
ILLEGAL SMUGGLING OF ARMS AND AMMUNITION FOR COMMITTING CRIMES IN INDIA AND RUSSIA: A COMPARATIVE ANALYSIS WITH THE INTERNATIONAL LAW

Shruti Sharma, Symbiosis Law School, Nagpur, India

KV Snigdha, Symbiosis Law School, Nagpur, India

I. ABSTRACT

The objective of this research paper is to identify the differences between the legal framework that governs the possession, sale, licensing, and purchase of arms and ammunition between India and Russia, determining which country has stringent regulations and how the same has been used to curb illegal smuggling of arms and ammunition. International law also provides for a protocol for curbing illegal smuggling which has been referred by various countries in their national legislations. The authors have made an attempt to understand the provisions of international law which can be inculcated in the Indian and Russian laws. Therefore, in the end, this will help to deduce how India can incorporate various provisions from Russian law and international law for making robust legislation.

Keywords: Arms Act 1959, Firearms Protocol, Federal Law on Weapons, UN Arms Trade Treaty, Smuggling.

II. INTRODUCTION

The smuggling of arms and ammunition in India and Russia poses a constant threat to national security and public safety. The illegal smuggling of arms and ammunition is considered one of the adverse effects of globalization. Smuggling will increase insecurity mainly if it is related to restricted goods such as guns. These goods can be harmful if they fall into the wrong hands as they can be used to destabilize the security of the people in the nation. To curb illicit smuggling, the governments of various nations and international organizations have enacted a regulation for restricting the supply of such arms and ammunition in the black market such as entering into a multilateral agreement, the United Nations Firearms Protocol.¹ In India, the first attempt to enact the Arms Act of 1878 was made by the Britishers to restrict the Indians from owning firearms without any license. This was the first measure taken as a gun control mechanism. The Act was amended in 1959. This Arms Act, 1959 is still the only prevailing legislation in India controlling and curbing illegal smuggling in India to date. Presently, this Act regulates the licensing, possession, and prohibition of firearms. Later, to bring more clarity to the procedure, the Arms Rules 1962 were brought in place which was modified by the Arms Rules 2016.

Despite legislation in place, the violence caused by illegal smuggling of arms and ammunition has grown with time instead of decreasing. As per a report, 74,877 firearms were seized out of which only 3,742 were made in factories or which were licensed.² The majority of smuggling is conducted via the international borders of India having routes covering Jammu and Kashmir, the coastline of Maharashtra, and the Northeastern region of India which borders Bangladesh and Myanmar.³ The inflow of illegal weapons is being used for committing varied offences such as out of 3775 murder cases committed using firearms, only 322 cases were committed with the use of licensed firearms in 2016.⁴

Similarly, in Russia, the Federal Law on Weapons⁵ governs among other things like production,

¹ Anna Ivanova, *An Analysis of Illicit Arms Trade*, SSRN, (Aug 13 2009).

² Crime in India 2018, National Crime Records Bureau Volume I, (2018) <http://ncrb.gov.in/crime-india-2018>

³ Ravinder Pal Singh, *An Ideal Arms Trade Treaty from India's Perspective*, Manohar Parrikar Institute for Defence Studies and Analyses (Jul 27 2012), <https://www.idsa.in/policybrief/AnIdealArmsTradeTreatyfromIndiasPerspective>

⁴ Table 2A.4, Victims murdered by use of firearms-2016, National Crime Records Bureau (2017) https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%202A.4.pdf

⁵ Federal Law No. 150 of Dec. 13, 1996, GARANT.RU, <https://base.garant.ru/510128024/>

sale, possession, purchase, transportation, possession, import, and export of firearms in the country. An amendment was brought in the "Rules on Circulation of Civil and Service Weapons and Munitions in the Territory of the Russian Federation"⁶ in 2014 which is considered a major amendment in the Russian Federal Law on Weapons. The Federal Law is also applicable to the circulation of ammunition. The law of the country applies to trafficking in ammunition and cartridge trafficking as well.

III. LEGAL FRAMEWORK ON ARMS AND AMMUNITION

A. INDIA

The Parliament of India after independence enacted the Arms Act, 1959 ("1959 Act") with the sole purpose of consolidating and amending the laws relating to arms and ammunition. This was necessary to curb the menace of people holding illegal weapons that could be used for committing crimes. The Act covers under its preview the possession, sale, purchase, import, and export of arms and ammunition. This Act was followed by Arms Rules, 1962. The following are certain features of the Act and the Rules:

1. Definitions provisions: The 1959 Act provides for an inclusive definition of ammunition which means ammunition for any type of firearms, rockets, bombs, articles designed for submarine mining, and other articles that contain or are designed to contain explosive, fissionable material whether used with or without any firearms.⁷ The arms have been defined in such a manner to include firearms, sharp-edged and deadly weapons, and machines used for manufacturing arms. Arms are articles that are designed in the form of a weapon for offense as well as defense.⁸
2. Mandatory requirement of Licensing of firearms and ammunition for acquiring and possessing: Any person who acquires, possesses, or carries any form of firearm or ammunition has to obtain a prior license. A maximum of two firearms can be possessed

⁶ Library of Congress, *Russian: Right to Use Firearms Extended* (Nov. 25 2014), <https://www.loc.gov/item/global-legal-monitor/2014-11-25/russia-right-to-use-firearms-extended/#:~:text=150%20of%20Dec.,1178>

⁷ Section 2 (b) of the Arms Act of 1959

⁸ Section 2 (c) of the Arms Act of 1959

by a person. If a person has a license to manufacture and sell the arms and ammunition, that person is required to inform the judicial magistrate or officer in charge of the nearest police station in writing about his intention to sell or transfer the licensed arms and ammunition.

3. Prohibition on possession, sale, or transfer of firearms or ammunition: As per the provision, a person who has not acquired the age of twenty-one years, who has been awarded imprisonment which involves violence, moral turpitude shall not possess or carry any firearms or ammunition. An individual is prohibited from selling or transferring any firearm or ammunition to above mentioned category of persons and also to a person who is of unsound mind.⁹
4. License required for importing and exporting arms: A person cannot import or export in or out of India via sea, land or air route any arms or ammunition unless that person has a license. However, if neither the Arms Act nor any other Act specifically prohibits possession of any arms or ammunition, then it can be imported or exported for private use although in reasonable quantity.
5. Powers and procedure of police and magistrate: A police officer has the power to arrest a person without any warrant if an individual fails to give his name and address or provides wrong details. Such details of an individual can be demanded when he/she fails to show that he is entitled to carry arms and ammunition which are in his possession without any license.¹⁰ A person carrying any arms or ammunition can be arrested without warrant by a police officer, magistrate, public servant, or even a person employed who is working in a railway, aircraft, vessel, etc., if there are grounds of any suspicion that weapon is being carried with an intention for committing an unlawful act.¹¹
6. Punishment for the offenses: Any person who contravenes the provisions related to manufacturing, sale, or transfer of arms and ammunition; is involved in import or

⁹ Section 9 of the Arms Act of 1959.

¹⁰ Section 19 of the Arms Act of 1959.

¹¹ Section 20 of the Arms Act of 1959.

export contravening the provisions of the Act will be punishable with imprisonment for not less than seven years which can be extended to life imprisonment along with fine. If a person who is prohibited from acquiring, possessing, manufacturing, or selling arms and ammunition without any authorization from the Central Government contravenes this provision, then he/she will be punishable with imprisonment for a period of not less than seven years which can be extended to fourteen years with a fine. As per Section 25 (6) of the Act which was brought by way of an amendment in 2019, if a member of an "organized crime syndicate" or a person on their behalf is in possession or carries any arms or ammunition which contravenes the Act, then he will be awarded an imprisonment of ten years which may be extended to a life imprisonment and fine. Further, if any person on behalf of the syndicate contravenes the provisions of the Act related to the manufacture, sale or transfer, import, or export of arms and ammunition in contravention of the Act, he will be punishable with imprisonment for a term of not less than ten years which may extend upto life and can be fined.¹² Additionally, the punishment for involving or aiding in illicit trafficking in arms and ammunition is imprisonment for life and payment of a fine.¹³

B. RUSSIA

Federal Law on Weapons

The Federal law begins with Article 1 providing for basic concepts such as the definition of weapons, firearms, parts of firearms, gas weapons, ammunition, and other terms about weapons and firearms. As in Russia citizens are allowed to use weapons for self-defense, sports, cultural and educational purposes the weapons have been specifically divided into civil, service weapons, and "combat hand-held small arms and edged weapons"¹⁴ which is used by the executive body of the country which carries out the function of implementation and development of state policy.¹⁵ Any person intending to acquire, exhibit, or collect any weapon and ammunition has to get a license from an executive body authorized in the field of arms trafficking. A validity period has

¹² Section 25(7) of the Arms Act of 1959.

¹³ Section 25(8) of the Arms Act of 1959.

¹⁴ Article 2 of the Federal Law on Weapons.

¹⁵ Article 5 of the Federal Law on Weapons

been provided for a license to purchase weapons and ammunition. The provision also mentions cases under which the license will be refused.¹⁶ The licensing for the process of development, testing, production, and repair of weapons as per law is mandatory.¹⁷ Any foreign citizen can purchase a civilian weapon under a license however, importing any type or model of weapon in Russia by a foreign citizen and its use in the country is prohibited to maintain the safety of citizens.¹⁸ To regulate the field of arms trafficking the federal executive body is authorized to take legal actions.¹⁹

Criminal Code of the Russian Federation

Apart from the Federal Law on Weapons the Criminal Code of Russia specifies the punishments relating to arms, weapons, and ammunition. Article 188 relating to 'Smuggling' provides that if any firearm, ammunition, or weapons causing mass destruction is being smuggled and the customs officers have no knowledge about this movement across the customs border of the country then it shall be punishable with imprisonment for three to seven years. A fine can amount to 1 million Roubles or the amount of wage of the person convicted extending to a period of five years. The Criminal Code also covers punishment for the act of illegal manufacturing, and repairing of arms, ammunition, and explosives which may be granted for a term of two years extending to four years. If the same is committed by a group of individuals, then imprisonment can be awarded for terms of two years extending up to six years.²⁰ The imprisonment for possessing and stealing weapons of mass destruction or allied equipment can be awarded for a term of five years extended up to ten years. The punishment is increased from a term of five years to twelve years with/without a fine of 500 thousand Roubles or the amount of wage of the person convicted extending to a period of three years in case the act is committed by: (a) group of individuals with common conspiracy; (b) person through official position; (c) accompanied by use of violence or threat to use violence which might pose danger to human life and health. If the offense is committed by an organized group, then imprisonment extends up to fifteen years.²¹

¹⁶ Article 9 of the Federal Law on Weapons

¹⁷ Article 9.1 of the Federal Law on Weapons

¹⁸ Article 14 of the Federal Law on Weapons

¹⁹ Article 23 of the Federal Law on Weapons

²⁰ Article 223 of the Criminal Code of the Federation of Russia

²¹ Article 226 of the Criminal Code of the Federation of Russia

IV. COMPARATIVE ANALYSIS OF INDIA AND RUSSIA

Both India and Russia have robust legislation which regulates various aspects of arms and ammunition. Following is an extensive analysis of the legislation of India and Russia.

SR. NO.	HEADING	INDIA	RUSSIA	COMMENTS
1.	Purpose/aim	The Arms Act 1959 was enacted to consolidate all the laws relating to arms and ammunition. The law on arms and ammunition was already in existence but was not under a single umbrella	The amendment in the Federal Law was brought to protect the life and health of citizens and regulate civil arms that could be owned and used by citizens of the country. The other purposes were to protect the natural resources and develop sporting weapons in games and sports, to fight crime and strengthen international cooperation, and lastly fight against the illegal propagation of weapons.	The law on arms and ammunition was enacted long before it was amended by Russia in its Federal Law. In Russia, the Criminal Code brought certain relief before the said amendment.
2.	Definitions	The definitions are more descriptive and exclusive such as that of arms. ²² Various authorities that play a role in	The definitions are provided in more layman's language and scientific language rather than in a legal language. More focus is	In Russia, more emphasis needs to be given to defining the terms in a descriptive manner than in

²² Section 2(c) of the Arms Act, 1959.

		licensing, and seizure such as District Magistrate, public servant has also been defined under the 1959 Act.	on defining the types of arms and ammunition and their ancillary parts.	<p>India. From the definitions, the terms can be interpreted in different manners in Russia which might confuse.</p> <p>Federal Law of Russia must also define its authorities just like in India.</p> <p>The term 'arms' has not been defined or used in Russia instead the 'weapons' have been used in Federal Law.</p>
3.	Types of weapons or arms	<p>Indian law does not allow its citizens access to arms and ammunition.</p> <p>However, in instances such as for protection of cattle and crops,²³ target practice²⁴ the license can be granted to certain individuals.</p> <p>Therefore, not</p>	<p>The law specifically divides the types of weapons based on subjects who use them.</p> <p>The citizens are allowed to possess and use weapons for various purposes including hunting.</p>	<p>The law concerning sub-dividing weapons based on the person or authority using it is more lenient in Russia, this is because other than authorities' citizens are allowed to use the weapons more freely than in India.</p>

²³ Section 14 of the Arms Rules 1962

²⁴ Section 15 of the Arms Rules 1962

		much emphasis has been given to the types of weapons or arms.		
4.	Licensing	The 1959 Act was drafted in a manner to focus more on the licensing of arms and ammunition. The provisions for licensing are well defined under the Rules 1962. A license is also required for importing and transporting arms and ammunition. ²⁵	The Federal Law although requires licensing doesn't provide for a process of licensing.	The requirement of licensing makes the Indian law more stringent, also the monitoring of arms and ammunition can be done easily through the methods of licensing. After licensing scrutiny is done by the authorities of the consignments which contain arms and ammunition. This process ensures that the arms are not illegally imported or exported to India. Russia does have such a defined process which if incorporated can lead to more transparency.
5.	Smuggling	The Indian law does not expressly define smuggling but as per the	In Russia smuggling has been expressly defined under Criminal Code itself. An	The Russian law is more pro-active in including smuggling under its

²⁵ Section 39 of the Arms Rules 1962

		Amendment of 2019, the provisions have been added for including and punish crimes by organized syndicates. Further, any person who is involved in illicit trafficking and aids it will be awarded imprisonment which may extend to life.	exorbitant fine of 1 million Roubles has been provided for such offense.	Criminal law itself. India however, has provided for stringent punishment for organized crimes, and illegal trafficking. On the other hand, Russia awards punishment for a period of 3 years extending to 7 years only. The fine which has to be given by the offender is well-defined and high in Russia.
6.	Punishment and Penalty	<p>After the 2019 Amendment to the Arms Act, the punishment has become more stringent.</p> <p>Awarding of penalty depends on the circumstances of the cases however, the same has not been specifically defined.</p>	The imprisonment is not stringent however, the penalty provisions have been drafted to be more rigorous and defined. To recover the fine from the convicted person, the wages/salary of the person which he/she earns while imprisonment is used.	The imprisonment in Russia needs to be more severe so that it acts as a deterrent especially in cases of organized crimes such as illegal smuggling as it affects a large section of society and even the economy of the country. India can incorporate the method used by Russia with respect to punishing a convict to pay a fine amounting to a

				certain amount of his/her wages or salary. This will ensure that the offender pays the fine and the government is not burdened in case he/she is unable to pay the fine.
--	--	--	--	--

V. INTERNATIONAL LAW ON ILLEGAL SMUGGLING OF ARMS AND AMMUNITION

After globalization, there was an increase in illegal trafficking and smuggling of arms and ammunition. Therefore, to restrict or regulate the trafficking of arms into the black market, the United Nations and various countries made came up with a protocol, multilateral agreements, and treaties to regulate the transfer of arms and prevent them from falling into illegal hands. Despite the fact that both India and Russia have special legislation in place to prevent illegal trafficking or smuggling of arms and ammunition, neither, country has ratified or joined any international treaty. Due to the lack of a treaty or convention, smuggled arms and ammunition that are seized are often left traceable. This is due to the reason of weak surveillance mechanism. Following are the international instruments for curbing illegal transfer, and smuggling of arms and ammunition which can be referred to provide recommendations to both India and Russia to make their law more robust:

FORM OF INSTRUMENT/LAWS	PARTICULARS OF THE INSTRUMENT/LAWS
Protocol	Protocol against the Illicit Manufacturing of and trafficking in Firearms, their Parts and Components and Ammunitions, Supplementing the United

	<p>Nations Convention Against Transnational Organised Crime.</p> <p>Also Known as the "Firearms Protocol"</p> <p>This Protocol supplemented the United Nations Convention against Transnational Organized Crime. To date, it is considered as the only legally binding instrument that provides for the procedure for preventing and suppressing the illicit manufacture of arms. Presently only 52 States have signed this Protocol out of which only 5 have ratified it.</p>
Treaty	United Nations Arms Trade Treaty
European Union Join Action	European Union Joint Action on Small Arms
Handbook on Best Practice on Small Arms and Light Weapons	These guidelines were developed by the “Forum for Security and Co-operation”
Protocol	<p>“Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa”</p> <p>This Protocol is similar to the “Firearms Protocol” however, there is a special provision under which the state parties must engage in mutual legal assistance²⁶ to eradicate illegal smuggling. This will ensure that</p>

²⁶ Article 14 of the Nairobi Protocol

	procedures such as search, seizure, investigation, detention, and request for documentation can be covered under this Treaty. This will ensure that a state is not biased against another and provides the required information and assistance needed to curb smuggling and trafficking.
--	--

Following is the analysis on the Firearms and Protocol and the Arms Trade Treaty:

A. FIREARMS PROTOCOL

The Protocol has provided various and extensive definition which is similar to those of India. The Protocol requires the State party to adopt a national legislation to include illicit manufacture in firearms and its parts or components.²⁷ Indian law fails to define the term of ‘illicit manufacturing’, a provision to that effect can be amended in the Arms Act of 1959. Even Russia can adopt such a definition. Such provision/definition will ensure that not only illicit trafficking but also manufacturing inside the country border is prevented. As per Article 6 of the Protocol, Parties must adopt within its domestic law the measure for confiscation, seizure, and dispose of arms and its components which has been manufactured illegally. In India in the case of import and export the arms and ammunition go through scrutiny.²⁸ Therefore, in case the person carrying the same does not have any original license or other requirement inform the nearest magistrate. This provision acts in a similar way as that of confiscation. In Russia, such a procedure has not been provided in the Federal Law on Weapons and in the Criminal Code. The Protocol requires maintaining of a record to ensure that illicit manufacturers and trafficked arms and ammunition can be traced. In India as well as Russia this requirement has been fulfilled. In India as per the Arms Rule 1962, the person who has been granted the license is required to maintain an account book for inspection in demand.²⁹

²⁷ Article 5 of the Firearms Protocol

²⁸ Section 40 of the Arms Rules 1962.

²⁹ Form No. 2 Arms Rules 1962.

As India has ratified this Protocol on 05 May 2011 as against Russia who haven't signed the Protocol the law of India is more robust in this matter.

B. UNITED NATIONS ARMS TRADE TREATY

Even though India is a part of the Firearm Protocol, it has yet to enter into an agreement or treaty with other countries. Even though national legislation is in place it cannot tackle the problem of illicit smuggling, trafficking alone. This treaty will obligate the nations to ensure that arms and ammunition are transferred through an authorized government. By this treaty, an obligation has been cast on the state party to not authorize any transfer of arms if that transfer violates the international obligation.³⁰ It has become the responsibility of the exporting state party to take measures to mitigate risk relating to the potential of arms being used to undermine peace and security, facilitate violence, commit offenses relating to organized crimes during the import and export.³¹ If India and Russia ratify such a treaty the government will be more accountable and the transfer of arms and ammunitions between countries with India and Russia will be more transparent. Similarly, the importing State party also has to take measures to ensure that they provide appropriate and relevant information to the exporting party upon a request to assist the exporting party in export it may include "end or end-user documentation."³² Right now India and Russia don't have to follow such procedure with any country. Under this treaty, the state parties are obligated to perform such a procedure. State parties are required to maintain record keeping for a period of a minimum 10 years³³ this is done to ensure that the smuggled, illegal arms and ammunition can be traced which has been provided in India as well as the Russian law. To implement this Treaty, the state parties are required to provide an initial report in the first years after it came into force to the Secretariat. Also, any measure taken to implement the Treaty taken by the state party has to be informed to the Secretariat. An annual report on the import and export of arms (conventional) has to be submitted as well.³⁴ The state parties will be more vigilant and transparent in case of such reporting.

³⁰ Article 6(2) of the Arms Trade Treaty.

³¹ Article 7 of the Arms Trade Treaty.

³² Article 8 of the Arms Trade Treaty

³³ Article 12 of the Arms Trade Treaty.

³⁴ Article 13 of Arms Trade Treaty

VI. CONCLUSION

Even though the laws are robust regarding arms and ammunition in India and to some extent in Russia, the problem of illegal smuggling and trafficking is still persistent. For instance, in India, drones were being used for smuggling arms and weapons across the Indian and Pakistan border in the state of Punjab. In the last few years, almost 30 incidents that were involved in smuggling have been recovered. Many drugs and arms were recovered like heroin, pistols, ammunition, and other explosives from these incidents.³⁵ With the advent of technology, there is a constant need to update laws on arms and ammunition because it affects the whole economy, especially public health and safety. The major goal of The Arms Act, of 1959 is to regulate and restrict the circulation of arms and ammunition, which are illegal. It lays down the process for obtaining licenses for a few categories of arms or ammunition and imposes restrictions on dangerous weapons so they can't be easily available to everyone. With this Act, a person's right to have arms in their possession has been given recognition as a legal right. In cases like self-defence or where there is a threat to life or property, it is important to allow people to possess and use a few kinds of weapons but restrictions must be there. This Act is vital as it helps in dealing with the danger posed by individuals who carry illegal arms that might be used for committing crimes that affect society. The Parliament of India has been proactive in bringing amendment of 2019 which has provided for harsher punishment and to an extent tried to cover illicit trafficking. But the law is still silent on smuggling. Even though the procedure for import and export of arms and ammunition has been extensively dealt with by the Arms Rules 1962 no explicit provisions are included to curb the menace of smuggling clearly. The references and support can be taken from international protocols and treaties to make the national law more vigorous. Similarly, the Russian Federal law and the Criminal Law provide for a robust law on regulating smuggling, however, there are various loopholes in the law that need to be addressed. There is a dire need for the governments of both India and Russia to agree to an international "Arms Trade Treaty (ATT)." This will ensure that the process of import and export, production, etc are more transparent at least with countries that are

³⁵ Ministry of Home Affairs, *Smuggling of Arms and Narcotics* (Mar. 28 2023), <https://pib.gov.in/PressReleasePage.aspx?PRID=1911737#:~:text=Anti%2Dnational%20elements%2Fsmugglers%20are,Arms%2FNarcotics%20have%20been%20detected>

parties to the treaty. Even though the treaty might not stop India and Russia's arms production and trade, it will require good practices by all nations.