



Journal of Contemporary Politics

Original Article

Gun Laws and Gun Related Violence in the United States: Issues and Complexities

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ARTICLE INFO

Article history:

Received 04.03.2023

Revised 24.04.2023

Accepted 12.06.2023

Published 22.06.2023

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<https://doi.org/>

[10.53989/jcp.v2i2_10_vinod](https://doi.org/10.53989/jcp.v2i2_10_vinod)



INTRODUCTION

Gun related violence in the US is complicated, nuanced, emotional, politically toxic, culturally complex and highly polarizing. In short, it is one of the most intractable issues in American political and social life. The periodicity of the gun related tragedies seems to have resulted in a certain numbness, bereft of emotionalism and sensitivity. All that one sees are the lighting of candles, placing of flowers, and making emotional eulogies. This is necessary, but in no way compensates for the enormity of these tragedies. Over the past few decades, thousands of innocent lives, including young innocent children have been man slaughtered for no fault of theirs. Guns are now one of the leading causes for the death of children in the US. The state authorities have been virtually reduced to mute spectators, leaving many questions unanswered. Has individual freedom resulted in the freedom

to kill? Is gun ownership a right for all Americans or just a minor militia? Can lose gun laws be construed as institutionalized murder? These are some of the critical issues that need to be addressed.

Wide civilian ownership of firearms legally and/or illegally has been the primary cause for gun violence. The statistics emerging out of the Gun Violence Archive says it all. About a third of the adults in the US have guns. America has one of the highest levels of gun ownership and gun violence. Gun ownership and homicide rates are very high in the US. There is a link between ownership of guns and violence, which has been proved through various studies. The US ratio of firearms per 1000 residents stands at 120 followed by Yemen 52, Serbia 39, Montenegro 39, Uruguay 32 and Canada 32. Even more disconcerting is that of all the murders in the US, 60% were by firearms, compared to 31%



in Canada, 18% in Australia and 10% in the UK. In the US, there are 4.12 deaths per 100,000 which is forty times higher than the UK. On a per capita basis US gun related murders is thirty times that of the UK.

Studies have shown that jihadi terrorists get their guns largely through criminal connections, whereas the rightwing terrorists procure their guns through legal means using the internet and even assembling of firearms. In the European Union there are currently 25-million-gun owners, who together possess up to 80 million guns. Presently almost 6700 people die in the EU as a result of gun wounds every year (most of these being impulsive suicides), compared to approximately 47,000 deaths in the US. The majority of gun deaths are suicides.

Online sales and 'ghost guns' have added to the problem. Among those below the age of twenty, gun violence accounts for over 7% of the deaths in the US. There has been a historic spike in homicides in the US too, along with domestic violence, community violence and mass shootings. Unfortunately, many of these firearms have found their way into the hands of criminal groups and terrorists. In the US even background checks are not always needed to purchase a gun. This is the outcome of poor enforcement and legal loopholes. More guns in the US means more deaths (German Lopez, May 22, 2022)¹.

DEBATE OVER THE SECOND AMENDMENT

The right to own a gun is considered sacrosanct by many Americans, perhaps as long as one's own kith and kin are not the victims. In the early days of the American Republic firearms were considered essential. Militias existed since the early days of white settlement, as many colonies were almost in a permanent state of war. The Colonists had to protect themselves. The war with the Indians also forced them to become proficient in guns. After independence, the US Congress was authorized to even call the militias into national service.²

For most of American history, the Second amendment has remained as the uninterpreted relic of the founding era, until the *Heller v District of Columbia* judgment of the US Supreme Court, though the Court did not fully ban handguns. Gun ownership is rooted in the Second Amendment which states that, "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".³ However, the right to bear arms is not open-ended. Certain restrictions are laid out in the Gun Control Act of 1968.

¹ Over the years many Gun Acts have not pulled through judicial review, like the Washington DC law that banned the carrying of banned handguns. This was one of the Courts first rulings on the Second Amendment in nearly seven

decades.

Their argument is that the right to possess firearms is enshrined in the Second Amendment to the US Constitution. The roots of the Second Amendment can be traced to the rights of Englishmen to carry weapons for their self-defense. Later the Amendment referred to the right of the citizen militia to keep arms. It was primarily meant for small militias of those times and not necessarily for individuals to carry and unleash them in the manner they tragically do now. Moreover, much has changed, from the days of the musket to an AR-15.

Today the AR-15 is at the heart of the gun debate in the US. No weapon is as ubiquitous /controversial as the AR-15's. The rough estimate is that one in twenty Americans owns an AR-15. This works out to almost 6% of the population. It has become so popular for both sport and mass shootings, that some suggest that it should be christened as the 'national gun of the US'. Unfortunately, AR-15's have been used in 10 of the 15 deadliest mass shootings in the US since 2012.⁴ Its popularity has to do with its lightweight, accuracy and ease of use even by women and children. The weapons simplicity has tragically made it a favourite for mass shootings. Commercially it has resulted in a huge cash flow for the gun sellers.

The core of the argument opposing gun control or "restrictionism" as Lester Hunt puts it is that "it is rights based". In that sense, the right of self-defense is empowered. Hunt argues that guns make people feel like responsible citizens. (David De Grazia and Lester Hunt: 2016)⁵. The counter argument is that gun ownership makes the lives of people more insecure. The right 'not to be shot' is a counter to those who perceive possession of guns as rights-based.

The Second amendment is perhaps one of the most controversial, volatile and misunderstood provision of the US Bill of Rights. The present debate according to Michael Waldman was a backlash to the liberal 1960s and the resurgence of libertarianism.⁶ Though the Second amendment states that "the right of the people to keep and bear arms shall not be infringed", yet it needs to be contextualized and qualified. Neither is it sacrosanct. Earlier the justification for guns were dual, viz., for self-defense and defense against a tyrannical government. Now the focus seems to be self-defense. If so many guns are required for self-defense, then it does not reflect well on American state and society. In this context, guns are both the problem and the solution. Ironically and tragically, the Second Amendment has made the US the world leader in mass shootings.

In *Hellner v District of Columbia* (2008), four justices of the US Supreme Court ruled that the right to bear arms made sense only in the context of a "well-regulated militia" of the 18th century. Justice John Paul Stevens in this case contended that the Second amendment cannot be construed as a fundamental right to self-defense. However, based on a

¹The Control Act of 1968 prohibits individuals under eighteen years of age, convicted criminals, the mentally disabled, dishonorably charge military personnel, and others from purchasing firearms.



5-4 verdict, a majority of the judges argued for the possession of firearms in self-defense. The case had to do with the 1976 District of Columbia's ban on gun ownership and their registration. Justice Stephen Brayer argued that the District's law banning guns was consistent with the Second Amendment. Yet, the 2008 judgment also He argues that the comma in the Second Amendment of the Bill of rights ratified on December 15th, 1791 is the pivot point on which ideological wars have been waged, and lives hang in balance, upheld the right of individuals to possess guns.

Jim Beckerman suggests that the Second Amendment is all about a comma. The second Amendment states as follows: "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." He argues that the comma in the Second Amendment of the Bill of rights ratified on December 15th, 1791 is the pivot point on which ideological wars have been waged, and lives hang in balance. The question Beckerman raises is: what is the relationship between these two phrases on either side of this ambiguous punctuation mark? The issue is whether the right of the people to keep and bear arms is for the primary purpose of maintaining a militia? If that is so then the right to use firearms for hunting down people in public spaces with semi-automatic weapons is not guaranteed. The other issue is whether the Second Amendment should be interpreted to mean that, because the need for a well-regulated militia has established the need for guns, therefore guns of any kind and under any circumstances must remain legal under the Constitution.⁷ Hence according to him this has been the platform on which the pro and anti-gun lobby platforms have been waging war.

Under the present circumstances, the Second Amendment does not protect the right of children to go to school or citizens to go to malls and hospitals with confidence. As President Biden rightly pointed out it's an issue of both "conscience and common sense". Both seem to be lacking among the stakeholders and the NRA. Moreover, in terms of attitudes towards gun license, perceptions seem to vary on the basis of ethnicity, race, party, community and class. More Republicans possess guns than the Democrats. Gun owners must be made liable for misuse of their guns by them or others. Unfortunately, this is not happening and what is being unleashed on fellow Americans are almost akin to weapons of war. Americans seem to be caught between the devil and the deep sea when it comes to the right to own firearms on the one hand and the need for regulating firearms on the other.

LOBBYING BY THE NATIONAL RIFLE ASSOCIATION (NRA)

Since its creation in 1871 as a recreational group. The National Rifle Association (NRA) headquartered in Fairfax, Virginia is today one of the most powerful political and gun rights organizations in the US, with a membership of more

than five million. The NRA's lobbying arm is the Institute for Legislative Action which openly lobbies against gun control, by influencing public policy. In 1977, it created its own Political Action committee to fund lawmakers, mostly Republicans.⁸ The NRA has close ties with the multibillion-dollar firearms' industry in the US.

Its standard argument is that guns make the US a safer place. US civilians own almost 390 million guns. Lobbyists like the NRA, the Gun Owners of America (GOA) and the Second Amendment Foundation along with some of the lawmakers move heaven-and-earth to defend the Second Amendment in 'letter', though not in 'spirit'. One may recall that since the formation of the Political Action committee (PAC) in 1977, the NRA has been channeling funds to legislators. In 2020 the NRA spend close to \$250 million for lobbying against gun-control laws. It grades the Congressmen from A to F based on their levels of support for gun rights. Needless to say, the NRA has stakes in the multibillion-dollar firearms' industry. That the NRA continues to be unrelenting, is not a matter of surprise. Stephen Gutowski argues that the NRA creates "puppet politicians", who do nothing but lie and continue to take the NRA's dirty money.

In the 2016 Presidential elections, the NRA reportedly spent \$50 million in outside spending in support of Trump and six Republican Candidates for the Senate. Large numbers of TV ads were sponsored by the NRA. Perhaps former President Trump benefited the maximum. In 2017, he is reported to have told the NRA that "I will never let you down".⁹ Yes, he never let them down, in spite of all the mass shootings that took place during his tenure as President.

There was a time when the NRA was in favour of modest gun control measures rather than universal measures. In a major turnaround, the NRA is now in favour of 'Endless Carry' i.e., gun holders can carry their gun in public without a permit. The NRA has also influenced 23 states to pass 'Stand your Ground Laws'. This implies that gun owners do not have a duty to retreat before perceived threats, but may now 'stand their ground' and shoot first.¹⁰

Proponents of the Second Amendment have virtually become habitual in the southern states. The tragedy is that guns are not just being used for sport, hunting and self-defense but unfortunately even for manslaughter. Let's not forget everyday more than 110 Americans are killed due to gun-related violence. When the NRA dismissed the Uvalde massacre as "the act of a lone, deranged criminal" it has only compounded this depressing familiarity. Ironically, soon thereafter a three-day Convention of the NRA took place in Houston displaying 14 acres of the latest guns and gear. How strange that the NRA still contends that the solution to gun massacres is more guns. That seems to be a cruel joke and a contempt for life.



NATURE OF THE CHALLENGE

The Americans killed in terrorist-related violence, perhaps pales in comparison to those who are made sacrificial lambs due to gun-related violence. Many researchers in the US have brought out the link between gun deaths and gun ownership in the US. A US war veteran who commanded the US and NATO forces in Iraq and Afghanistan lamented: "It is gut-wrenching to me that Americans today are more likely to experience gun violence than in many of the places to which I was deployed in the name of defending the nation".

Some of the ways to address this scourge is by insisting on more background checks, red flag laws (also termed Extreme Risk Protection Orders), exercising the right to confiscate guns if necessary and having a ban on assault rifles like AR-15's.¹¹ To estimate exactly the number of firearms in private hands is never easy in the US. One of the reasons is that an individual would need only one background check, even if multiple firearms are purchased. Moreover, it is difficult to account for purchase of firearms from private dealers, friends or even parents.¹² Additionally, there would be the challenge posed by uneven enforcement, even if a law is passed for this purpose. Establishing more gun-free zones like transport hubs, hospitals, government offices, educational institutions etc. need to be prioritized. The gun-rights activists argue that places with restrictive gun laws have witnessed crimes with the use of illegal arms. But this is no argument at all.

Banning assault rifles, defined as semi-automatic weapons, like AR-15's is necessary under the circumstances. Studies show that there are almost 20 million assault rifles in private hands today in the US. The problem is that several laws banning assault rifles face a variety of legal challenges across the country. Many cities and states have stepped in with their own laws in the absence of federal laws in this context. Such laws can take precedence depending on the context and the contingency. Critics argue that it is a violation of the due process. Stricter gun laws could reduce the possibility of gun violence and deaths. Changing the gun culture is sometimes as equally difficult as changing the laws. As long as the Congressmen look at gun control issues from a purely partisan and commercial perspective, rather than as a national issue, the problem will linger on.

In 2021, the Texas Governor signed a law permitting any person above the age of 18 years to openly carry a gun without license or training. If more guns will make Texas safer, the facts prove otherwise.¹³ Texas has one of the highest gun sales in the US as well as one of the highest gun-related death rates. Some of the deadliest mass shootings have taken place in Texas.

It has unfortunately been a story of more guns, more violence, more deaths, more eulogies and more debates. Gun-related violence has been a morally charged issue. Gun violence has and continues to be a complex issue with no easy solutions. The lack of a working consensus on the issue continues to baffle both America and the rest of the

world. Regardless of one's views on the Second Amendment, the recurring tragedies should be an eye-opener. Strict background checks, regulation of firearms and a ban on assault weapons seems to be the only way out.

Gun control legislation is not meant to confiscate guns from law-abiding citizens, but to ensure that it does not go into wrong hands. If not, it will only be a question of waiting for the next tragedy to unfold. In that sense the 'State' has become part of the problem rather than the solution. The problem is ingrained in US politics, culture, and law. The prospects for reform look bleak because of the overwhelming influence of the gun lobby. Mathew Lacombe argues that the NRA has "politically weaponized the gun owners". This is because of the NRA's cultivation of a distinct, politicised "gun owner social identity".¹⁴ This has been used by the NRA to mobilise mass political action on its behalf. Breaking the NRA's stranglehold on American democracy is never going to be an easy task, as it has a nationwide lobbying apparatus.¹⁵ But the fight must go on.

A spate of recent gun-related tragedies at Sandy Hook School and Rob Elementary School have renewed the call for repeal of the Second Amendment. The fact is that gun control is both a state and a federal issue. Moreover, the debate over gun laws has to do with the obligation of the American State to its people. Right to own a gun is now almost akin to a right to kill. Given its rabid misuse, the 18th century rationale is no longer justifiable. Rather, it is more a smokescreen for stake holders like the NRA and the lawmakers, to perpetuate the policy and the industry. The possibility of the US Congress passing a national Red Flag Law seems remote at this point of time, though it is the moral obligation of the State to make adequate safeguards. What is required is political will, backed up by raw common sense. It is time to stem the bloodshed. If not, America will continue to pay a heavy price for its exceptionalism and the "good guy with the gun" theory. After every high-profile mass shooting, the US gun debate is reignited. The debate has waxed and waned over the years. It all seems to be about political power, political muscle, money power and the Second Amendment being used as a convenient lever. Gun control has become one of the most contentious issues in American politics. The challenge is to strike an eclectic balance between individual freedom and the public good.

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