows the costs of unstructured discretion. A licensing regime that is restrictive in substance but predictable, reasoned and fair in procedure would honour both the constitutional choice made in 1950 and the rule of law.

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