



## Gun control in America: A perpetual debate

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### Abstract

The Gun Rights in American politics and society continues to be a highly debated issue in the twenty-first century. It is in the wake of tragic gun violence that the subject has gained renewed importance in the recent years. However broadly the debate can be split into two sides. On one side, the advocates of gun control claim that strict regulation of firearms would greatly contribute in curbing gun-related violence. On the other hand, partisans of gun rights claim that ownership of guns is a fundamental right of every American citizen and it is instrumental in the act of self-defence. Such diversity of thought is further animated by the different interpretations of the American Constitution.

**Keywords:** gun, second amendment, American society, conservative, liberal

### 1. Introduction

#### Judgements of the Supreme Court have Upheld but not Promoted Gun Rights

For most of the nineteenth and twentieth century, the right to bear arms enshrined in the Second Amendment had been interpreted as a collective right. In *District of Columbia v. Heller* (2008) case, the US Supreme Court upheld that the Second Amendment safeguards the individual right to bear firearms, for traditionally lawful purposes like self-defence at home. However, the judgement upholds that the Second Amendment rights are not unlimited in nature. Justice Antonin Scalia wrote, "Like most rights, the Second Amendment right is not unlimited. It is not a right to keep and carry any weapons whatsoever and for whatever purpose." It prohibited the usage of concealed weapons under the Second Amendment. The Court announced a prohibition of firearms by both the felons and mentally ill individuals. The judgement struck down the District of Columbia law which proposed a ban on keeping handguns at home.

Two years later, in the *McDonald v. Chicago* (2010) case, in 5 to 4 majority, the Supreme Court held that the Second Amendment right was enforceable against the states. Justice Alito in the decision struck down the gun regulation that was in place in Chicago city. The gun regulation had banned the private possession of handguns at home for the purpose of self-defence.

Despite the fact that the U.S Constitution, the state constitutions and judicial interpretations post-2008 have guaranteed the right to possess arms, yet courts have ruled that such rights might be stringently controlled. Several regulations have been ratified at the federal, state and local levels to regulate firearms. It is a generally accepted fact that ownership of guns would be denied to mentally ill patients and convicted felons. Restrictions of such kind too have been challenged in courts.

Although, the *District of Columbia v. Heller* and the *McDonald v. City of Chicago* cases were landmark

judgements from the individual rights perspective yet the judiciary has not really promoted the idea of individual rights to bear arms. In the *Williams v. Maryland* case (2010), the Maryland Court of Appeals had restricted the scope of the Second Amendment to one's home. It put forth that the right to possess arms elsewhere was "outside the scope of the Second Amendment." Similarly in the *United States v. Masciandaro* case (2010) the Fourth Circuit Court of Appeals had restricted the Second Amendment right within the home. The judgement declared that: "On the question of *Heller's* applicability outside the home environment, we think it prudent to await direction from the Court itself."

In 2013, the Fifth Circuit Court of Appeals in the *National Rifle Association v. McCraw* case championed a Texas law that denied the individual right to bear handguns outside homes to individuals who were between the age of eighteen and twenty. The decision of the Court was based on an earlier judgement *NRA v. Bureau of Alcohol, Tobacco, Firearms and Explosives* (2012). Irrespective of the fact whether the decisions in the above-mentioned cases were right or wrong, the Supreme Court on February 24, 2014, denied reviewing both the cases.

In the *Chardin v. Police Commissioner of Boston* case (2013), the Massachusetts Supreme Judicial Court championed the firearm licensing statute of the Commonwealth that necessitated an applicant to demonstrate a "good reason to fear injury to his person or property." The judgement declared that such a high burden "does not infringe on a right protected by the Second Amendment."

There are numerous such ongoing challenges to gun laws in the United States of America, whereby the lower courts across the nation, without adequate guidance from the Supreme Court, continues to weigh in on the Second Amendment. Nearly in all cases, the lower courts have shown a tendency to endorse restrictions on the individual right to bear arms. The Supreme Court too on its part, with an exception to the *McDonald V. City of Chicago* case, has not considered any other

case worthy of reconsideration <sup>[1]</sup>.

## 2. The Conservative-Liberal Divide Continues to Thrive in the American Society

The United States of America known for its two party system contains two prominent parties namely the Democrats and the Republicans. On the issue of gun ownership the Democrats, popularly referred to as the liberals, are in favour of gun control laws and crime control. They oppose the individual right to ownership of guns. The Republicans, on the other hand, popularly referred to as the conservatives, are in favour of gun rights. They interpret the Second Amendment as conferring the right to American citizens to bear arms as well as the right to bear concealed weapons <sup>[2]</sup>. The Republicans hold that the right to bear arms is a God gifted right of self-defence.

The first reference to the gun rights in any major party platforms appeared in 1968, when rising crimes, political assassination and consideration of major gun control legislation in Congress spurred the parties to address the issue. Precisely the firm belief of the Republicans on the issue of gun rights stems from their three key ideologies that revolve around the interpretation of the philosophy, culture and constitution of the party. The first ten amendments according to them demonstrate the undeniable rights of American citizens. The “right to bear arms”, like the other amendments refers to the individual rights. The conservatives take great pride in their patriotism and believe that sociological changes in the political environment of the country have no bearing the individual rights that were once enshrined in the Bill of Rights.

Further, the Conservatives believe that regulation by the government on gun ownership is clearly an act of infringement of individual rights and must be regarded as unconstitutional. The chief argument contended by them, that is in congruence with the Second Amendment is that every American citizen has the right to protect himself, his family and his property <sup>[3]</sup>.

The Democrats too regard the individual right to bear arms as an integral part of the American constitution. However, the party has the idea that the usage of firearms must be subject to effective government regulation. Such a perspective is in view of the concern of the appalling effect that gun violence may have on society. They contend that since life is fragile therefore effective regulations such as strengthening background checks, gun safety test and requirement of a photo licence ID must be enforced <sup>[4]</sup>.

In line with the party’s ideology, under President George W. Bush the Republican Party consistently demanded the need for more hunting grounds and the necessity for greater access to shooting clinics. Since hunting was the means of survival for the first settlers in America, therefore the Republicans believed that destroying such a rich tradition of the country is

‘un-American.’ <sup>[5]</sup>

The debate on gun ownership continues to be a part of the legacy of the American political system. President Barack Obama, a representative of the Democratic Party, during his tenure as the President of the country, spoke in favour of gun control.

In the State of Union Address on January 28, 2014, President Obama stated, “Citizenship means standing up for the lives that gun violence steals from us each day. I have seen the courage of parents, students, pastors, and police officers all over this country who say ‘we are not afraid’, and I intend to keep trying, with or without the Congress, to help stop more tragedies visiting innocent Americans in our movie theatres, shopping malls, or schools like Sandy Hook.” <sup>[6]</sup>

President Obama had unveiled a string of executive actions namely fresh background check requirements which would, in turn increase the effectiveness of National Instant Criminal Background Check System (NICS), improvement of the mental health treatment, greater education as well as enforcement of the existing laws. Further, the President has instructed the Departments of Justice, Defence and Homeland Security to sponsor research on gun safety technology.

Although President Obama’s proposal was appreciated in some quarters yet it was vehemently criticised by the Republicans. Roger Williams, a Republican from Texas responded by saying that “The Constitution is the foundation of our government, and I will not sit back and let this president pick and choose which parts to uphold.” <sup>[7]</sup> They also argued such a series of executive action was only a tactic to undermine the ability of law abiding citizens to purchase weapons for the safety of their family.

The following chart represents the perspectives of the various ethnic groups towards gun rights/gun control in the United States of America. It will demonstrate the response that the Obama government may expect from the various sections of the American society.

Following the series of gun violence incidents, the subject has gained public importance and has become a critical subject in the 2016 presidential election campaign. The election has witnessed a shift in trend in Hillary Clinton’s perspective on gun rights. From being an advocate of gun rights in 2008, she has vehemently called for a gun control movement at the national level. She has demanded laws that would hold the manufacturers of guns responsible for the violence that is committed by their guns. She has also claimed the necessity for conducting background checks for guns that are purchased at gun stores and gun shows.

Bernie Sanders has adopted a more middle path approach to gun control than Hillary Clinton. Although he does not prefer holding the gun manufacturers responsible for gun violence or

<sup>5</sup> “Know the Republican Platform”, *Laws*, <http://gun.laws.com/gun-rights/republican-platform>

<sup>6</sup> Ken Mandel, “Obama Gun Control Quotes: 8 Times President Has Addressed The Issue”, *Newsmax*, November 2, 2014, <http://www.newsmax.com/FastFeatures/obama-gun-control-quotes/2014/11/02/id/602135/>

<sup>7</sup> Rich Schapiro, “Critics Rip Into President Obama’s Executive Action on Gun Control; NRA Says Measures Will ‘Do Nothing To Improve Public Safety’”, *Daily News*, January 5, 2016 <http://www.nydailynews.com/news/politics/critics-quick-rip-obama-executive-action-gun-control-article-1.2486004>.

<sup>1</sup> Josh Blackman, “Our Gun-Shy Justices”, *The American Spectator*, July/August 2014, <http://spectator.org/articles/59552/our-gun-shy-justices>

<sup>2</sup> [http://www.diffen.com/difference/Democrat\\_vs\\_Republican](http://www.diffen.com/difference/Democrat_vs_Republican)

<sup>3</sup> “Know the Republican Platform”, *Laws*, <http://gun.laws.com/gun-rights/republican-platform>

<sup>4</sup> “Democratic Party on Gun Control”, *On The Issues*, [http://www.ontheissues.org/Celeb/Democratic\\_Party\\_Gun\\_Control.htm](http://www.ontheissues.org/Celeb/Democratic_Party_Gun_Control.htm)

is in favour of conducting background checks yet he has demanded the necessity of federal ban on all assault weapons. Donald Trump has taken a tougher stance demanding stringent punishment for violent criminals. He has called for reforms in the country's mental health system. Further, he has claimed that ban of specific magazines or guns is a failure as according to him there was clearly no need to instruct law-abiding citizens on the type of firearms they are supposed to possess.

On the other hand, Ted Cruz and the chairman of the Gun Owners of America have initiated a coalition that comprises of gun rights supporters of the country. He stands in strong opposition to President Barack Obama's gun control approach.

Thus, the diversity of approaches adopted by the various American leaders in the 2016 American Presidential elections itself demonstrates that Conservative versus Liberal debate and deliberation on the subject of gun ownership is an integral part of American political system.

### **3. The Clamour for Gun Control has failed to Weaken Gun Rights in the US**

Since several decades gun control measures have been imposed in the United States of America. In response to the gun violence incidents carried out by Al Capone, a legislation was passed in 1934 that imposed fresh penalties, as well as taxes and regulations on sawed-off guns and machine guns that were preferred by the most notorious gangsters of that age. Over the years, the Congress included some new laws to the National Firearms Act. Restriction on interstate trade on ammunitions and gun trade was imposed by the Federal Firearms Act of 1938. For the first time, it necessitated dealers to register themselves as well as maintain records of their transactions.

Later in response to the assassination of President John F. Kennedy on November 22, 1963, Martin Luther King on April 4, 1968, and Robert F. Kennedy in June 1968, a substantial gun reform law was instituted in 1968 in America under the Presidency of President Lyndon Johnson. The law enforced fresh regulations on "destructive devices" which comprised grenades, bombs, rockets, gases, missiles. It also banned the sale of guns to felons and those who were deemed mentally incompetent.

On May 19, 1986, President Ronald Reagan had signed the Firearm Owner's Protection Act. On one hand, the law prevented the formation of a national firearm database, on the other hand, it banned the future sale of machine guns and fully automatic weapons to private purchasers.

In 1993, the Brady Bill was signed by President Bill Clinton. The next year in 1994, he signed the Assault Weapons Ban into law. The law prohibited the possession, manufacture as well as sale of certain specific combat style weapons. However, the law expired in 2004 during the tenure of President George W. Bush and was never renewed again <sup>[8]</sup>.

The United States ranks the highest in terms of gun ownership across the globe, followed by Yemen and Switzerland. A survey conducted in 2007 suggested that on an average every

100 Americans possess 89 guns. Further, it was found that although the Americans constituted only 5 percent of the world's population yet the civilians in the country owned 35 to 50 percent of the firearms that were owned by the civilians of the world. The case of gun rights has also given way to the menace of gun violence. The countries that ranks highest in terms of homicides that involve the usage of firearms are El Salvador, Honduras and Jamaica.

Despite such gun control measures that have been in place since several decades, yet gun rights have continued to be an integral part of American society. The issue is deeply embedded in the history of the country. Gun rights originate from the age when colonial sharpshooters had facilitated in winning independence for the country. The significance of gun rights has shifted over the years. From being an instrument of easy access during times of crisis, guns today are a matter of patriotism, pride and libertarian philosophy. As Craig Shirley, an NRA advocate and historian had put forth, "It's about power, and the power of an individual to decide for himself."

The USA is not the sole nation in the world to enshrine gun rights in the constitution. Guatemala and Mexico being the other examples to this end. The Founding fathers of the American constitution had offered patronage to the right 'to bear arms' as part of their conviction that centralized tyranny could be curbed through multiple bases of power. It is for this reason that the language of the American Constitution confers the need for preserving state militias to act as a counterweight against the central authority. Over time, the Second Amendment has come to be interpreted as bestowing a personal and more importantly constitutional right.

Gun rights have been considered important in the American society for the purpose of self-defence and protection of family. A consequence of the recent cases of shootings have been responsible for the upsurge in the support for the private ownership of guns for the cause of protection of the home.

Further, it must be remembered that the gun industry forms a key sector of the American economy. The National Rifles Association prefers to sustain its position as the guardian of constitutional freedom. However, the organization also functions as a trade association. Guns constitute a \$10 billion industry in the country today. At the base of its economic fundamentals, the NRA seeks to increase the sale of guns as well as protect the firearms manufacturers.

The reason for gun rights having a widespread support in the American society is the effect of the entertainment industry on the masses. This industry that is greatly responsible for selling patriotism, myth, heroism, conflict and blood- has in a way glorified guns. Movies like "The Life and Legend of Wyatt Earp", "The Rifleman", "The Lone Ranger" that had released in the 1950s and 1960s have highlighted the exclusive features of the protagonists guns. Such TV shows and movies have had a deep impact on the mind of the American masses. It is for the above-mentioned reasons that despite the sustained imposition of gun control measures, the demand for gun rights has not weakened in the country.

Thus, the Second Amendment is clearly an enigma. Although several aspects of the Bill of Rights have remained a matter of controversy, however, the disputes have mostly focussed on questions regarding the extent of particular rights. Although

<sup>8</sup> Gregory Krieg, "Gun Control in America: How We Got Here", *CNN Politics*, January 7, 2016 <http://edition.cnn.com/2016/01/07/politics/gun-control-america-history-timeline/>

there is no real consensus on the real meaning of the Second Amendment, yet advocates have been divided into two opposing groups <sup>[9]</sup>. Of the two perspectives, the school of thought advocating gun rights is more significant. This is because historically gun rights have comprised to be an essential strand of American culture. Safeguarding oneself as well as his/her family and property is essentially a fundamental right that every democracy offers to its citizens. Therefore interpreting the real meaning of the Second Amendment as one that advocates this inalienable right seems to be the most appropriate understanding of the much controversial Second Amendment.

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<sup>9</sup> Steven J. Heyman, "Natural Rights and the Second Amendment", *Chicago-Kent Law Review*, Volume 76, Issue 1, October 2000.