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# Legislative Provisions in Various Statutes Providing for Protection of Animals

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## ABSTRACT

*This research article gives an overview of various legislative measures provided by the Indian Legislation for the Prevention of Animals from Cruelty in India. There have been various legislations in the past few decades which provides for various statutes to control and supervise the use of animals in various fields and industries. This article discusses in detail, the provisions of the Prevention of Cruelty to Animals Act, 1960 and the rules made by the Government by the virtue of the power given under Section 38 of the Prevention of Cruelty to Animals Act, 1960.*

## I. PREVENTION OF CRUELTY AGAINST ANIMALS ACT, 1960

The Prevention of Cruelty Against animals Act, 1960 was enacted on 26<sup>th</sup> December, 1960 with the objective to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to the prevention of cruelty to animals as is given in the preamble.

### *Meaning of cruelty:*

The word cruelty has not been defined anywhere in the Act. Section 11 of Act gives certain actions which amounts to cruelty against animals which are as follows:

(a) beating, kicking, over-riding, over-driving, over-loading, torturing or otherwise treating any animal so as to subject it to unnecessary pain or suffering or causing or being the owner permitting to treat any animal in the above mentioned manner.

(b) employment in any work or labour or for any purpose any animal who is unfit to be so employed by reason of its age or any disease, infirmity, wound, sore or other cause, or, being the owner, permitting any such unfit animal to be employed in any such work or labour.

(c) wilful and unreasonable administration of any injurious drug or injurious substance to any animal or wilful and unreasonable causing or attempting to cause any such drug or substance

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to be taken by any animal.

(d) conveying or carrying an animal in a manner or a position which subjects the animal to unnecessary pain or suffering.

(e) keeping or confining any animal in any cage or other receptacle whose measurements are not sufficient in height, length and breadth to permit the animal a reasonable opportunity for movement.

(f) keeping an animal chained for an unreasonable time or tethered upon an unreasonably short or unreasonably heavy chain or cord.

(g) Any person, being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement.

(h) Any person, being the owner of any animal fails to provide such animal with sufficient food, drink or shelter.

(i) Abandoning any animal without reasonable cause, in circumstances which render it likely that the animal will suffer pain by reason of starvation or thirst.

(j) Any person, being the owner of the animal wilfully permits the animal to go at large in any street while the animal is affected with contagious or infectious disease or, without reasonable excuse permits any diseased or disabled animal, of which he is the owner, to die in any street.

(k) if a person offers for sale or, has in his possession without a reasonable cause, any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill-treatment.

(l) mutilating any animal or killing any animal (including stray dogs) by using the method of strychnine injections in the heart or in any other unnecessarily cruel manner.

(m) Confining any animal (including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object of prey for any other animal or inciting any animal to fight or bait any other animal solely for the purpose of entertainment.

(n) organising, keeping, using or acting in the management of, any place for animal fighting or for the purpose of baiting any animal or permitting or offering any place to be so used or receiving money for the admission of any other person to any place kept or used for any such purposes.

(o) promoting or taking part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting.

***Punishment:***

Section 11 also lays down the punishment for cruelty against animals done by any person as mentioned in clause (a) to (o) of the section 11(1). The punishment given to the first time offender is a fine of Rs. 10 which can extend up to Rs. 50.

In the case of commission of second or subsequent offence within three years of previous offence, a fine of Rs. 25 can be imposed which can extend up to Rs. 100 or an imprisonment of up to three months or both can be imposed.

Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the Prevention of Cruelty to Animals Act, 1960.<sup>3</sup>

***Animal Welfare Board of India:***

Section 4 to section 10 of the 1960 Act lays down the provisions for establishment, powers and functions of Animal Welfare Board of India.

Section 4 of the Act lays down that the Central Government shall establish an Animal welfare Board for the promotion of animal welfare and for the purpose of protecting animals from being subjected to unnecessary pain or suffering.

Section 4(2) states that the Board:

- a) Shall be a body corporate,
- b) shall have a perpetual succession,
- c) shall have a common seal,
- d) shall have power to hold acquire and dispose of property and
- e) may sue or be sued in its name.

***Constitution of the board:***

The Board shall consist of the following members as per Section 5 of the Prevention of Cruelty to Animals Act, 1960:

*“(a) the Inspector-General of Forests, Government of India, ex officio;*

*(b) the Animal Husbandry Commissioner to the Government of India, ex officio;*

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<sup>3</sup> *Animal Welfare Board of India v. A. Nagaraja* (2014) 7 SCC 547

*(ba) two persons to represent respectively the Ministries of the Central Government dealing with home affairs and education, to be appointed by the Central Government;*

*(bb) one person to represent the Indian Board for Wild Life, to be appointed by the Central Government;*

*(bc) three persons who, in the opinion of the Central Government, are or have been actively engaged in animal welfare work and are well-known humanitarians, to be nominated by the Central Government;*

*(c) one person to represent such association of veterinary practitioners as in the opinion of the Central Government ought to be represented on the Board, to be elected by that association in the prescribed manner;*

*(d) two persons to represent practitioners of modern and indigenous systems of medicine, to be nominated by the Central Government;*

*(e) one person to represent each of such two municipal corporations as in the opinion of the Central Government ought to be represented on the Board, to be elected by each of the said corporations in the prescribed manner;*

*(f) one person to represent each of such three organisations actively interested in animal welfare as in the opinion of the Central Government ought to be represented on the Board, to be chosen by each of the said organisations in the prescribed manner;*

*(g) one person to represent each of such three societies dealing with prevention of cruelty to animals as in the opinion of the Central Government ought to be represented on the Board, to be chosen in the prescribed manner;*

*(h) three persons to be nominated by the Central Government;*

*(i) six members of Parliament, four to be elected by the House of the People (Lok Sabha) and two by the Council of States (Rajya Sabha).”*

(2) Any of the persons referred to in clause (a) or clause (b) or clause (ba) or clause (bb)] of sub-section (1) may depute any other person to attend any of the meetings of the Board.

(3) The Central Government shall nominate one of the members of the Board to be its Chairman and another member of the Board to be its Vice-Chairman.

*Term of office of the Board:*

Animal Welfare Board of India consists of twenty eight members and the term of office of the members is for a period of three years.

### *Functions of the Board:*

The Board performs the following functions namely<sup>4</sup>:

*“The functions of the Board shall be—*

*(a) to keep under constant study, the law in force in India for the prevention of cruelty to animals and advise the Government on the amendments that needs to be undertaken in any such law from time to time.*

*(b) to advise the Central Government on the making of rules under the Prevention of Cruelty to Animals Act, 1960 to prevent unnecessary pain or suffering to animals generally, particularly when they are being transported from one place to another or when they are used as performing animals or when they are kept in captivity or confinement.*

*(c) to advise the Government or any local authority or other person on improvements in the design of vehicles which can lessen the burden on draught animals;*

*(d) to take all such necessary steps as the Board may think fit for amelioration of animals by encouraging, or providing for, the construction of sheds, water-troughs and the like and by providing for veterinary assistance to animals;*

*(e) to advise the Government or any local authority or other person in the design of slaughter-houses or in the maintenance of slaughter-houses or in connection with slaughter of animals so that unnecessary pain or suffering, whether physical or mental, is eliminated in the pre-slaughter stages as far as possible, and animals are killed, wherever necessary, in as humane a manner as possible;*

*(f) to take all such steps as the Board may think fit to ensure the destruction of unwanted animals by local authorities, whenever necessary, either instantaneously or after being rendered insensible to pain or suffering;*

*(g) to encourage, by the grant of financial assistance or otherwise the formation or establishment of pinjrapoles, rescue homes, animal shelters, sanctuaries and the like where animals and birds may find a shelter when they have become old and useless or when they need protection;*

*(h) to co-operate with, and co-ordinate the work of, associations or bodies established for the purpose of preventing unnecessary pain or suffering to animals or for the protection of animals and birds;*

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<sup>4</sup> Section 9 Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960)

*(i) to give financial and other assistance to animal welfare organisations functioning in any local area or to encourage the formation of animal welfare organisations in any local area which shall work under the general supervision and guidance of the Board;*

*(j) to advise the Government on matters relating to the medical care and attention which may be provided in animal, hospitals and to give financial and other assistance to animal hospitals whenever the Board thinks it necessary to do so;*

*(k) to impart education in relation to the humane treatment of animals and to encourage the formation of public opinion against the infliction of unnecessary pain or suffering to animals and for the promotion of animal welfare by means of lectures, books, posters, cinematographic exhibitions and the like;*

*(l) to advise the Government on any matter connected with animal welfare or the prevention of infliction of unnecessary pain or suffering on animals.”*

## **II. EXPERIMENTATION ON ANIMALS:**

The term experiment has been defined in section 2(e) of the Breeding of And Experiments On Animals (Control And Supervision) Rules, 1998 as experiment means “*any programme/project involving experiments on an animal/animals for the purpose of advancement by new discovery of physiological knowledge which will be useful for a thing or prolonging life or alleviating suffering or for combating any disease whether on human beings or animals.*”

This definition was updated by the way of an amendment in 2001 as "experiment" “*means any programme/project involving use of an animal/animals for the acquisition of knowledge of a biological, psychological, ethological, physical or chemical nature; and includes ,the use of animal in the production of reagents and products such as, antigens and antibodies, routine diagnostics, testing activity and establishment of transgenic stocks, for the purpose of, saving or prolonging life or alleviating suffering or for combating any disease whether on human beings or animals.*”

Then came another Amendment Act in the year of 2006 which further updated the definition of the term “experiment” as “Experiment” means “*any programme or project involving use of animal(s) for the acquisition of knowledge of a biological, physiological, ethological, physical or chemical nature; and includes the use of animal(s) in the production of reagents and products such as antigens and antibodies, routine diagnostics, testing activity and establishment of transgenic stocks, for the purpose of saving or prolonging life or alleviating suffering or significant gains in well- being for people of the country or for combating any*

*disease whether of human beings or animals. ”*

Chapter IV of The Prevention of Cruelty against Animals Act, 1960 i.e. Section 14 to 20 makes certain provisions regarding experimentation on animals.

Other than the provisions laid down in The Prevention of Cruelty against Animals Act, 1960, there are certain acts which have been enacted by the Parliament which deals exclusively with the provisions related to experiments on animals. The first set of rules enacted were Experiments on Animals (Control and Supervision) Rules, 1968 which were later replaced by Experiments On Animals (Control And Supervision) Rules, 1998. The 1998 rules have been further amended thrice in 2001, 2005 and 2006.

Section 4 of The Experiments on Animals (Control and Supervision) Rules, 1968 lays down certain conditions regarding the conducting of experiments like experiments should be performed with due care and humanity, experiments shall be conducted in every case by or under the supervision of persons duly qualified in laboratory adequately equipped and staffed for the purpose and under the responsibility of the person performing the experiment. Minimum number of animals shall be used in an experiment, Experiments involving operative procedure more severe than simple inoculation or superficial venesection shall be performed under the influence of anaesthetic of sufficient power to prevent the animal feeling pain and it shall remain so throughout the experiment. The experiment shall not be performed for the purpose of attaining or retaining manual skill. Experiment shall not be performed by way of an illustration of lecture in schools or colleges. Experiments shall not be performed as a public demonstration except for advancement of knowledge. The substance known as Urari or Curari or any such paralyzant shall not be used or administered for the purpose of any experiment except in conjunction with anaesthetic of sufficient depth to produce loss of consciousness.<sup>5</sup>

Section 14 legalises experimentation done on animals for the purpose of advancement by new discovery of physiological knowledge or of knowledge which will be useful for saving or for prolonging life or alleviating suffering or for combating any disease, whether of human beings, animals or plants.

***Committee for the Purpose of Control & Supervision of Experiments on animals (CPCSEA):***

Section 15 of The Prevention of Cruelty to Animals Act, 1960 gives power to the Central Government to constitute a committee on the advise of the Animal Welfare Board whenever necessary for the purpose of controlling and supervising experimentation on animals. This

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<sup>5</sup> P.P Mitra, *An Introduction to Animal Laws in India* 14 (Thomson Reuters, Uttar Pradesh, 1<sup>st</sup> edn.)



committee is known as Committee for the Purpose of Control & Supervision of Experiments on animals (CPCSEA).

*Historical background of CPCSEA:*

The detailed rules for experimentation on animals were first enacted by the Ministry of Agriculture in 1968 and were implemented by a Committee set up in pursuance of Section 15(1) of the PCA Act, 1960. However, the Committee was later wound up in 1977. After a hiatus of 13 years, a recommendation to reconstitute Committee for the purpose of control and supervision of experiments on animals (CPCSEA) was received from Animal Welfare Board of India (AWBI). After due consideration of the recommendation of AWBI, CPCSEA was set up by this Ministry on 8th February, 1991. The Committee was, subsequently, reconstituted on 23rd February, 1996 with 15 Members and one Member Secretary. Since then, this Ministry has reconstituted the CPCSEA routinely. The present Committee was constituted on 30th August, 2012 under the chairmanship of Additional Secretary, Ministry of Environment, Forest and Climate Change with 17 Members.<sup>6</sup>

*Objective of CPCSEA:*

The objective of CPCSEA is “to ensure that animals are not subjected to unnecessary pains or suffering before, during or after performance of experiments on them. For this purpose, under the delegated powers, the Committee formulated the ‘Breeding of and Experiments on Animals (Control and Supervision) Rules, 1998’ which were amended in 2001 and then in 2006, to regulate the experimentation on animals.”<sup>7</sup>

*Functions of CPCSEA:*

CPCSEA performs the following functions:

- 1) It Registers the establishments which are involved in conducting animal experimentation or breeding of animals for experimentation.
- 2) It selects and assigns the nominees for the Institutional Animal Ethics Committees of the registered establishments.
- 3) It approves the Animal House Facilities on the basis of reports of inspections conducted by CPCSEA.
- 4) It gives permission for conducting experiments involving use of animals.

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<sup>6</sup> Cpcsea.nic.in. 2021. Home :Committee for the Purpose of Control And Supervision of Experiments on Animals. [online] Available at: <<http://cpcsea.nic.in/Auth/index.aspx>> [Accessed 10 July 2021].

<sup>7</sup> *Ibid*

- 5) It Recommends the import of animals for use in experiments.
- 6) It takes actions against establishments in case of violation of any legal norm/stipulation.
- 7) It conducts Training Programmes for the Nominees of CPCSEA.
- 8) It conducts / supports Conference / workshop on Animal Ethics.<sup>8</sup>

The term establishment has been defined under section 2(d) of the Breeding of and Experiments on Animals (Control and Supervision) Rules, 1998 as “*establishment means any individual, company, firm, corporation, institution other than schools up to higher secondary level, which performs experiments on animals.*”

*Composition of the committee:*

The committee may consist as many number of members as the government deems fit. The Central Government shall nominate one of the members as the chairman. The committee had the power to regulate its own procedure in relation to performance of its duties. . At present, Shri Hem Pande, Additional Secretary, Ministry of Environment, Forest and Climate Change is the Chairman of the Committee.

*Powers and duties of committee:*

Section 17 lays down the powers and duties of the committee to make the rules for experimentation on the animals. Following are the duties of the committee:

(1) It is the duty of the Committee to take all the necessary measures to ensure that animals are not subjected to unnecessary pain or suffering before, during or after the experiments are performed on them and it may make such rule as it thinks fit in relation to conduct of such experiments. Such rules may provide for the following matters:

- a) Registration of the institutions or persons carrying on experiment on animals.
- b) The reports and other information to be forwarded to the committee by the persons and institution carrying on experiment on animals.

(2) The rules made by the committee shall be designed to secure the following objects:

(a) That if the experiment is conducted by an institution, the responsibility is placed on the person in charge of the institution and if the the experiments are performed by individuals. Then such individuals are qualified in that behalf.

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<sup>8</sup> *ibid*

(b) The experiments are performed with due care and humanity and the experiments must as far as possible be performed under the influence of some anaesthesia sufficient to prevent the animals feeling pain.

(c) The animals which are so injured during the course of experiments that their recovery would involve serious suffering, such animals are ordinarily destroyed while they are still under the influence of anaesthesia and are insensible.

(d) Experimentation on animals should be avoided wherever it is possible to do so. For example, if in institutions such as medical schools, hospitals, colleges etc. of teaching devices such as books, models, films equally suffice then animal experimentation should be avoided.

(e) Experiments in larger animals to be avoided when the results for the same could be achieved by performing experiments on small laboratory animals like guinea pigs, rabbits, frogs and rats.

(f) Experiments should not be performed merely for the purpose of acquiring manual skill.

(g) Animals intended for performance should be properly looked after both before and after the experiments.

(h) Records should be maintained with respect to experiments performed on animals.

In exercise of the powers given to the committee by section 17(1), (1A), (2) the committee for control and supervision of experiments on animals made The Breeding of And Experiments On Animals (Control And Supervision) Rules, 1998. This act lays down rules regarding the breeding of animals for the purpose of experimentation, stocking of animals and experimentation on animals.

The Breeding of And Experiments On Animals (Control And Supervision) Rules, 1998:

Section 3 of the rules makes provisions regarding the breeding of animals for experimental purposes. It makes it compulsory for establishments carrying on the business of breeding of animals or trade of animals for the purpose of experiments to be registered.

The procedure for application of registration is given under section 5 of 1998 rules. The breeder or the establishment shall make an application for registration in the specified format to the Member Secretary or any other member of the Committee.

While deciding on the issue of registration, the committee may ask for information relating to the premises where the experiment is to be conducted, animal housing facilities, details of breeding of animal and its trade, other infrastructure etc. and after receiving the information is satisfied, shall register the establishment and the breeder.

After registration, the breeder or the establishment has to comply with the conditions specified by the Committee at the time of the registration.

***Institutional Animals Ethics Committee:***

The 1998 rules establish an Institutional Animal Ethics Committee under section 2(f) which states that "*Institutional Animals Ethics Committee means a body comprising of a group of persons recognised and registered by the Committee for the purpose of control and supervision of experiments on animal performed in an establishment which is constituted and operated in accordance with procedures specified for the purpose by the Committee.*"

***Composition of the Institutional Animals Ethics Committee:***

Section 13 of The Breeding of And Experiments On Animals (Control And Supervision) Rules, 1998 states that "*every Institutional Animals Ethics committee shall include a biological scientist, two scientists from different biological disciplines, a veterinarian involved in the care of animal, the scientist in charge of animals facility of the establishment concerned, a scientist from outside the institute, a non-scientific socially aware member and a representative or nominee of the specialist may be co-opted while reviewing special project using hazardous agents such as radio-active substance and deadly micro-organisms.*"

***Functions of the committee:***

Section 8 of the 1998 rules states that the permission of the Ethics committee needs to be taken for the conduct of experiments. Following are the provisions regarding the permission that has to be taken to conduct experiments:

Firstly, only registered establishments can conduct any experiment on animals.

a) Before acquiring an animal or conducting any experiment on animal(s), every establishment shall make an application for permission of the Committee or the Institutional Animals Ethics Committee. The application for the permission shall be accompanied with details of the experiment in the specified format and it shall be addressed to the Member Secretary of the Committee or the Institutional Animals Ethics Committee, as the case maybe.

b) Then the Member Secretary of the Committee or the Institutional Animals Ethics Committees shall present the application to the Committee or the Institutional Animals Ethics Committee and the Committee after scrutiny may grant permission to the establishment. It has to state the name of the species and the number of animals that can be acquired for carrying out the experiments.

c) The committee or Institutional Animals Ethics Committee while granting permission for conducting experiments on animals must ensure that animals are not being subjected to unnecessary pain or suffering before, during or after the experiments.

d) The establishments are required to forward all the information that the committee may ask for regarding the experiments being carried on the animals.

Section 11 casts a duty on The Institutional Animals Ethics Committee to maintain a record of the animals under its control and custody and to furnish any information as the Committee may ask from the Institutional Animals Ethics Committee from time to time.

As per Section 6 every establishment after registration a register shall be maintained in the specified format and the establishment must keep the particulars about the kind of animal used, health of the animal, nature of the experiment to be performed and the reasons necessitating the performance of the experiment on that particular species. The Committee has the power to examine the register. If the member examining the register is not satisfied, he can give an opportunity for improvement and if after that too he is not satisfied, he may bring the same to the notice of the Committee and seek directions in this regard.

Section 7 of the 1998 Rules makes following regarding stocking of animals. The animals must be stocked by the breeder and the establishment in the following manner:

a) The location of the animal houses must be in a quiet atmosphere undisturbed by the traffic. The premises must be kept tidy, hygienic and must be protected from drought and extremes of weather.

b) Animal cages and stables shall be such that animals can live comfortably and there is no overcrowding in the cage or the stable.

c) Where the Indian Standards Institution has laid down standards for the cages and stables, they must conform to those standards.

d) The animal attendants in the establishments must be trained and experienced in the duties allotted to them.

e) Before and after every experiment, the animal shall be looked after by a trained and experienced attendant.

f) There must be arrangement to look after the animals during off hours and on holidays.

Section 9 of the 1998 Rules lays down the conditions to be followed while the performance of the experiments. Following are the conditions which are to be followed:

a) Every experiment shall be performed by or under the supervision of a duly qualified person in that behalf. He may be Degree or Diploma holder in Veterinary Science or Medicine or Laboratory Animal Science of a University or an Institution recognised by the Government for the purpose and under the responsibility of the person performing the experiment.

b) Experiment shall be conducted with due care and humanity.

c) Animals on whom experiments are performed must be properly looked after before as well as after the experiments.

d) Any operation which involves a procedure more severe than simple inoculation or superficial venesection shall be performed under the influence of anaesthesia administered by a Veterinary Surgeon or a Scientist or technician trained in the methods of anaesthesia so that any kind of pain and suffering to the animal during the experiment can be prevented. The Surgeon or Scientist administering anaesthesia to the animal shall be present near the animal till the completion of the experiment.

e) Animals which during the course of experiment are so injured that their recovery would also involve pain or suffering shall be destroyed humanly while they are still under the influence of anaesthesia.

f) Where there is a reason to believe that the animal on whom experiment is being done is suffering abnormal or severe pain at any stage of continuing, that animal shall be painlessly destroyed at that stage and the experiment shall not be proceeded further.

g) No experiment shall be done for the purpose of attaining or retaining manual skill except in school, colleges and recognised training institutions.

h) Experiments shall not be performed by way of an illustration.

i) Experiment shall not be performed by way of public demonstration.

j) Urari or Curari or any such paralyzant shall not be used for the purpose of any experiment except with anaesthesia or loss of consciousness.

k) No such experiment shall be repeated without justification whose result is already conclusively known.

l) No chemical substance shall be applied to the eye of an animal by way of an experiment for the purpose of absorption through the conjunctival membrane or through the cornea calculated to only give pain.

m) No dogs held for experimentation shall be debarked (devocalized).

n) The responsibility of the experiments in case of an institution is upon the person in charge of the institution and in case of a qualified individual person performing the experiment, that individual person is responsible for the experiment.

Section 10 of the 1998 Rules makes provisions regarding the transfer and acquisition of animals for experimentation. It states that no animal shall be transferred by sale or otherwise to an establishment which is not registered under the provisions of these Rules. This section puts a bar both on the breeder from transferring an animal to an unregistered establishment and on the establishment from acquiring an unregistered breeder or establishment. The animals which are used for experimentation in a production or breed improvement can be given out by the institution for domestic use.

An animal which is available in a country shall not be imported by any breeder or any establishment.

Section 18 and 19 give the committee the powers to enter for inspection and the power to prohibit experimentation on animals respectively. As per section 19 of the Act, to ensure that the rules made by the committee are being followed, the committee may authorise any of its officers or any other person in writing to inspect any institution or place where experiments are being carried on and report to it as a result of such inspection. The officer or person so authorised has the power—

(a) to enter any institution at any reasonable time and inspect any institution or place in which experiments on animals are being carried on; and

(b) to require the production of any record kept by any person with respect to experiments on animals.

Similarly, section 19 states that on being satisfied by the report given by such an authority or such a person that the rules made by the committee are not being followed by the individual or the institution conducting the experiment, the committee has the power to prohibit the person or institution from carrying on any such experiments either for a specified period or indefinitely, or may allow the person or institution to carry on such experiments subject to such special conditions as the Committee may think fit to impose.

As per section 21, if any person or committee makes a contravention of any order made by the committee or commits a breach of any condition imposed by the committee, then he shall be punished with a fine extendable to two hundred rupees, and, in case of contravention or breach of condition taken place in any institution, the person in charge of the institution shall be deemed to be guilty of the offence and shall be punishable accordingly.

### III. CLINICAL TRIALS AND THE DRUGS AND COSMETICS RULES, 1945:

Clinical trials are necessary for obtaining a license before manufacturing a new drug in India. These trials are done on animals which act as subjects to check for any clinical, pharmacological or adverse effects of those products, with the object of determining their safety and efficacy. Though animals and humans are biologically different species, still their can done some estimation of the safety of the new drug and the mode of action based on its results on animals.

Pharmacodynamics is the quantitative study of the effects of drugs and is used to protect overdoses in humans. Pharmacokinetics is essential for evaluation of the efficacy and toxicity of a drug and toxicology is the study of toxicity of the drugs on experimental animals under varying conditions. Hence, animal testing is done to study pharmacodynamics, pharmacokinetics and toxicology and see the results of drugs on animals.<sup>9</sup>

An amendment in the Drugs and Cosmetics Rules, 1945 was issued in 2014 by the Ministry of Health and Family Welfare to ban the testing of drugs on animals. It introduced Rule 135 B to the drugs and Cosmetics Rules, 1945 provides for a prohibition on import of cosmetics tested on animals in the following words –No cosmetic that has been tested on animals after the commencement of the Drugs and Cosmetics (Fifth Amendment) Rules, 2014 shall be imported into the country.

The Bureau of Indian Standards removed animal testing from the testing standards in the year of 2013, following which the Ministry of Health & Family Welfare published the cosmetic testing ban, which *added* the new rule **148-C which provided for the prohibition of testing of cosmetics on animals and stated that no person shall use any animal for testing of cosmetics.**<sup>10</sup> The definition of “cosmetics” under the Drugs and Cosmetics Rules, 1945, includes any article intended for use as a component of cosmetic, the ban on animal testing should apply to ingredients, too.<sup>11</sup>

### IV. PERFORMING ANIMALS

Chapter V of the Prevention to Cruelty on Animals Act, 1960 lays down the principles regarding performing animals. In accordance with the section 38 read with section 37 of the Prevention of Cruelty of Animal Act, 1960 the government made Performing of Animals Rules,

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<sup>9</sup> *Supra* note 3 at p. 145

<sup>10</sup> PETA India. 2021. Cosmetic Testing Banned On Animals. [online] Available at: <<https://www.petaindia.com/blog/cosmetics-testing-banned-on-animals>> [Accessed 10 July 2021].

<sup>11</sup> *ibid*



1973.

Performing animal is defined in Section 2(b) of The Performing Animals Rules, 1973 as “*any animal which is used at, or for the purpose of, any entertainment to which the public are admitted through sale of tickets.*”

Section 21 of the Prevention to Cruelty on Animals Act, 1960 defines the terms exhibit and train.

Exhibit is defined as “*exhibit at any entertainment to which the public are admitted through sale of tickets*” and “*train means train for the purpose of any such exhibition.*”

Section 22 puts restriction on exhibition and training of performing animals in the following cases:

a) No person shall exhibit or train any performing animal unless he is registered in accordance with the provisions of this Chapter.

b) No person shall exhibit or train as a performing animal, any animal which the Central Government may, by notification in the Official Gazette, specify as an animal which shall not be exhibited or trained as a performing animal.

**Registration:**

Registration procedure for the above provision is given under Section 23 which is as follows:

A person desirous of exhibiting or training any animal shall:

i) make an application in the prescribed form to the prescribed authority. The application must contain the particulars of the animals and the general nature of the performances in which the animals are to be exhibited or for which they are to be trained. Entry of the particulars musty be made by the authorities in the register kept for the same.<sup>12</sup>

ii) pay the prescribed fee.

Then, he may be registered under this act unless the court has made an order that he is not entitled to be registered.

The prescribed form and the prescribed fees has been mentioned in The Performing Animals Rules 1973.

Section 3 of The Performing Animals Rules, 1973 prescribes the format of the application that needs to be followed. It states that every application for registration shall contain the particulars

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<sup>12</sup> Section 23(2), Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960)

mentioned in the first schedule. The application shall be made to the prescribed authority within whose jurisdiction the applicant ordinarily resides. If there is no fixed place of residence of the applicant, the application shall be made to the authority that the Central Government specifies.

The fees that has to be accompanied with the application has been prescribed by the section 4 of the 1973 as rupees twenty-five which can be paid either in cash or any other manner prescribed by the authority.

Section 5 states that the prescribed authority shall issue a certificate in the form set out in the Second Schedule. Their shall be a serial number given to every registration which shall be inserted in the certificate of registration.

As per section 6, every person to whom the certificate of registration is issued shall get his entered in the register. This register shall be kept in the form set out in the third schedule. This register shall be kept open for inspection during office hours for payment of fees of two rupees. Any person may take extract from such a register and may require the prescribed authority to issue him a certified copy for the payment of five rupees as fees. This provision is provided under section 7 of the 1973 rules.

If any variations need to made in these particulars entered in the register, it shall be dine in the form set out in Fourth Schedule and where any particulars are changed, then the existing certificate shall be cancelled and a new certificate of registration shall be issued to the applicant. This provision is provided under Section 8 of the 1973 Rules.

Under section 9, if the certificate of registration issued to any person is lost or destroyed and this fact is proved by that person, then in the payment of five rupees, a duplicate certificate can be issued to that person. This duplicate certificate has the same effect as the original certificate. According to Section, a copy of certificate of registration issue shall be sent to the Animal Welfare Board of India.

A certificate of registration containing the particulars entered in the register must be given by the prescribed authority to every person whose name appears on the register.<sup>13</sup>

This register shall be open for inspection at all reasonable time on payment of the prescribed fee, and any person shall, on payment of the prescribed fee, be entitled to obtain copies thereof or make extracts therefrom.<sup>14</sup>

Any person whose name appears on the register can make an application to make variations in

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<sup>13</sup> Section 23(3), Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960)

<sup>14</sup> Section 23(4), Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960)

the particulars entered in the register. On the basis of such variation the certificate can be cancelled and a new certificate can be issued.<sup>15</sup>

Power of the court to prohibit or restrict the exhibition or training of performing animals:

According to Section 24 if it is proved to the satisfaction of the magistrate that the training or exhibition of any performing animal has been accompanied by unnecessary pain or suffering and should be prohibited or allowed only subject to conditions, the court may make an order against the person in respect of whom the complaint is made, prohibiting the training or exhibition or imposing such conditions in relation thereto, as may be specified by the order.

Power to enter premises:

Any authorised person or any police officer not below the rank of a sub-inspector may have the following powers:<sup>16</sup>

- a) enter and inspect at all reasonable times any premises in which any performing animals are being trained or exhibited or kept for training or exhibition and
- b) require the trainer or exhibitor of performing animals to produce his certificate of registration.

### ***Offences:***

As per section 26, following activities constitute an offence under the 1960 Act:

- 1) Exhibiting or training animals without registration,
- 2) Exhibiting or training animals in a manner in respect of which no registration is done.
- 3) Exhibits or trains an animal as performing animal which is not to be used for the purpose by reason of a notification issued under clause (ii) of section 22.
- 4) Obstructs or wilfully delays any person or police officer referred to in section 25 in the exercise of powers under this Act as to entry and inspection.
- 5) conceals any animal with a view to avoiding such inspection.
- 6) Fails to produce the certificate without reasonable cause to do so.
- 7) Applies for registration under the act without being entitled to do so.

Punishment to the offenders under this section is fine extendable to five hundred rupees, or imprisonment which may extend to three months, or both.

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<sup>15</sup> Section 23(5), Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960)

<sup>16</sup> Section 25 Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960)

According to section 27 of the 1960 Act, the provision of Chapter V do not apply to the following:

- (a) the training of animals for bona fide military or police purposes or the exhibition of any animals so trained; or
- (b) any animals kept in any zoological garden or by any society or association which has for its principal object the exhibition of animals for educational or scientific purposes.

***Animals Performing in films:***

The Cinematograph Act gives the Central Government the power to issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.<sup>17</sup> Hence, the Government made The Cinematograph (Certification) Rules, 1983 which provides under Rule 21(3)(bb) that *the producer of every film has to make a declaration in writing declaring that no cruelty was caused to the animals used during shooting of the films produced in India. Animal here has the same meaning as given in the Prevention of Cruelty Act, 1960 and cruelty has the same meaning as defined under section 11(1)(a) to (o) of the Prevention to Cruelty Act, 1960.*

In 2001, the Central Government enacted the Performing Animals (Registration) Rules. Section 2(h) of the rules defines the term performing animal as “*an animal which is used at or for the purpose of any entertainment including a film or an equine event to which the public are admitted.*”

Section 7 of these rules requires a prior information to be given for use of performing animals in films. It states that an owner desirous of lending a performing animal in the making of a film has to give a prior information in the prescribed format to specify the kind of animal age of animal, physical health of the animal, the nature of performance to be done by the animal, the duration for which the animal shall be used for such performance, the duration and method of training of the animal for such performance and justification for the use of such animals in the film and such other information as may be required by that authority.

There must also be a fitness certificate accompanying the application issued by a veterinary doctor certifying the health and fitness of the animal issued by a veterinary doctor along with the certificate of ownership in case of animals covered under the Wildlife (Protection) Act, 1972 (53 of 1972).

The application submitted is screened by the Animal Welfare Board of India in two stages

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<sup>17</sup> Section 5-B of the Cinematograph Act, 1952 (37 of 1952)

under the 2001 Rules to issue a no objection certificate. The first stage is the pre shooting stage where the application has to be submitted in the prescribed format and containing all the details which are to be provided with the application. The second stage is the issuing of no objection certificate where the applicant after obtaining the pre-shoot permission has to follow all the conditions that have been issued by the authority. Then the producer of the film has to send two CDs of the film to the Animal Welfare Board of India. Based on this screening report, the Board decides whether to issue or deny no objection certificate to the applicant.<sup>18</sup>

## V. POWER TO MAKE RULES

Section 38 of the Prevention of Cruelty to Animals Act, 1960 gives power to the Central Government to make rules. The Government has made various rules by virtue of these powers for instance, Pet Shop Rules 2018, Animal Birth Control (Dogs) Rules 2001, Prevention of cruelty to Animals (Care and Maintenance of Care Property Animals) Rules, 2016 etc for the better enforcement of Prevention of Cruelty to Animals Act, 1960.

In a writ petition filed in Supreme Court in the case of *Geeta Seshamani v. Union of India and Another*<sup>19</sup>, the petitioners contended that the provisions of the under the Prevention of Cruelty to Animals Act, 1960 are not being implemented in all the States properly. Hence, they made all the States party-respondents. The main grievance was that in many of the states, Animal Welfare Boards have not been constituted. In many other states, the Animal Welfare Boards are not taking effective measures to set up Society for Prevention of Cruelty to Animals in every district as provided by Rule 3 of the Cruelty to Animals (Establishment and Regulation of Societies for Prevention of Cruelty to Animals) Rules, 2001.

The Supreme Court directed all the States to establish Animal Welfare Board and also establish Society for Prevention of Cruelty to Animals in every district within three months of the passing of this order.

## VI. SEXUAL OFFENCES AGAINST ANIMALS

The Prevention of Cruelty Against Animals Act, 1960 doesn't make any provision against sexual offences against animals. Under Indian laws, unnatural intercourse with animals i.e. animal bestiality has been penalised by Section 377 of the Indian Penal Code, 1860 which states that Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either

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<sup>18</sup> *Supra* note 3 at p. 163

<sup>19</sup> W.P. (Civil) No. 440 of 2000 in Supreme Court of India

description for a term which may extend to ten years, and shall also be liable to fine.

### **Provisions of the Indian Penal Code:**

Section 428 and Section 429 of The Indian Penal Code also makes provisions to prevent cruelty against animals.

Section 428 talks about Mischief by killing or maiming animal of the value of ten rupees. It states that “*Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or both.*”

Section 429 makes provisions regarding Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees. According to this section, “*Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.*”

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Bestiality is also a ground of divorce under Indian Laws under ‘sexual offences and attempts to commit unnatural offences.’<sup>20</sup>

## **VII. LAWS AGAINST SACRIFICE OF ANIMALS**

Article 25 of the Constitution of India, 1950 guarantees Freedom of Religion to all the persons. The marginal note of the Section states that Freedom of conscience and free profession, practice, and propagation of religion. The bare language of this Section recites:

“(1) *Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.*

(2) *Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-*

(a) *regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;*

(b) *providing for social welfare and reform or the throwing open of Hindu religious institutions*

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<sup>20</sup> *Supra* note 3 at p. 93

*of a public character to all classes and sections of Hindus.*

*Explanation I .-The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.*

*Explanation II .-In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”*

There has always been a debate around a person’s Freedom to practice his/her religion by performing the necessary rituals and the right of a person to perform animal sacrifices in the name of religion. There are various Supreme Court judgments which have dealt with this question and have tried to provide a solution to it.

The Supreme Court in one of its judgments have a comprehensive definition of religion in the following words:

*“Religion is certainly a matter of faith with individuals or communities and it is not necessarily. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, but it would not be correct to say that religion is nothing else but a doctrine of belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress. 18. The guarantee under our Constitution not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression "practice of religion" in article 25.”*<sup>21</sup>

This case gave a very comprehensive definition of religion and it also included *right to protect acts done in pursuance of a religion* which explains the expression “practice of religion”. Then the Apex Court in the case of **Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan**<sup>22</sup> states that it is the duty of the court to ascertain as to what practice is essential and integral part of the religion. The Supreme Court held this in the following words:

*“In deciding the question as to whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community*

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<sup>21</sup> *The Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (2004) 8 SCC 556

<sup>22</sup> AIR 1963 SC 1638

following the religion or not. This formula may in some cases present difficulties in its operation. Take the case of a practice in relation to food or dress. If in a given proceeding, one section of the community claims that while performing certain rites while dress is an integral part of the religion itself, whereas another section contends that yellow dress and not the white dress is the essential part of the religion, how is the Court going to decide the question? Similar disputes may arise in regard to food. In cases where conflicting evidence is produced in respect of rival contentions as to competing religious practices the Court may not be able to resolve the dispute by a blind application of the formula that the community decides which practice is an integral part of its religion, because the community may speak with more than one voice and the formula would, therefore, break down. This question will always have to be decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion.”

This raised a question of whether animal sacrifices are included in the term right to practice religion. The Apex Court in the case of *Mohd. Hanif Quareshi & Others v. The State Of Bihar*<sup>23</sup> stated that sacrifice of a cow on Bakr Id is not an obligatory ritual for Muslims. Also in the case of *Ardar Syedna Taher Saifuddin Saheb v. The State Of Bombay*<sup>24</sup> it was said that:

“There may be religious practices of sacrifice of human beings, or sacrifice of animals in a way deleterious to the well-being of the community at large. It is open to the State to intervene, by legislation, to restrict or to regulate to the extent of completely stopping such deleterious practices. It must, therefore, be held that though the freedom of conscience is guaranteed to every individual so that he may hold any beliefs he likes, his actions in pursuance of those beliefs may be liable to restrictions in the interest of the community at large, as may be determined by common consent, that is to say, by a competent legislature.”

What constitutes essential part of a religion was explained by the Apex Court in the case of *Seshammal v. State of Tamil Nadu*<sup>25</sup> as essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices the superstructure of religion is built. Without which, a religion will be no religion. Test to determine whether a part or practice is essential to the religion is - to find out whether the nature

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<sup>23</sup> AIR 1958 SC 731

<sup>24</sup> AIR 1962 SC 853

<sup>25</sup> (1972) 2 SCC 11



of religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts which are protected by the Constitution. Nobody can say that an essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the "core" of religion whereupon the belief is based and religion is founded upon. They could only be treated as mere embellishments to the non-essential part or practices.

There is no central law prohibiting age old practice of animal sacrifice. However, there are certain state laws, certain High Courts and also some Supreme Court's judicial pronouncements which has banned animal sacrificial practices. Some of these state laws are very limited while some other legislations have widened the scope of the ban put on the activity of animal sacrifice. Some of the state laws which prohibit animal sacrifice are Tamil Nadu Animals and Birds Sacrifices Prevention Act, 1950, Karnataka Animal Sacrifice Prohibition Act 1959, Gujarat Animals and Birds Sacrifice Prohibition Act, 1972, Andhra Pradesh Animals and Birds Sacrifices (Prohibition) Act, 1950, The Kerala Animals and Birds Sacrifices Prohibition Act, 1968, The Rajasthan Animals and Birds Sacrifice (Prohibition) Act, 1975, The Pondicherry Animals and Birds Sacrifices Prohibition Act, 1965.

Some High Courts have also pronounced judgments stating that animal sacrifice is not a necessary religious activity and has banned practices of animal sacrifice.

In the case of *Gauri Maulekhi v. Union of India*<sup>26</sup>, a writ petition was filed in the High Court of Uttarakhand to put a ban on the slaughter of animals in the State of Uttarakhand, the court was presented with the question that whether animal sacrifice can be made to appease the God. And even if it is allowed, how are these sacrifices to be made.

Section 11(3)(e) of the Prevention of Cruelty to Animals Act, 1960 makes it illegal to destruct any animal for any purpose other than arranging for food for mankind.

Also. Section 28 of the Act states that destruction or killing in the manner required by the religion should not render an offence. Therefore, for the purpose of arranging food for mankind, if an animal is sacrificed, the same may be sacrificed in the manner followed by the religion of any community, but such sacrifice should only be for the purpose of arranging food for

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<sup>26</sup> Writ Petition (PIL) No. 77 of 2010

mankind and for no other purpose.

Hence, *the person sacrificing an animal can only sacrifice the same, not for the purpose of appeasing the Gods, as he believes, but only for the purpose of arranging food for mankind.*

The court also relied on Section 3 of the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001 which under sub rule 1 prohibits the slaughter of any animal within a municipal area except in a slaughter house recognized or licensed by the concerned authority empowered under the law for the time being in force to do so.

Thus, ritual slaughter is also to be conducted at slaughter houses when the same is to be performed in the areas coming under municipalities or other authorities.

Hence, the court concluded *“that despite there being old tradition of sacrificing animals to appease deities, no such sacrifice is permissible outside a slaughter house.”*

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