

Use of illegal arms in socio legal perspectives of Bangladesh: An overview

Md. Habib Alam*

Abstract

Right to life is the supreme right of a citizen gives absolutely guaranteed priority in the constitution. But the right is become seriously at danger due to availability of illegal arms in Bangladesh. Government is under a constitutional obligation to ensure this hardcore right to life by any means. Enforcement of the Arms Act, 1878 is seems to be a little afford by the government to regulate and control arms in Bangladesh. But the act is not good enough due to some loopholes and lacuna in the present context of free transit and cross boundary communication system. The Act which was enacted during the British period is not a justifiable in the present context. The Act needs necessary modification and repeal of this Act so as to allow for the registration, surveillance and control of these enlisted arms dealing by the criminal and justifiable reasons by the people.

Keywords: *Illegal arms, right to life, socio legal prospects, law and order.*

1.1 Introduction

The most heard words -“Power corrupts man and absolute power corrupts absolutely”- Lord Atkins. Naturally human beings are brutish and ferocious. Law and order bring them civilized. Article 38 of the constitution of the People’s Republic of Bangladesh that every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in interests of morality and public order. at the same, Article 39 prescribed freedom of thought and conscience is guaranteed subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality....the right of every citizen to freedom of speech and expression; and freedom of the press, are guaranteed. Most of the democratic modern states confirm it as one of the core fundamental rights for the people except few certain exceptions people have the way to claim it and practice under valid umbrella. Since from the beginning when a group of people raise voice for in favor of any right there might have some people who at least no be with that right at the same manner and though standard of democracy states ability and strength is important towards the trends and the dimensions

* Barrister -at -Law, E-mail: mdhabibalam7250@gmail.com.

of conflicts and that's the reflection of last few decades after independence in Bangladesh, the statistical and analysis easily draw attention of the catastrophic rivalry towards development and positive progress. If the eyes shift on the trends of democratic continuance of last few decades' people's attitude to good politics. There it could easily available to see a class of people who dislike politics and de motivates others to do it. Their logics and argument are not weaker who liked to oppose involvement in politics, its true and my writing actually not in that point. Every change in the society structure of the statehood and government the people's rights and politics are the ultimate reasons behind to have something better. At the same the trends of politics and its force for mandating dominances creates some harsh reality and message for us in one side state try to prevent subversive trends in politics especially by the opposition at the same the opposition seem to make their task justified though that completely in violations of social and legal notion of justice.

1.2 Importance of the Study

Killing by small arms and light weapons is ever increasing rapidly to the greatest number of people in Bangladesh. There are a lot of illegal small arms in the hands of unauthorized people to be widely spread through criminals, insurgents, and paramilitaries is equally problematic. Politicians and their supporters are acquiring small arms to intimidate opponents and voters for to protect themselves. Unless and until these illegal arms can be ceased and controlled, it will create a massive danger to public safety. This study suggests some recommendations which will be helpful to reform the existing legal framework relating to arms. Where a man possesses an illegal arm, becomes more possibility of danger to vitiate others and to threat public safety (Karp, 2007). Right to security protection as a part of right to life is guaranteed constitutionally as well as internationally. Complying with national and international laws it is the primary responsibility to fulfillment of human rights, obedience of criminal laws. Now small arms are very widely available, relatively cheap and durable so that they can be reused in Bangladesh. Easy access to weapons facilitates violent crime and threatened public safety. It is evident that the existing legal provisions are not uniform and exhaustive to tackle the issues of individual security rather danger to public safety. The essence of the Arms Act, 1878 (Act No XI of 1878) shows the same that the Act was firstly enacted to control and taking order and introducing legal process to combat illegal arms keeping and dealings but not supposed to be with consideration of peoples fundamental rights e.g. right to life or right to self defenses issue of individuals (Kofi, 2005).

1.3 Objectives of the Study

The main object of the study is to broadly analyze the domestic laws on controlling illegal arms in Bangladesh and to find out the legal lacuna and loopholes thereby. The additional objectives of the study are-The additional objectives are to find out mechanisms to combat holds of illegal arms, to identify the compliances of the domestic laws with illicit trade of arms and to render some recommendations for prevention of illegal arms disbarments in Bangladesh.

1.4 Methodology

This is a qualitative study. The general methodological approach of this study is grounded on theoretical approach based on data and information systematically gathered and analyzed both from primary source and secondary source. The Arms Act, 1878 has taken as the primary source. The second sets of data and information are collected from specific records, official desk reports, Article, surveys, newspapers, electric media, magazines, journals and researches. Acknowledgement has been made all the sources wherefrom information is taken either directly or indirectly. The study is concluded by the author themselves within October'2012 to December'2012.

1.5 Existing Legal Framework in Bangladesh

The existing legal framework on Arms is based on three spheres. They are- the Arms Act, 1878, The Penal Code, 1860 and the Code of Criminal Procedure, 1898. The Arms Act, 1878 is the main law on the matter and other two are in part. Where there has no express provision as to any offence prescribed by the Arms Act, it comes under the Penal Code, 1860. For example, there has no provision as to the lethal weapons in the Arms Act. Therefore, automatically it goes under the Penal code (Hossain, Online Article available at <http://www.unrcpd.org.np/uploads/conferences/file/SWplW%20Seminar%20Nepal.pdf>). If there prevail any Law and order matter relating to lethal weapons, the Local Administrative Authority issue an order absolute at once in urgent cases of Nuisance or apprehended danger under the Code of Criminal procedure, 1898.

1.6 Availability of illegal Arms in Bangladesh

Bangladesh is now increasingly being used as a transit route by trans-national militant and insurgent outfits for smuggling weapons. According to intelligence sources, North South and South-eastern parts of the country, especially Chittagong, Khagrachhari, Bandarban, Sandwip, Haluaghat and emerging Char islands are being used for transportation of illegal small arms. Illegal arms trafficking has alarmingly picked up in the South-western Bangladesh. Law enforcement agency sources have identified 29 points in six border districts where arms traffickers are active in carrying out the illicit trade the districts are Kushtia, Meherpur, Chuadanga, Jhenidah, Jessore and Satkhira (Furukawa & Naoko,2010). Bangladesh recovered 10 truck-loads of arms and ammunition from the jetty of the Chittagong Urea Fertilizer Factory (CUFF), in the port city of Chittagong. This was the largest arms haul in the country's history, 290 SMGs, 100 Tommy guns, 400 semi-automatic rifles, 150 40mm rocket launchers, 2,000 grenade launchers, 840 rockets (40mm), 25,020 hand grenades, 6, 392 magazines for SMGs, and 184 million rounds of ammunition were recovered. Reports said that this huge quantity of arms and ammunition was smuggled into Bangladesh from a third country was intended heard for being illegally trans-shipped to recipients in North-eastern India (UNODA.2011).

1.7 Statutory Loopholes in Bangladesh

The Arms Act, 1878 was adopted during the British colonial period on punitive approach rather than sociological approach. The Act did not complied with social aspects of that time. Moreover, the Act is not adaptable to the present day due to some loopholes in the Act itself. The legal lacuna and leakage of the Act may be draw up more clearly if it discuss on comparison to the Arms Act,1959 applicable in India.

1.7.1 As to Definition:

The Arms Act, 1878 defines arms in a narrow sense while under The Arms Act, 1959 is a comprehensive and broad one. In Bangladesh “arms” includes fire-arms, bayonets, swords, daggers, spears, spearheads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms. But in India “arms” means articles of any description designed or adapted as weapons for offence or defense, and includes firearms, sharp edged and other deadly weapons, and parts of, and machinery for manufacturing, arms, but does not include articles designed solely for domestic or agricultural uses such as a lathi or an ordinary walking stick and weapons incapable of being used otherwise than as toys or of being converted into serviceable weapons. The narrow definition has facilitated a number of dangerous armaments to keep out of control under the Arms Act, 1878 in Bangladesh. Moreover, the Arms Act, 1878 provides a critical and complex definition of many terms used in the Act like acquisition, ammunition while the Indian Act has clear and comprehensive definition of those terms. There have no definition on the authority especially on district magistrate, firearm, licensing authority, prescribe, prohibited ammunition, prohibited arms, public servant and transfer in the Arms Act, 1878.

1.7.2 As to licenses

The Arms Act, 1878 prescribes the provisions only directory and not exhaustive. It provides that the Government may from time to time, by notification in the official Gazette, make rules to determine the officers by whom the form in which, and the terms and conditions on and subject to which, any license shall be granted; and may by such rules among other matters. The government may fix the period for which such license shall continue in force. It may from time to time, by notification in the official Gazette, make rules to determine the officers by whom the form in which, and the terms and conditions on and subject to which, any license shall be granted; and may by such rules among other matters. It may fix the period for which such license shall continue in force. There are no uniform rules as to granting licenses under the Act. But the issue is totally different in India. The Arms Act, 1959 provides specific rules as to granting license under the Act.

1.7.3 As to cancellation and suspension of Arms

The Indian Arms Act, 1959 provides uniform provisions as to cancellation of license. Such as the Act states that license may be cancelled or suspended by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a district, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate deems it necessary for the security of the public peace to cancel or suspend such license; or by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act; and the Government may by same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a district, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate deems it necessary for the security of the public peace to cancel or suspend such license. But the provisions as to cancellation of license in Bangladesh under the Arms Act, 1878 are ambiguous, complex and not effective.

1.7.4 As to Refusal of License

The Indian Arms Act, 1959 mention the specific grounds refusal of license. The Act expressly provides that the authority shall refuse to grant license where such license is required by a person whom the licensing authority has reason to believe that he is unsound mind, unfit for license and refusal is necessary for the security of the public peace or for public safety. But grounds of refusal of license are not specific under the Arms Act, 1878. The Act gives a wide discretionary power to the authority without any reasonable direction.

1.7.5 As to Duration and renewal of license

The provisions as to duration and renewal of license under the Arms Act, 1878 is not specific. The Act only states directory provisions that government may pass rules as to duration and renewal of license. But no uniform rules regarding the issue exists till today. In the other side there have specific rules in the Indian Arms Act, 1959 as to the point. The Act prescribes that a license shall, unless revoked earlier, continue in force for a period of three years from the date on which it is granted Provided that such a license may be granted for a shorter period if the person by whom the license is required so desires or if the licensing authority for reasons to be recorded in writing considers in any case that the license should be granted for a shorter period.

1.8 Impact on Social Order

Availability of illegal arms, a massive threat to the social order may be the most crucial issue at the present day in Bangladesh. The threat begins from the family bond up to national security. The curse of availability of illegal arms is not confined to political violence but also to public service institutions and even more to educational institutions. The social rights are violated at the gun point by political leader and terrorist (Biting the Bullet 'Red Book' 2006). The society creates new terrorist. Where a student should get proper harmony to be trained up for society and nation becomes a terrorist by an illegal arm. Violence and cruelty hamper the normal social life of people. Violence in place may threat the social order in whole because the society is nothing but a human network to live with cooperation. Social development is restricted due to illegal influence of the persons who have power. There should be noted that power means nothing but how many arms does he possess. Gradually society becomes deprived of at least of the social security and welfare.

1.9 Impact on National Security

Availability of illegal arms is also significantly threatened national security as well as a big challenge for domestic stability (Albright and et all, 2010). Illicit trade of arms has facilitated the availability of arms not only in Bangladesh but also other neighboring countries like India, Myanmar and Pakistan. Many security analysts believe that the internal factors and sub-systemic dynamics of South Asia have contributed to turn the region into a large illegal arms trading centre (Carolyn, 2008). It may be difficult to stop this illegal

trafficking completely. There are around 28 syndicates in Bangladesh who are engaged in illicit trading of arms as well as criminal activities including gun running, human trafficking, extortion, prostitution, illegal occupation of land, smuggling of contraband items, drug peddling, drug dealing and money laundering etc.

1.10 Recommendations

The study finds out the following recommendations to suggest on the basis of problems and challenges found in research. The recommendations are-

- 1.10.1 Adoption of Uniform Law:** Bangladesh government needs adoption and implementation of a uniform law controlling production, preventing illegal transfer and criminally prosecuting the illegal manufacture, possession, stockpiling and trade of small arms and light weapons. Provisions should be adopted to confiscate, seize or collect small arms and light weapons. It should be ensured that the armed forces, police or any other body authorized to hold small arms and light weapons establish adequate and detailed standards and procedures relating to the management and security of their stocks of these weapons. The Arms Act, 1878 should be modified with provisions as to grant, refusal, renewal, duration and cancellation of arm license (Kabir, Article published in Newspaper, available at <http://www.thedailystar.net/newDesign/news-details.php?nid=170983>).
- 1.10.2 Establishment of national coordination agency:** Government should establish a national coordination agency consists of expert on arms and armaments for policy guidance, research and monitoring of efforts to prevent, combat and eradicate illicit manufacture, control, trafficking, circulation, brokering and trade, as well as tracing, finance, collection and destruction, to assessment of illegal arms.
- 1.10.3 To prevent illicit Trade of Arms:** Illicit trade of arms, especially within border district with neighboring states should be prevented by the government immediately. Since illicit trade of arms is a cross boundary incidents therefore Bangladesh needs to come forward for regional cooperation among SAARC member states (Ashtakala, Online Article available at <http://sikhspectrum.com/author/ashtakalatara/>). Moreover, the government may make provision for destruction and disposal of confiscated illegal small arms and light weapons; monitoring the licensed arms traders regularly to control illegal arms uses; increasing patrolling through its borderlines and checking all entry points; monitoring and vigilance of welding machines factory, especially whose are working at nighttimes (Che, online Article available at <http://epu.ac.at/fileadmin/downloads/research/Che.pdf>.)
- 1.10.4 Procedural Uniformity:** Procedural uniformity is necessary on the power to demand production of licence, arrest of persons conveying arms especially in suspicious circumstances. Power to call deposit of arms when its possession ceasing to be lawful but that should be with or by prior consent of magistrate, clear empowerment required to search of vessels, vehicles arms and in certain circumstances strict power should be given to seizure and detention Government.

1.11 Conclusion

There a complexity in controlling arms and armaments under the existing legal framework in Bangladesh. The framework is not uniform and adequately good enough for the new problems and challenges. The Act made during the British colonial period is not adaptable today. New dimension makes us to modify the traditional complex law as to comprehensive. Law is necessary to maintain social order and national security. There can be no social order where there has no uniform law on a matter however an important issue of arms and armaments. Loopholes and ineffectiveness of the legal provisions have facilitated availability of illegal arms which is a danger to both social order and national security more acutely. Bangladesh government needs immediate action and modification in the existing legal framework to prevent the danger before becoming a deep rooted disease in Bangladesh.



References:

- Arms Act, 1878 (Act No. XI OF 1878). *Dhaka: Ministry of Law, Justice and Parliamentary Affairs.*
- Albright, D., Brannan, P., & Scheel, A. (2010). Detecting and disrupting illicit nuclear trade after A.Q. Khan. *The Washington Quarterly*, pp.85-106.
- Ashtakala, Tara. 'Paper on Update on the Small Arms Situation in South Asia' available at: <http://sikhpectrum.com/author/ashtakalataral/>.
- Biting the Bullet 'Red Book' (2006). Reviewing Action on Small Arms, Assessing the first five years of the UN Programme of Action. New York: International Action Network on Small Arms and the Biting the Bullet project.p.126.
- Carolyn, W. Pumphrey. (2008). *Transnational Threats: Blending Law Enforcement and Military Strategies*, Chapter 1, Special Report of Department of Defence. p.38.
- Che, Kevin Ngang 'Small Arms and Light Weapons, Africa's True Wmds: The Role of Salw in Conflict and Insecurity in Sub-Saharan Africa' available at: <http://epu.ac.at/fileadmin/downloads/research/Che.pdf>.
- Furukawa & Naoko. 'Katsuhisa. Asian Conflicts Reports' Norollicit Networks and North Korea's WMD Program. Available at:<http://www.ristex.jp/aboutus/enterprize/security/pdf/acr9-10-2010.pdf>.
- Hossain, Kaikobad. "Implementation and Evaluation of Small Arms & Portable Lethal weapons in bangladesh" available at: <http://www.unrcpd.org.np/uploads/conferences/file/SWpIW%20Seminar%20Nepal.pdf>
- Kabir, Ekram. *The arms act needs amendment* available at: <http://www.thedailystar.net/newDesign/news-details.php?nid=170983>.
- Kafi, Sharif A. (2005). *Illegal Small Arms and Human Insecurity in Bangladesh*. Dhaka: Bangladesh Development Partnership Centre. p.91.
- Karp, Aaron.(2007). 'Completing the Count: Civilian firearms.' Small Arms Survey 2007Guns and the City. Cambridge: Cambridge University Press. P.241.
- UNODA, (2011). 'National Reports on Small Arms Exports.' United Nations Register of Conventional Arms - The Global Reported Arms Trade. New York: United Nations Office for Disarmament Affairs, Part Bangladesh.