



JOINT COMMITTEE ON OFFICES OF PROFIT

SEVENTEENTH LOK SABHA

**MINISTRY OF FISHERIES, ANIMAL HUSBANDRY AND DAIRYING
(DEPARTMENT OF ANIMAL HUSBANDRY AND DAIRYING)**

Examination of Election of Members of Parliament to the Animal Welfare Board
of India (AWBI)

NINTH REPORT



LOK SABHA SECRETARIAT

NEW DELHI

December, 2022 / *Agrahayana*, 1944 (Saka)

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of India (AWBI)

Presented to Lok Sabha on 09-12-2022

Laid on the Table of Rajya Sabha on 09-12-2022



LOK SABHA SECRETARIAT

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JOINT COMMITTEE ON OFFICES OF PROFIT
(SEVENTEENTH LOK SABHA)

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* Shri V. Vijayasai Reddy, MP (RS) retired w.e.f 21st June, 2022; Dr. Sasmit Patra, MP (RS) retired w.e.f. 01st July, 2022 and Shri Mahesh Poddar, MP (RS) retired w.e.f. 07th July, 2022 *vide* CB-I note dated 03rd February, 2022. A motion to fill up the casual vacancy in the Committee, consequent upon retirement of these three Members, has already been moved and adopted by the Lok Sabha on 15th March, 2022.

INTRODUCTION

I, the Chairperson, Joint Committee on Offices of Profit, having been authorized by the Committee to submit the Report on its behalf, present this Ninth Report on the examination of election of Members of Parliament to the Animal Welfare Board of India (AWBI) of the Ministry of Fisheries, Animal Husbandry and Dairying (Department of Animal Husbandry and Dairying).

2. At its sitting held on Tuesday, 20 November, 2019, the Committee examined the term, composition, character, functions, etc., of the Animal Welfare Board of India (AWBI) with a view to consider as to whether the election of Members of Parliament to the AWBI would attract disqualification from the angle of 'Office of Profit' under Article 102(1)(a) of the Constitution of India. The Report was considered and adopted by the Committee at its Sitting held on Tuesday, 18th October, 2022.

3. For facility of reference and convenience, the Recommendations / Observations of the Committee have been printed in bold letters.

4. The Committee wishes to express its thanks to the officials of the Ministry of Fisheries, Animal Husbandry and Dairying (Department of Animal Husbandry and Dairying) and the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) for appearing before the Committee and furnishing the information in connection with the examination of the AWBI.

5. The Committee would also like to place on record its deep sense of appreciation for the invaluable assistance rendered by the officials of Lok Sabha Secretariat attached to the Committee.

NEW DELHI;
18 October, 2022
Asvina 26, 1944 (Saka)

DR. SATYA PAL SINGH
Chairperson,
Joint Committee on Offices of Profit

Examination of election of members of Parliament to the Animal Welfare Board of India (AWBI) under the administrative domain of the Department of Animal Husbandry and Dairying, the Ministry of Fisheries, Animal Husbandry and Dairying.

REPORT

Shri S.P. Gupta, IAS (Retd.), Chairman, Animal Welfare Board of India (AWBI) *vide* letter dated 18th October, 2018 (**Annexure-I**) had requested the Chairperson, Joint Committee on Offices of Profit (JCOP) to examine the election of six members of Parliament (04 from Lok Sabha and 02 from Rajya Sabha) in the Animal Welfare Board of India from the angle of Office of Profit.

2. As per information furnished by the then administrative Ministry i.e. the Ministry of Environment, Forest and Climate Change (Animal Welfare Division) *vide* OM No. F. No. 11/11/2007-AWD dated 19th December, 2018 (**Annexure-II**), the Animal Welfare Board of India is a statutory advisory body on animal welfare laws and promotes animal welfare in the country. It was established in 1962 as per Section 4 of the Prevention of Cruelty to Animals (PCA) Act, 1960 (No.59 of 1960). Section 5(i) of the PCA Act, 1960 provides for election of six members of Parliament, four from the Lok Sabha and two from the Rajya Sabha as members of the Board. The Animal Welfare Board of India is constituted for ensuring that animal welfare laws in the country are diligently followed. It provides grants to animal welfare organisations while advising the Government of India on animal welfare issues. The Board has been the face of animal welfare movement in the country for the last 50 years. The AWBI ensures the implementation of the Prevention of Cruelty to Animals Act, 1960 and rules made thereunder. The term of the member of Parliament as a non-official member in the Board is three years which shall come to an end as soon as he ceases to be a Member of the body which elected him or in respect of which he was chosen (section 6(2)(b) of the PCA Act, 1960). A member of Parliament is elected as per clause 5(1)(i) of PCA Act, 1960. As per Section 6(2)(d) of the PCA Act, 1960, the Central Government exercises control over the appointment to and removal from

the office and over the performance and functions of the office. The Ministry has also stated in replies to List of Points, that the Board has the powers of disbursement of funds to animal welfare organisations as per Section 9(g) of the PCA Act, 1960.

3. According to Rule 14(1) of the Animal Welfare Board (Administration) Rules, 1962, no remuneration shall be paid to any member of the Board on account of his service as such. Rule 14(2)(b) specifically provides for the entitlement of members of Parliament in the Board **(Annexure-II)** as follows :-

"14(2) (b) Where he is a Member of Parliament -

(i) Travelling or conveyance allowance to recoup any expenditure incurred by him in performing such journey at a rate not exceeding the allowance admissible to a Member of Parliament appointed to a committee set up by the Central Government.

(ii) Daily allowance at a rate not exceeding the rate to which a Member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954."

4. As per provisions of Article 102(1)(a) of the Constitution of India :-

"A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament -

If he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder."

5. Parliament has passed a law, namely the Parliament (Prevention of Disqualification) Act, 1959 **(Annexure-III)** laying down which offices would not disqualify holders thereof from the membership of Parliament. This Act also provides that if a chairman or director or member of any statutory or non-statutory body is not entitled to any remuneration other than the compensatory allowance, he would not incur disqualification for being chosen as, or for being, a member of Parliament. Under Section 2(a) of the said Act, "compensatory allowance" has been defined as any sum of "money payable to the holder of an office by way of daily allowance (such allowance not exceeding the amount of daily allowance to which a member of Parliament is entitled under the Salary, Allowance and Pension of Members of Parliament Act, 1954), any

conveyance allowance, house-rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office".

6. As per the information furnished by the then administrative Ministry *i.e.* the Ministry of Environment, Forest and Climate Change, it is seen that the Government, as per Section 6(2)(d) of the PCA Act, 1960, exercises control over the appointment to and removal from the office and over the performance and functions of the office. The Board has powers of disbursement of funds to the Animal Welfare Boards as per Section 9(g) of the PCA Act, 1960. In the Prevention of Cruelty to Animals Act, 1960 and the Rules framed thereunder, nowhere it is specified that members of Parliament nominated or elected to the Board are exempted from disqualification **(Annexure-II)**.

7. The Committee sought written opinion of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs). The Department of Legal Affairs *vide* OM dated 22nd February, 2019 **(Annexure-IV)** had furnished their written opinion as under: -

2. ".....It is noted that as per the Department, the Animal Welfare Board of India is a statutory advisory body established under Section 4 of the Prevention of Cruelty to Animals Act, 1960 (the PCA Act). The functions of the Board include the promotion of animal welfare generally for the purpose of prevention of cruelty and for protecting animals from being subjected to unnecessary pain or suffering, in particular. It is stated that from ensuring that animal welfare laws in the country are diligently followed, to providing grants to Animal Welfare Organisations and advising the Government of India on animal welfare issues, the Board has been the face of the animal welfare movement in the country for the last 50 years and has helped in the implementation of Prevention of Cruelty to Animals Act, 1960 and rules made thereunder.
3. Section 5(1)(i) of the Act provides that the Board shall consist inter-alia the '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). "It is stated that 04 Members of Lok Sabha and 02 Members of Rajya Sabha are appointed by the government after election by the Lok Sabha and Rajya Sabha, respectively and their term as non-official Member in the Board is three years and the term of member elected as per section 5(1)(i) is co-terminus with his ceasing to be Member of Parliament [section 6(2)(b)]. It is stated that MPs have not been nominated to the Board since 2007 and that Government exercises control over the appointment and removal from the office and over the performance and functions of the office as per section 6(2)(d) of the Act.

4. With respect to the details of expenses payable to the Members of Parliament, it is stated that as per AWBI Administration Rules 1962, travelling or conveyance allowance to recoup any expenditure incurred by him in performing such journey at a rate not exceeding the allowance admissible to a Member of Parliament appointed to a Committee set up by the Central Government. Daily allowances at a rate not exceeding the rate to which a Member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954. No facilities have been provided to them and as per Rule 14(1) of AWBI Administration Rules, 1962, no remuneration shall be paid to any Member of the Board on account of his services as such.
5. It is stated that the Board neither has powers of appointment / removal nor wields influence or power by way of patronage and does not exercise executive, legislative or judicial powers. However, it is stated that the Board exercises powers of implementation of PCA Act and Rules made thereunder. It is stated to have powers of disbursement of funds to Animal Welfare Organisations under section 9(g) of the Act.
6. Attention is drawn towards Article 102(1) in the Constitution of India, which provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder. The essential ingredients for attracting the said article, as settled by numerous cases, are that there must be an office, such office must be an office of 'profit', it must be under the Government of India or the Government of a State, such office must not be excluded from the operation of this sub-clause by a law made by Parliament. To decide the issue, therefore, it is imperative to examine the nature of Government control, functions of the Board and the allowances receivable by the Member.
7. Attention is also drawn to the case of Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa, (1971) 3 SCC 870, wherein the Apex Court analyzed the ingredients of Article 102(1)(a) and held as under :

“That Article says that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder. Therefore, before the provisions of that Article can be attracted, it must be established that he was holding an office under the Union or the State Government and that office was an office of profit and thereafter we must see whether the disqualification relating to that office has been removed by any Parliamentary legislation. In other words, the office in question must have been held under a Government and to that

some pay, salary, emoluments or allowance is attached.” The word ‘profit’ connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit.

The Court also reiterated the tests laid down in several decisions for finding out whether an office in question is an office under a Government and whether it is an office of profit. “Those tests are : (1) Whether the Government makes the appointment; (2) Whether the Government has the right to remove or dismiss the holder; (3) Whether the Government pays the remuneration; (4) What are the functions of the holder? Does he perform them for the Government and (5) Does the Government exercise any control over the performance of those functions?”

8. In the recent case of U.C. Raman v. P.T.A. Rahim, (2014) 8 SCC 934, the Court has extracted the relevant para of the judgment in the case of Jaya Bachchan case [(2006)5 SCC 266] as under and reiterated the principles laid therein:

“An office of profit is an office which is capable of yielding a profit or pecuniary gain. Holding an office under the Central or State Government, to which some pay, salary, emolument, remuneration or non-compensatory allowance is attached, is ‘holding an office of profit’. The question whether a person holds an office of profit is required to be interpreted in a realistic manner. Nature of the payment must be considered as a matter of substance rather than of form. Nomenclature is not important. In fact, mere use of the word ‘honorarium’ cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient. Payment of honorarium, in addition to daily allowances in the nature of compensatory allowances, rent free accommodation and chauffeur driven car at State expense, are clearly in the nature of remuneration and a source of pecuniary gain and hence constitute profit. For deciding the question as to whether one is holding an office of profit or not, what is relevant is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain. If the ‘pecuniary gain’ is ‘receivable’ in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not. If the office carries with it, or entitles the holder to, any pecuniary gain other than reimbursement of out-of-pocket/actual expenses, then the office will be an office of profit for the purpose of Article 102(1)(a). This position of law stands settled for over half a century commencing from the decisions of Ravanna Subanna v. G.S. Kaggeerappa [AIR 1954 SC 653], Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa [(1971) 3 SCC 870], Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev [(1992) 4 SCC

9. The Court, in the said case, negated the plea that the word “profit” should include even status and influence, etc. besides the pecuniary profits and reiterated that an “office of profit” is an office which is capable of yielding a profit or pecuniary gain only and the same includes the pecuniary gain not only received but also “receivable” in connection with the office. As in the said case amount was only compensatory in nature by way of TA and daily allowances, the same was held to not amount to remuneration in the form of pay, salary, emoluments, remuneration, commission or anything of such nature.
10. In the present matter, the AWBI is a Statutory Advisory Body established as per section 4 of the Act. Functions of the Board are as per section 9 of the PCA Act. The Board has a fixed composition and the term of the non-official Member in the Board is three years and the term of member elected as per section 5(1)(i) is co-terminus with his ceasing to be Member of Parliament [section 6(2)(b)]. The Government is stated to exercise control over their removal from the office and over the performance and functions of the office as per section 6(2)(d) of the Act.
11. Attention is drawn to the relevant functions specified in clause (d), (f) and (h) of section 9, which appear to be executive functions performed by the Board on behalf of the Government. This is more so, when the administrative Department itself has stated that they are responsible for implementation of the Prevention of Cruelty to Animals Act, 1960. Other relevant functions are specified in clauses (g), (i) and (j) of section 9 of the PCA, which empower the Board to grant financial assistance and make disbursement of funds. The Member of the Board thus appears to be holding an ‘office’.
12. With respect to the issue of allowance and ‘office of profit’, attention is drawn to the reply of Ministry, wherein it is stated that as per Rule 14(1) of the AWBI Administration Rules 1962, no remuneration shall be paid to any Member of the Board on account of his services as such. Only travelling or conveyance allowance to recoup any expenditure incurred by the Member in performing such journey at a rate not exceeding the allowance is admissible to a Member of Parliament appointed to a Committee. Daily allowances at a rate not exceeding the rate to which a Member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954 is payable and no facilities have been provided to them. Thus, the allowances payable to a member appear to be in consonance with the compensatory allowances permissible to the Members of Parliament and the ingredient of ‘profit’ or ‘pecuniary gain’ is absent in the present case.
13. On the basis of the information furnished by the administrative Ministry, we are of the view that the election of Members of Parliament to Animal Welfare

Board of India may not be considered as an 'office of profit' and may not incur disqualification in terms of Article 102 (1)(a) of the Constitution of India.”.

8. The Legislative Department of the Ministry of Law and Justice *vide* OM No. 17(6)/2018/-Leg.III dated 17th September, 2019 (**Annexure-V**) had also furnished their written opinion in the matter as under :-

“.....that clause (i) of section 3 of the Parliament (Prevention of Disqualification) Act, 1959 (10 of 1959) exempts the office of chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (h), if the holder of such office is not entitled to any remuneration other than compensatory allowance. However, this exemption is not available to the chairman of the bodies specified in Part I of the Schedule to the Act and chairman and secretary to the bodies specified in Part II of the Schedule to the Act.

3. In the light of the above provisions, the nomination of a Member of Lok Sabha to the Animal Welfare Board of India may not attract disqualification from the angle of 'office of profit'. However, it is noteworthy to mention that in the reply to the list of points provided by the administrative Ministry, against the query at serial number 7 (iii), they have stated that the allowances payable to the Member of Parliament as a Member of the Board are not covered under the compensatory allowance as defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959.

4. Further, considering the powers of the Animal Welfare Board of India which involves disbursement of funds, it may attract the tests laid down by the Apex Court in the case of *Shivamurthy Swami Inmadar Vs. Sanganna Andanappa* (1971) 3 SCC 870 and the guiding principles laid down by the Joint Committee on Offices of Profit, in their Tenth Report (Seventh Lok Sabha), which are being followed by the Committee time and again. Therefore, it appears that the nomination of the Member, Lok Sabha to the Animal Welfare Board of India may attract disqualification from the angle of 'office of profit'.”.

9. In view of the contradictory opinion tendered by both the Departments of the Ministry of Law and Justice, it was decided to take oral evidence of the representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) and the Ministry of Environment, Forests and Climate Change (Animal Welfare Division). However, the Ministry of Environment, Forests and Climate Change (Animal Welfare Division) informed that the

animal welfare subject has been transferred to the Ministry of Agriculture (Department of Animal Husbandry, Dairying and Fisheries). The Ministry of Fisheries, Animal Husbandry and Dairying (Department of Animal Husbandry and Dairying) vide their OM No.11/11/2007-AWD dated 18th November, 2019 had stated that the animal welfare subject had been transferred to the Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture vide Cabinet Secretariat notification No. S. O. 153(E) dated 04th April, 2019. Later on after the creation of a new Ministry of Fisheries, Animal Husbandry, Dairying, the animal welfare and the Prevention of Cruelty to Animals Act, 1960 is administered by the Department of Animal Husbandry and Dairying (**Annexure-VI**).

10. The Ministry of Fisheries, Animal Husbandry and Dairying (Department of Animal Husbandry and Dairying) vide OM No. 11/11/2007-AWD dated 18th November, 2019 (**Annexure-VI**) provided information which is summarized as under :-

- (i) The Animal Welfare Board of India is a statutory body established under Section 4 of the Prevention of Cruelty to Animals Act, 1960.
- (ii) The functions of the Board include the promotion of animal welfare generally for the purpose of prevention of cruelty and for protecting animals from being subjected to unnecessary pain or suffering, in particular.
- (iii) Section 5(1)(i) of the Act provides that the Board shall consist of 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).
- (iv) Rule 14(1) of the Administrative Rules, 1962 framed under section 38 of the PCA Act, 1960, stated that no remuneration shall be paid to any member of the Board on account of the services as such.
- (v) As per Section 14(2)(b)(i) and 14 (2)(b) (ii), a member of Parliament who is a member of the Board is allowed to avail TA/DA at the rate not exceeding the rate to which a member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954.
- (vi) Pecuniary gain or advantage has been given to any member of the Board including member of Parliament and whatever is given, is only in the nature of compensatory allowance for contribution in achieving and proceeding towards the objectives of the Board.

- (vii) The members of Parliament in the Board have merely advisory role and they are provided only compensatory allowance i.e. out of pocket expense and actual expenses incurred for attending meetings of the Board.

11. An oral evidence of the representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) and the Ministry of Fisheries, Animal Husbandry and Dairying (Department of Animal Husbandry and Dairying) was taken on Wednesday, 20th November, 2019.

12. During the course of oral evidence, the Secretary, Ministry of Fisheries, Animal Husbandry and Dairying briefed the Committee as under :-

“Animal Welfare Board is a statutory body under Section 4 of the Prevention of Cruelty to Animals Act. The functions of the Animal Welfare Board which is also included in the Prevention of Cruelty to Animals Act, are : (i) to encourage, by the grant of financial assistance or otherwise [for formation or establishment of pinjrapoles, rescue homes, animal shelters, sanctuaries and the like]. Disbursal of funds (ii) to give financial and other assistance to animal welfare organizations functioning in any local area or to encourage the formation of animal welfare organizations in any local area which shall work under the general supervision and guidance of the Board.”

13. When the Committee enquired about the honorarium and TA / DA being given to the members of Parliament for attending the meetings of the Animal Welfare Board of India, the representatives of the Ministry stated that no honorarium or any grant was being given to the members of the Board, and that the details of travelling and daily allowances for attending the meetings of the Board were specified in the relevant Rules.

14. When asked about the daily allowance being given to the members of Parliament as non-official members of the Board, the representatives of the Ministry informed that “the daily allowance which is being given to the members of Parliament for attending the meetings, is same as provided in the MSA Act, 1954.”

15. After hearing the views, the Committee concluded that the Office of the AWBI should not be construed as an Office of Profit as it is basically for the welfare of the animals. By virtue

of Section 3(i) of the Parliament (Prevention of Disqualification) Act, 1959, the AWBI may not attract disqualification from the angle of 'Office of Profit'. However, considering the powers of the AWBI which involves disbursement of funds, it may attract disqualification.

16. The Committee directed the Ministry of Fisheries, Animal Husbandry and Dairying (Department of Animal Husbandry and Dairying) to include the AWBI in the exempted category in the Act of 1959 irrespective of the amount of fund the Board is getting for further disbursement.

Observations / Recommendations

17. The Committee note that the Animal Welfare Board of India is a statutory advisory body on the animal welfare laws and promotes animal welfare in the country. It was established in 1962 as per section 4 of the Prevention of Cruelty to Animals Act, 1960. Section 5(i) of the PCA Act, 1960 provides that six MPs, four from Lok Sabha and two from Rajya Sabha will be elected as members of the Board. The term of the member of Parliament as non-official Member in the Board is for three years.

18. The Committee further note that the Animal Welfare Board of India helps in the implementation of the Prevention of Cruelty to Animals Act, 1960 and rules made thereunder. According to Section 14(1) of the Animal Welfare Board (Administration) Rules, 1962, no remuneration shall be paid to any member of the Board on account of his service. As per the AWBI (Administration) Rules 1962, a member of Parliament elected to the AWBI is allowed to avail travelling or conveyance allowance to recoup any expenditure incurred by him in performing such journey at a rate not exceeding the allowance admissible to a member of Parliament appointed to a Committee set up by the Central Government and also daily allowances at a rate not exceeding the rate to which a member of Parliament is entitled to under the Salaries and Allowances of Members of Parliament Act, 1954.

19. The Committee find that by virtue of Section 3(i) of the Parliament (Prevention of Disqualification) Act, 1959, the election of members of Parliament to the AWBI may not attract disqualification. However, the main issue which could attract disqualification is the nature and amount of funds received by the Board for disbursal. During the course of oral evidence, deliberations with the representatives of the Ministry of Fisheries, Animal Husbandry and Dairying (Department of Animal Husbandry and Dairying) and the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs), the Committee observe that funds are given for pinjrapoles, rescue homes, animal shelters, sanctuaries etc. Financial assistance is provided to the Board to extend assistance to

animal welfare organizations functioning in local area and to encourage the animal welfare organizations in local area, which shall work under the overall supervision and guidance of the Board.

20. In view of the foregoing, the Committee are of the considered opinion that election of members of Parliament to the Animal Welfare Board of India may not be construed as an office of profit under the Government and the same may be considered not to incur disqualification under Article 102(1)(a) of the Constitution of India. However, in order to curb any anomaly, the Committee, therefore, recommend that the administrative Ministry concerned may take up the matter with the Ministry of Law and Justice and move a file for inclusion of the AWBI in the Table of the Parliament (Prevention of Disqualification) Act, 1959.

21. Further, the Committee note that the Ministry of Fisheries, Animal Husbandry and Dairying (Department of Animal Husbandry and Dairying) has moved a file pertaining to inclusion of the Animal Welfare Board of India in the exempted category of the Parliament (Prevention of Disqualification) Act, 1959. However, the Committee direct the administrative Ministry as well as the Ministry of Law and Justice (Department of Legal Affairs) to inform the Committee forthwith, whenever any amendment to the Parliament (Prevention of Disqualification) Act, 1959 is proposed.

New Delhi;
18 October, 2022
Asvina 26, 1944 (Saka)

DR. SATYA PAL SINGH
Chairperson,
Joint Committee on Offices of Profit



भारतीय जीव जन्तु कल्याण बोर्ड
ANIMAL WELFARE BOARD OF INDIA
(पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार)
Ministry of Environment, Forest & Climate Change, Govt. of India

एस.पी. गुप्ता, आईएएस (सेवानिवृत्त)
S.P. Gupta, IAS (Retd.)
अध्यक्ष / Chairman

October 18, 2018

Respected Sir,

Sub. : Declaration that the election / nomination of Members of Parliament in the Animal Welfare Board of India does not come under the category of office of profit

The Animal Welfare Board of India is a statutory body established under Section 4 of the Prevention of Cruelty to Animals Act, 1960. The functions of the Board include the promotion of animal welfare generally for the purpose of prevention of cruelty and for protecting animals from being subjected to unnecessary pain or suffering, in particular. Section 5 (1) (i) of the Act provides that the Board shall consist *inter alia* the following persons :

"(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)."

Hence, it is the mandate of the Law that six members of Parliament shall be in the Board. Further, clause 14 of the said rules Administrative Rules, 1962, which were framed under section 38 of the Prevention of Cruelty to Animals Act, 1960, provides as under :

"14. Allowances and Remuneration -

(1) No remuneration shall be paid to any member of the Board on account of his service as such.

(2) A member of the Board who is not an official shall be entitled to draw in respect of any journey performed for the purpose of attending a meeting of the Board or of a committee or sub-committee thereof or any other association or society to which he is appointed or nominated as a representative of the Board or any other journey in connection with the work of the Board performed under the direction of the Chairman :

(a) Where he is not a Member of Parliament, travelling and daily allowance at rates admissible to a Government servant of the first grade serving under the Central Government.

(b) Where he is a member of Parliament :

.....2

Handwritten notes: "Mention 29/10/18" and "S.P. Gupta" with a signature and date "29/10/18".

एन.आई.ए. डब्ल्यू. कैम्पस, 42 माइलस्टोन, दिल्ली-आगरा हाईवे, एन.एच.-2, बल्लभगढ़, फरीदाबाद-121004 (हरियाणा)

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Website: www.awbi.org Tel.: +91 129 2555611

- (i) Travelling or conveyance allowance to recoup any expenditure incurred by him in performing such journey at a rate not exceeding the allowance admissible to a Member of Parliament appointed to a committee set up by the Central Government.
- (ii) Daily allowance at a rate not exceeding the rate to which a Member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954.

From the said rule, it is apparently clear that no pecuniary gain or advantage has been given to any member of the Board including Member of Parliament and whatever is given, is only in the nature of compensatory allowance for contribution in achieving and proceeding towards the objectives of the Board.

The Member of Parliament to be nominated in the Animal Board of India has merely advisory role and they have been provided only compensatory allowance *i.e.* out of pocket expenses and actual expenses incurred for attending meetings of the Board, hence their nomination in the Board cannot be called office of profit. However, from the list of office of profits issued by the Joint Committee on Office of Profit, it is not clear whether the Member of Parliaments to be nominated in the Animal Welfare Board of India falls under the category of office of profit.

In common parlance, an 'office of profit' is an office which is capable of yielding a profit or pecuniary gain. Holding an office under the Central or State Government, to which some pay, salary, emolument, remuneration or non-compensatory allowance is attached, is "holding an office of profit" for the purpose of Article 102 of the Constitution of India.

The expression "office of profit" has not been defined in the Constitution or in the Representation of the People Act, 1951. It is for the court to explain the significance and meaning of this concept. Over the years, courts have decided this issue in the context of specific factual situations. Thus the final interpretation and decision whether a person is disqualified or not rests with the courts and not with Parliament.

The Joint Committee on office of profit constituted has also opined that "if a member of a body gets only compensatory allowance and the body exercises merely an advisory function, then no disqualification would arise. But if the allowance given are more than compensatory allowance and / or the body exercises executive and financial powers and is in a position to wield influence and patronage, then its membership would not be excluded from disqualification.

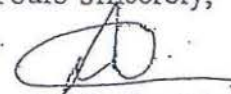
The Hon'ble Supreme Court in *Jaya Bachchan v. Union of India*, (2006) 5 SCC 266 case developed the doctrine of 'potential effect of an office' to ascertain the nature of office, which reads as under :

"... The question whether a person holds an office of profit is required to be interpreted in a realistic manner. Nature of the payment must be considered as a matter of substance rather than of form. Nomenclature is not important. In fact, mere use of the word "honorarium" cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient. Payment of honorarium, in addition to daily allowance in the nature of compensatory allowances, rent free accommodation and chauffeur driven car at State expense, are clearly in the nature of remuneration and a source of pecuniary gain and hence constitute profit. For deciding the question as to whether one is holding an office of profit or not, what is relevant is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain. If the "pecuniary gain" is "receivable" in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not. If the office carries with it, or entitles the holder to, any pecuniary gain other than reimbursement of out of pocket / actual expenses, then the office will be an office of profit for the purpose of Article 102 (1) (a)." The same was further reiterated in U C Raman v. PTA Rahim and Ors., (2014) 8 SCC 934.

In view of the above, it is humbly requested to kindly make a declaration, if not already made, that the nomination of the Members of Parliament in the Animal Welfare Board of India shall not fall under the office of profit so that the Members of Parliament may be nominated in the Board in compliance of the statutory requirements of Prevention of Cruelty to Animals Act, 1960 at the earliest in order to make the functioning of the Board effective in taking its decision and to achieve its objectives.

With warm regards,

Yours sincerely,


(S. P. Gupta)

Shri Kalraj Mishra,
Chairperson,
Joint Committee on Offices of Profit
119, Parliament House Annexe,
New Delhi - 110001.
Ph. 011-23035698 / 21410262
Email: kalraj@kalraj.com





F.No. 11/11/2007-AWD
Government of India
Ministry of Environment, Forest and Climate Change
(Animal Welfare Division)

5th floor, Vayu Wing,
Indira Paryavaran Bhavan,
Jor Bagh Road, New Delhi-110003
Dated 19/12/2018

OFFICE MEMORANDUM

Subject:- Examination of nomination of Six Members of Parliament to the Animal welfare Board of India from the angle of Office of Profit.

The undersigned is directed to refer to Lok Sabha Secretariat's O.M. No. 21/14/4/2018: CII dated 30.11.2018 on the above mentioned subject and to furnish herewith the requisite information as per List of Points enclosed.

2. This issues with the approval of competent authority.

Encl: As above

(Ramesh Kumar)

Under Secretary to the Government of India

Ph. No. 24695235

To.

The Deputy Secretary,
(Kind Attention: Shri Munish Kumar Rewari),
Committee Branch-II, Joint Committee on Office of Profit
Lok Sabha Secretariat,
G-013, Parliament House Annexe; Extn. Building, New Delhi-110001

LIST OF POINTS

| S. No. | Points | Reply |
|--------|--|---|
| 1 | Please state whether the Animal welfare Board of India is a standing or an Ad-hoc body. | Animal Welfare Board of India is a statutory advisory body on Animal Welfare Laws and promotes animal welfare in the country. It was established in 1962 as per Section 4 of the Prevention of Cruelty to Animals (Annexure I) (PCA) Act, 1960 (No. 59 of 1960). |
| 2 | Please furnish details of the composition of the committee indicating the number of officials and non officials in the body. | As per Section 5 of the PCA Act, 1960, the composition of the Board is as under: (1) The Board shall consist of the following persons, namely: (a) the Inspector General of Forests, Government of India, ex-officio, (b) the Animal Husbandry Commissioner to the Government of India, ex-officio; (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 animal as in the opinion of the Central Government ought to be represented on the Board, to be chosen, in the prescribed manner; |

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| | | <p>(h) three persons to be nominated by the Central Government,</p> <p>(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).</p> <p>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.</p> <p>Official Members-Five Non Official- Seventeen Member of Parliament- Six</p> |
| 3 | <p>Please give in detail the powers and functions of the Animal welfare Board of India .</p> | <p>As per Section 9 of PCA Act, 1960, the Functions of the Board are as under :-</p> <p>(a) to keep the law in force in, India for the prevention of cruelty to animals under constant study and advise the Government on the amendments to be undertaken in any such law from time to time;</p> <p>(b) to advise the Central Government on the making of rules under this Act with a view to preventing unnecessary pain or suffering to animals generally, and more 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;</p> <p>(c) to advise the Government or any local authority or other person on improvements in the design of vehicles so as to lessen the burden on draught animals;</p> <p>(d) to take all such steps as the Board may think fit for 11(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:</p> <p>(e) to advise the Government or any local authority or other person in the design of slaughterhouses or 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 preslaughter-stages as far as possible, and animals are killed; wherever necessary, in as humane a manner as possible;</p> <p>(f) to take all such steps as the Board may think fit to ensure that unwanted animals are destroyed by local authorities, whenever it is necessary to do so, either instantaneously or after being rendered insensible to pain or suffering.</p> <p>(g) to encourage by the grant of financial assistance or otherwise, 12(the formation or establishment of pinjrapoles, rescue homes, animal shelters, sanctuaries and the like) where animals and birds may find a</p> |

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| | | <p>shelter when they have become old and useless or when they need protection:</p> <p>(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;</p> <p>(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;</p> <p>(j) to advise the Government on matters relating to the medical care and attention which may be provided in animal hospital, and to give financial and other assistance to animal hospitals whenever the Board thinks it necessary to do so;</p> <p>(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;</p> <p>(l) to advise the Government on any matter connected with animal welfare or the prevention of infliction of unnecessary pain or suffering on animals.</p> <p>Rule 10 of PCA Act define Power of Board to make regulations: The Board may, subject to the previous approval of the Central Government, make such regulations as it may think fit for the administration of its affairs and for carrying out its functions.</p> |
| 4 | Whether the functions of Animal Welfare Board of India are purely advisory in nature. | The Animal Welfare Board of India is a statutory advisory body on Animal Welfare Laws and promotes animal welfare in the country. From ensuring that animal welfare laws in the country are diligently followed, to provide grants to Animal Welfare Organizations and advising the Government of India on animal welfare issues, the Board has been the face of the animal welfare movement in the country for the last 50 years. AWBI helped the implementation of Prevention of Cruelty to animals Act, 1960 and rules made thereunder. |
| 5 | Please furnish details with respect to the following:- | |
| | (i) The term of Member of Parliament as non-official Member in the Committee | The term of the Member of Parliament as non-official Member in the Board is for three years. The term of a Member of Parliament elected as per clause 5(1)(i) of PCA Act shall come to an end as soon as he ceases to be a Member of the body which elected him or in respect of which he was chosen (section 6(2)(b) of the PCA Act, 1960) |

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| | (ii) whether the Government exercises control over the appointment to and removal from the office and over the performance and functions of the Board | As per Section 6(2)(d) of PCA Act-The Central Government exercise control over the appointment to and removal from the office and over the performance and functions of the office. |
| | The qualification for membership | As per Section 5(1)(i) of PCA Act 1960 the Board shall consist of 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). Specific qualification is not prescribed in the Act. |
| | The role of the member of parliament in the committee | To fulfill the role as a Member of the Board as per the provisions of the PCA Act 1960 and Animal Welfare Board (Administration) Rules, 1962 (Annexure II) |
| 6 | Please also give a specific reply to each of the following | |
| | (i) Whether the Committee exercises executive, legislative or judicial powers. | Powers of the implementation of PCA Act and rules made thereunder. |
| | (ii) Whether the committee confers powers of disbursement of funds, allotment of lands etc. | Powers of disbursement of funds to Animal Welfare Organizations as per Section 9(g) of PCA Act 1960. |
| | (iii) Whether it would have powers of appointment/ removal and | No |
| | (iv) Whether the committee would wield influence or power by way of patronage. | No |
| | (i) Please indicate the detail of expenses payable to the Member of Parliament as a Member of the Committee specifying the actual rates of payment with break-up of sitting fee, daily allowance, travelling allowance, house-rent allowance, compensatory allowance, honorarium etc. | As per AWBI Administration Rules 1962, travelling or conveyance allowance to recoup any expenditure incurred by him in performing such journey at a rate not exceeding the allowance admissible to a Member of Parliament appointed to a Committee set up by the Central Government. - Daily allowance at a rate not exceeding the rate to which a Member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954. |
| | (ii) Please specify the facilities, other than the remuneration given or proposed to be given to the member of Parliament as a Member of the Board. | NIL As per Rule 14(1) of the AWBI Administration Rules 1962, no remuneration shall be paid to any Member of the Board on account of his services as such. |
| | (iii) Please state whether the allowances payable to the Member of Parliament as a member of the Board are covered under the Compensatory Allowance defined in section 2(a) of Parliament (Prevention of | No |

| | Disqualification) Act, 1959. | |
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| 8 | Please furnish any information which the Ministry wish to furnish on the subject. | <p>Animal Welfare Board of India was constituted with 18 members vide Gazette notification No. S.O. 729(E) dated 3rd March, 2017 for a period of three years w.e.f. 01.03.2017 (Annexure-III). Director General of Forests and Special Secretary was nominated as Chairman of the AWBI. This was followed by corrigendum S.O. No. 834(E) dated 15.03.2017 (Annexure-IV). In continuation of notification number S.O. 729(E) dated 3rd March, 2017 issued by the MoEF&CC and in exercise of the powers conferred by sub-section (1) of Section 4 and Section 5A of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960), four persons namely Dr. Prakash Arnte, Shri S. P. Gupta, IAS (Retd.), Shri Rakesh Gupta and Ms. Anjali Gopalan were included as the Members in the Board, vide Gazette notification no. S.O. 3847(E) dated 8th December, 2017 (Annexure-V). Shri S. P. Gupta, IAS (Retd.), Founder Chairman, People's Voice, Kamdhenu. Gow Dham & Arogya Sansthan was nominated as the Chairman of the AWBI. The Six Members of Parliament, Four Members from the Lok Sabha and Two Members from Rajya Sabha were not elected and nominated to the present Board. The MPs have not been nominated since 2007 onwards.</p> <p>Advice of Legislative Department was sought as to whether nomination of Member of AWBI being Member of Parliament attract disqualification under the office of profit through Article 102(1)(a) of the Constitution who have viewed that the the Members of Parliament, if nominated as member to the Animal Welfare Board of India may incur disqualification in terms of sub-clause (a) of clause (1) of article 102 of the Constitution.</p> |



THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1960

(59 OF 1960)

[26th December, 1960]

An Act 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.

Enacted by Parliament in the Eleventh Year of the Republic of India as follows:—

Statement of Objects and Reasons.—The Committee for the prevention of cruelty to animals, appointed by the Government of India drew attention to a number of deficiencies in the Prevention of Cruelty to Animals Act, 1890 (Central Act 11 of 1890) and suggested its replacement by a more comprehensive Act. The existing Act has a restricted scope as:—

- (1) it applies only to urban areas within municipal limits;
- (2) it defines the term "animal" as meaning any domestic or captured animal and, thus, contains no provision for prevention of cruelty to animals other than domestic and captured animals;
- (3) it covers only certain specified types of cruelty to animals; and
- (4) penalties for certain offences are inadequate.

This Bill is intended to give effect to those recommendations of the Committee which have been accepted by the Government of India and in respect of which Central legislation can be undertaken. The existing Act is proposed to be repealed.

Besides declaring certain type of cruelty to animals to be offences and providing necessary penalties for such offences and making some of the more serious of them cognizable, the Bill also contains provisions for the establishment of an Animal Welfare Board with the object of promoting measures for animal welfare.

Provision is also being made for the establishment of a Committee to control experimentation on animals when the Government, on the advice of the Animal Welfare Board, is satisfied that it is necessary to do so for preventing cruelty to animals during experimentation. The Bill also contains provisions for licensing and regulating the training and performance of animals for the purpose of any entertainment to which the public are admitted through sale of tickets.

Amendment Act 26 of 1982—Statement of Objects and Reasons.—The Prevention of Cruelty to Animals Act, 1960 was enacted in 1960 to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend and codify all laws relating to the Prevention of Cruelty to Animals. Keeping in view the experience gained in the working of the Act for the last twenty years, it is considered necessary to amend the Act so as to better achieve the purposes thereof.

2. The more important amendments which are proposed to be made are the following:—

(a) The name of the Board is proposed to be changed as the Animal Welfare Board of India to reflect the national character of the Board (*vide* clause 4).

(b) The composition of the Board is being altered for giving representation to well known humanitarians engaged in animal welfare work and to the Ministries of Home Affairs and Education and the Indian Board for Wild Life. At the same time the number of Members representing municipal corporations is being reduced from five to two. As a result of these changes the Board will have 28 Members instead of 25 Members as at present. In order to ensure that the same team continues for a period of three years, provision is being made for the reconstitution of the Board on the expiry of every third year (*vide* clauses 5, 6 and 7).

(c) The function of the Board under clause (a) of section 9 which is confined at present to ameliorating the condition of beasts of burden is being widened so as to cover

improvement of all animals and the function under clause (g) of the section relating to the grant of financial assistance for the formation of *panipols*, *sanctuaries*, and the like is being amplified to cover expressly the humane treatment of animals and animals (vide clause 9).

(d) Section 11 relating to punishment for treating animals cruelly is proposed to be included to cover certain additional cases of cruelty and also to provide for a minimum punishment by way of fine for treating animals cruelly (vide clause 10).

(e) Section 12 of the Act provides for penalty for practicing *phoska* or *doom dev* upon any cow or other milch animal. This section is being amended to make other operations to improve lactation (including injection of any substance) which are injurious to the health of such animals punishable (vide clause 11).

(f) With a view to enabling the Committee for control and supervision of experiments on animals to function more effectively a new section is proposed to be included for enabling the Committee to constitute sub-Committees for exercising any of its powers or discharging any of the duties or for enquiring into or reporting and advising on any matters referred to them by the Committee (vide clause 13).

(g) Section 38 relating to the power to make rules is being amended *inter alia* to provide for the fees which may be charged by the Committee for control and supervision of experiments on animals for the registration of institution for which such experiments are carried on (vide clause 16).

3. The Bill seeks to achieve the above objects.

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called The PREVENTION OF CRUELTY TO ANIMALS ACT, 1960.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States and for the different provisions contained in this Act.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "animal" means any living creature other than a human being;

[(b) "Board" means the Board established under section 4, and as reconstituted from time to time under section 5-A;]

(c) "captive animal" means any animal (not being a domestic animal) which is in captivity or confinement, whether permanent or temporary, or which is subjected to any appliance or contrivance for the purpose of hindering or preventing its escape from captivity or confinement or which is maimed or which is or appears to be maimed;

(d) "domestic animal" means any animal which is tamed or which has been or is being sufficiently tamed to serve some purpose for the use of man or which, although it neither has been nor is being nor is intended to be so tamed, is or has become in fact wholly or partly tamed;

¹ Brought into force on 1-4-1961 in the State of Punjab (now divided into States of Punjab and Haryana and Union territory of Chandigarh) and the Union territory of Andaman and Nicobar Islands vide S.O. 823, dated 1-4-1961, see Gazette of India, Pt. II, Sec. 3, p. 306.

² Substituted by Act 26 of 1982, S. 2, for Cl. (b) w.e.f. 1-1-1983.

(e) "local authority" means a municipal committee, district board or other authority for the time being invested by law with the control and administration of any matters within a specified local area;

(f) "owner", used with reference to an animal, includes not only the owner but also any other person for the time being in possession or custody of the animal, whether with or without the consent of the owner;

(g) "phooka" or "dohm dey" includes any process of introducing air or any substance into the female organ of a milch animal with the object of drawing off from the animal any secretion of milk;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "street" includes any way, road, lane, square, Court, alley, passage or open space, whether a thoroughfare or not, to which the public have access.

3. Duties of persons having charge of animals.—It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.

CHAPTER II

[ANIMAL WELFARE BOARD OF INDIA]

4. Establishment of [Animal Welfare Board of India].—(1) For the promotion of animal welfare generally and for the purpose of protecting animals from being subjected to unnecessary pain or suffering in particular, there shall be established by the Central Government, as soon as may be after the commencement of this Act, a Board to be called the [Animal Welfare Board of India].

(2) The Board shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by its name sue and be sued.

5. Constitution of the Board.—(1) The Board shall consist of the following persons, namely:—

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

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

⁵[(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;

³ Substituted by Act 26 of 1982, S. 3, for "ANIMAL WELFARE BOARD" (w.e.f. 30-7-1982).

⁴ Substituted by Act 26 of 1982, S. 3, for "Animal Welfare Board" (w.e.f. 30-7-1982).

⁵ Inserted by Act 26 of 1982, S. 5 (w.e.f. 30-7-1982).

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

⁶[(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 animal 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 ⁷[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.

⁸[(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.]

⁹[5-A. Reconstitution of the Board.—(1) In order that the Chairman and other Members of the Board hold office till the same date and that their terms of office come to an end on the same date, the Central Government may, by notification in the Official Gazette, reconstitute, as soon as may be after the Prevention of Cruelty to Animals (Amendment) Act, 1982 comes into force, the Board.

(2) The Board as reconstituted under sub-section (1) shall be reconstituted from time to time on the expiration of every third year from the date of its reconstitution under sub-section (1).

(3) There shall be included amongst the Members of the Board reconstituted under sub-section (1), all persons who immediately before the date on which such reconstitution is to take effect, are Members of the Board but such persons shall hold office only for the unexpired portion of the term for which they would have held office if such reconstitution had not been made and the vacancies arising as a result of their ceasing to be Members of the Board shall be filled up as casual vacancies for the remaining period of the term of the Board as so reconstituted:

Provided that nothing in this sub-section shall apply in relation to any person who ceases to be Member of the Board by virtue of the amendment made in sub-section (1) of section 5 by sub-clause (ii) of clause (a) of section 5 of the Prevention of Cruelty to Animals (Amendment) Act, 1982.)]

6. Substituted by Act 26 of 1982, S. 5, for Cl. (e) (w.e.f. 30-7-1982).

7. Substituted by Act 26 of 1982, S. 5, for "clause (b)" (w.e.f. 30-7-1982).

8. Substituted by Act 26 of 1982, S. 5 for sub S. (3) (w.e.f. 30-7-1982).

9. Inserted by Act 26 of 1982, S. 6 (w.e.f. 30-7-1982).

6. Term of office and conditions of service of Members of the Board.—

(1) The term for which the Board may be reconstituted under section 5-A shall be three years from the date of the reconstitution and the Chairman and other Members of the Board as so reconstituted shall hold office till the expiry of the term for which the Board has been so reconstituted.

(2) Notwithstanding anything contained in sub-section (1),—

(a) the term of office of an *ex officio* Member shall continue so long as he holds the office by virtue of which he is such a Member;

(b) the term of office of a Member elected or chosen under clause (c), clause (e), clause (f), clause (g), clause (h) or clause (i) of section 5 to represent any body of persons shall come to an end as soon as he ceases to be a Member of the body which elected him or in respect of which he was chosen;

(c) the term of office of a Member appointed, nominated, elected or chosen to fill a casual vacancy shall continue for the remainder of the term of office of the Member in whose place he is appointed, nominated, elected or chosen;

(d) the Central Government may, at any time, remove for reasons to be recorded in writing a Member from office after giving him a reasonable opportunity of showing cause against the proposed removal and any vacancy caused by such removal shall be treated as casual vacancy for the purpose of clause (c).

(3) The Members of the Board shall receive such allowances, if any, as the Board may, subject to the previous approval of the Central Government, provide by regulations made in this behalf.

(4) No act done or proceeding taken by the Board shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board and in particular, and without prejudice to the generality of the foregoing, during the period intervening between the expiry of the term for which the Board has been reconstituted under section 5-A and its further reconstitution under that section, the *ex officio* Members of the Board shall discharge all the powers and functions of the Board.]

7. Secretary and other employees of the Board.—(1) The Central Government shall appoint ["* * *"] the Secretary of the Board.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Board may appoint such number of other officers and employees as may be necessary for the exercise of its powers and the discharge of its functions and may determine the terms and conditions of service of such officers and other employees by regulations made by it with the previous approval of the Central Government.

8. Funds of the Board.—The funds of the Board shall consist of grants made to it from time to time by the Government and of contributions, donations, subscriptions, bequests, gifts and the like made to it by any local authority or by any other person.

10. Substituted by Act 26 of 1982, S. 7, for S. 6 (w.e.f. 30-7-1982).

11. The words "one of its officers to be" omitted by Act 26 of 1982, S. 8 (w.e.f. 30-7-1982).

9. Functions of the Board.—The functions of the Board shall be—

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

(b) to advise the Central Government on the making of rules under this Act with a view to preventing unnecessary pain or suffering to animals generally, and more 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 so as to lessen the burden on draught animals;

(d) to take all such steps as the Board may think fit for ¹²[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 that unwanted animals are destroyed by local authorities, whenever it is necessary to do so, either instantaneously or after being rendered insensible to pain or suffering;

(g) to encourage, by the grant of financial assistance or otherwise, ¹³[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;

(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

12. Substituted by A. 26 of 1982, S. 9, for "ameliorating the condition of beasts of burden" (w.e.f. 30-7-1982).

13. Substituted by Act 26 of 1982, S. 9, for "the formation of *pinjrapoles*, sanctuaries and the like" (w.e.f. 30-7-1982).

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.

10. Power of Board to make regulations.—The Board may subject to the previous approval of the Central Government, make such regulations as it may think fit for the administration of its affairs and for carrying out its functions.

CHAPTER III

CRUELTY TO ANIMALS GENERALLY

11. Treating animals cruelly.—(1) If any person—

(a) beats, kicks, overrides overdrives, overloads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animal to be so treated; or

(b) ¹⁴employs in any work or labour or for any purpose any animal which, by reason of its age or any disease, infirmity, wound, sore or other cause, is unfit to be so employed, or being the owner, permits any such unfit animal to be so employed; or

(c) wilfully and unreasonably administers any injurious drug or injurious substance to ¹⁴[any animal] or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by ¹⁴[any animal]; or

(d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or

(e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or

(f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or

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

(h) being the owner of ¹⁴[any animal], fails to provide such animal with sufficient food, drink or shelter; or

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

(j) wilfully permits any animal, of which he is the owner, 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; or

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

¹⁴ Substituted by Act 26 of 1982, S. 10, for certain words (w.e.f. 30-7-1982).

¹⁵[(l) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in the heart or in any other unnecessarily cruel manner; or

(m) solely with a view to providing entertainment—

(i) confines or causes to be confined 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

(ii) incites any animal to fight or bait any other animal; or]

(n) ¹⁶[***], organises, keeps, uses or acts in the management of, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes; or

(o) promotes or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting,

he shall be punishable, ¹⁷[in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees, and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both].

(2) For the purposes of sub-section (1), an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence:

Provided that where an owner is convicted of permitting cruelty by reason only of having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3) Nothing in this section shall apply to—

(a) the dehorning of cattle, or the castration or branding or nose-roping of any animal, in the prescribed manner; or

(b) the destruction of stray dogs in lethal chambers or ¹⁷[by such other methods as may be prescribed]; or

(c) the extermination or destruction of any animal under the authority of any law for the time being in force; or

(d) any matter dealt with in Chapter IV; or

(e) the commission or omission of any act in the course of a destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering.

12. Penalty for practising *phooka* or *doom dev*.—If any person performs upon any cow or other milch animal the operation called *phooka* or ¹⁸[*doom dev* or any other operation (including injection of any substance) to improve lactation which is injurious to the health of the animal] or permits such

15. Substituted by Act 26 of 1982, S. 10, for Cls. (l) and (m) (w.e.f. 30-7-1982).

16. The words "for the purposes of his business" omitted by Act 26 of 1982, S. 10 (w.e.f. 30-7-1982).

17. Substituted by Act 26 of 1982, S. 10 for [the words "or by such other methods as may be prescribed"] (w.e.f. 30-7-1982).

18. Substituted by Act 26 of 1982, S. 11, for "*doom dev*" (w.e.f. 30-7-1982).

operation being performed upon any such animal in his possession or under his control, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to two years, or with both, and the animal on which the operation was performed shall be forfeited to the Government.

13. Destruction of suffering animals.—(1) Where the owner of an animal is convicted of an offence under section 11, it shall be lawful for the Court, if the Court is satisfied that it would be cruel to keep the animal alive, to direct that the animal be destroyed and to assign the animal to any suitable person for that purpose, and the person to whom such animal is so assigned shall, as soon as possible, destroy such animal or cause such animal to be destroyed in his presence without unnecessary suffering, and any reasonable expense incurred in destroying the animal may be ordered by the Court to be recovered from the owner as if it were a fine:

Provided that unless the owner assents thereto, no order shall be made under this section except upon the evidence of a veterinary officer in charge of the area.

(2) When any Magistrate, Commissioner of Police or District Superintendent of Police has reason to believe that an offence under section 11 has been committed in respect of any animal, he may direct the immediate destruction of the animal, if in his opinion, it would be cruel to keep the animal alive.

(3) Any police officer above the rank of a constable or any person authorised by the State Government in this behalf who finds any animal so diseased or so severely injured or in such a physical condition that in his opinion it cannot be removed without cruelty, may, if the owner is absent or refuses his consent to the destruction of the animal, forthwith summon the veterinary officer in charge of that area in which the animal is found, and if the veterinary officer certifies that the animal is mortally injured or so severely injured or in such a physical condition that it would be cruel to keep it alive, the police officer or the person authorised, as the case may be, may, after obtaining orders from a Magistrate, destroy the animal injured or cause it to be destroyed¹⁰ [in such manner as may be prescribed].

(4) No appeal shall lie from any order of a Magistrate for the destruction of an animal.

CHAPTER IV

EXPERIMENTATION OF ANIMALS

14. Experiments on animals.—Nothing contained in this Act shall render unlawful the performance of experiments (including experiments involving operations) 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.

15. Committee for control and supervision of experiments on animals.—

(1) If at any time, on the advice of the Board, the Central Government is of opinion that it is necessary so to do for the purpose of controlling and supervising experiments on animals, it may, by notification in the Official

¹⁰ Inserted by Act 26 of 1982 S. 23 (w.e.f. 30.7.1982)

Gazette, constitute a Committee consisting of such number of officials and non-officials, as it may think fit to appoint thereto.

(2) The Central Government shall nominate one of the Members of the Committee to be its Chairman.

(3) The Committee shall have power to regulate its own procedure in relation to the performance of its duties.

(4) The funds of the Committee shall consist of grants made to it from time to time by the Government and of contributions, donations, subscriptions, bequests, gifts and the like made to it by any person.

²⁰[15-A. Sub-Committees.—(1) The Committee may constitute as many sub-Committees as it thinks fit for exercising any power or discharging any duty of the Committee or for inquiring into or reporting and advising on any matter which the Committee may refer.

(2) A sub-Committee shall consist exclusively of the Members of the Committee.]

16. Staff of the Committee.—Subject to the control of the Central Government, the Committee may appoint such number of officers and other employees as may be necessary to enable it to exercise its powers and perform its duties, and may determine the remuneration and other terms and conditions of service of such officers and other employees.

17. Duties of the Committee and power of the Committee to make rules relating to experiments on animals.—(1) It shall be the duty of the Committee to take all such measures as may be necessary to ensure that animals are not subjected to unnecessary pain or suffering before, during or after the performance of experiments on them, and for the purpose it may, by notification in the Gazette of India and subject to the condition of previous publication, make such rules as it may think fit in relation to the conduct of such experiments.

²¹[(1-A) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the following matters, namely:—

(a) the registration of persons or institutions carrying on experiments on animals;

(b) the reports and other information which shall be forwarded to the Committee by persons and institutions carrying on experiments on animals.]

(2) In particular, and without prejudice to the generality of the foregoing power, rules made by the Committee shall be designed to secure the following objects, namely:—

(a) that in cases where experiments are performed in any institution, the responsibility therefor, is placed on the person in charge of the institution and that, in cases where experiments are performed outside an institution by individuals, the individuals are qualified in that behalf and the experiments are performed on their full responsibility;

(b) that experiments are performed with due care and humanity, and that as far as possible experiments involving operations are performed under the influence of some anaesthetic of sufficient power to prevent the animals feeling pain;

²⁰ Inserted by Act 26 of 1982, S. 13 (w.e.f. 30-7-1982).

²¹ Inserted by Act 26 of 1982, S. 14 (w.e.f. 30-7-1982).

(c) that animals which, in the course of experiments under the influence of anaesthetics, are so injured that their recovery would involve serious suffering, are ordinarily destroyed while still insensible;

(d) that experiments on animals are avoided wherever it is possible to do so; as for example in medical schools, hospitals, colleges and the like, if other teaching devices such as books, models, films and the like, may equally suffice;

(e) that experiments on larger animals are avoided when it is possible to achieve the same results by experiments upon small laboratory animals like guinea-pigs, rabbits, frogs and rats;

(f) that, as far as possible, experiments are not performed merely for the purpose of acquiring manual skill;

(g) that animals intended for the performance of experiments are properly looked after both before and after experiments;

(h) that suitable records are maintained with respect to experiments performed on animals.

(3) In making any rules under this section, the Committee shall be guided by such directions as the Central Government (consistently, with the objects for which the Committee is set up) may give to it, and the Central Government is hereby authorised to give such directions.

(4) All rules made by the Committee shall be binding on all individuals performing experiments outside institutions and on persons in charge of institutions in which experiments are performed.

18. Power of entry and inspection.—For the purpose of ensuring that the rules made by it are being complied with, 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, and any officer or person so authorised may—

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

(b) require any person to produce any record kept by him with respect to experiments on animals.

19. Power to prohibit experiments on animals.—If the Committee is satisfied, on the report of any officer or other person made to it as a result of any inspection under section 18 or otherwise, that the rules made by it under section 17 are not being complied with by any person or institution carrying on experiments on animals, the Committee may, after giving an opportunity to the person or institution of being heard in the matter, by order, 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.

20. Penalties.—If any person—

(a) contravenes any order made by the Committee under section 19; or

(b) commits a breach of any condition imposed by the Committee under that section,

he shall be punishable with fine which may extend to two hundred rupees, and, when the contravention or breach of condition has 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.

CHAPTER V
PERFORMING ANIMALS

21. "Exhibit" and "train" defined.—In this Chapter, "exhibit" means exhibit or any entertainment to which the public are admitted through sale of tickets and "train" means train for the purpose of any such exhibition, and the expressions "exhibitor" and "trainer" have respectively the corresponding meanings.

22. Restriction on exhibition and training of performing animals.—No person shall exhibit or train—

(i) any performing animal unless he is registered in accordance with the provisions of this Chapter;

(ii) 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.

COMMENTS

S. 29 of the Prevention of Cruelty to Animals Act, 1960 gives power to the Court to deprive a person convicted under the Act of the ownership of animals. It is true that the Act is silent with regard to the ownership of the animals with respect to whom a notification under S. 22 is issued, but inasmuch as the circus owners keep the animals only for the purpose of training and exhibition, it must follow that they cannot retain them for that purpose: *N.R. Nair v. Union of India* A.I.R. 2001 S.C. 2337: (2001) 6 S.C.C. 84.

23. Procedure for registration.—(1) Every person desirous of exhibiting or training any performing animal shall, on making an application in the prescribed form to the prescribed authority and on payment of the prescribed fee, be registered under this Act unless he is a person who, by reason of an order made by the Court under this Chapter, is not entitled to be so registered.

(2) An application for registration under this Chapter shall contain such particulars as to the animals and as to the general nature of the performances in which the animals are to be exhibited or for which they are to be trained as may be prescribed, and the particulars so given shall be entered in the register maintained by the prescribed authority.

(3) The prescribed authority shall give to every person whose name appears on the register kept by them, a certificate of registration in the prescribed form containing the particulars entered in the register.

(4) Every register kept under this Chapter shall at all reasonable times be open for inspection 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.

(5) Any person whose name is entered in the register shall, subject to the provisions of any order made under this Act by any Court, be entitled, on making an application for the purpose, to have the particulars entered in the register with respect to him varied, and where any such particulars are so varied, the existing certificate shall be cancelled and a new certificate issued.

24. Power of Court to prohibit or restrict exhibition and training of performing animals.—(1) Where it is proved to the satisfaction of any Magistrate on a complaint made by a police officer or an officer authorised in writing by the prescribed authority referred to in section 23, 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.

(2) Any Court by which an order is made under this section shall cause a copy of the order to be sent, as soon as may be after the order is made, to the prescribed authority by which the person against whom the order is made is registered, and shall cause the particulars of the order to be endorsed upon the certificate held by that person, and that person shall produce his certificate, on being so required by the Court for the purposes of endorsement, and the prescribed authority to which a copy of an order is sent under this section shall enter the particulars of the order in that register.

25. Power to enter premises.—(1) Any person authorised in writing by the prescribed authority referred to in section 23 and any police officer not below the rank of a Sub-Inspector may—

(a) enter at all reasonable times and inspect any premises in which any performing animals are being trained or exhibited or kept for training or exhibition, and any such animals found therein; and

(b) require any person who, he has reason to believe, is a trainer or exhibitor of performing animals to produce his certificate of registration.

(2) No person or police officer referred to in sub-section (1) shall be entitled under this section to go on or behind the stage during a public performance of performing animals.

26. Offences.—If any person—

(a) not being registered under this Chapter, exhibits or trains any performing animal; or

(b) being registered under the Act, exhibits or trains any performing animal with respect to which, or in a manner with respect to which, he is not registered; or

(c) exhibits or trains as a performing animal, any animal which is not to be used for the purpose by reason of a notification issued under clause (ii) of section 22; or

(d) 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; or

(e) conceals any animal with a view to avoiding such inspection; or

(f) being a person registered under this Act, on being duly required in pursuance of this Act to produce his certificate under this Act, fails without reasonable excuse so to do; or

(g) applies to be registered under this Act when not entitled to be so registered,

he shall be punishable on conviction with fine which may extend to five hundred rupees or with imprisonment which may extend to three months, or with both.

27. Exemptions.—Nothing contained in this Chapter shall apply to—

(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.

CHAPTER VI
MISCELLANEOUS

28. Saving as respects manner of killing prescribed by religion.—Nothing contained in this Act shall render it an offence to kill any animal in a manner required by the religion of any community.

29. Power of Court to deprive person convicted of ownership of animal.—

(1) If the owner of any animal is found guilty of any offence under this Act, the Court, upon his conviction thereof, may, if it thinks fit, in addition to any other punishment, make an order that the animal with respect to which the offence was committed shall be forfeited to Government and may, further, make such order as to the disposal of the animal as it thinks fit under the circumstances.

(2) No order under sub-section (1) shall be made unless it is shown by evidence as to a previous conviction under this Act or as to the character of the owner or otherwise as to the treatment of the animal that the animal, if left with the owner, is likely to be exposed to further cruelty.

(3) Without prejudice to the provision contained in sub-section (1), the Court may also order that a person convicted of an offence under this Act shall, either permanently or during such period as is fixed by the order, be prohibited from having the custody of any animal of any kind whatsoever, or as the Court thinks fit, of any animal of any kind or species specified in the order.

(4) No order under sub-section (3) shall be made unless—

(a) it is known by evidence as to a previous conviction or as to the character of the said person or otherwise as to the treatment of the animal in relation to which he has been convicted that an animal in the custody of the said person is likely to be exposed to cruelty;

(b) it is stated in the complaint upon which the conviction was made that it is the intention of the complainant upon the conviction of the request that an order be made as aforesaid; and

(c) the offence for which the conviction was made was committed in an area in which under the law for the time being in force a license is necessary for the keeping of any such animal as that in respect of which the conviction was made.

(5) Notwithstanding anything to the contrary contained in any law for the time being in force, any person in respect of whom an order is made under sub-section (3) shall have no right to the custody of any animal contrary to the provisions of the order, and if he contravenes the provisions of any order, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

(6) Any Court which has made an order under sub-section (3) may at any time, either on its own motion or on application made to it in this behalf, rescind or modify such order.

COMMENTS

S. 29 of the Prevention of Cruelty to Animals Act, 1960 gives power to the Court to deprive a person convicted under the Act of the ownership of animals. It is true that the Act is silent with regard to the ownership of the animals with respect to whom a notification under S. 22 is issued, but inasmuch as the circus owners keep the animals only for the purpose of training and exhibition, it must follow that they cannot retain them for that purpose: *N.R. Nair v. Union of India* A.I.R. 2001 S.C. 2337; (2001) 6 S.C.C. 84.

30. Presumption as to guilt in certain cases.—If any person is charged with the offences of killing a goat, cow or its progeny contrary to the provisions of clause (1) of sub-section (1) of section 11, and it is proved that such person had in his possession, at the time the offence is alleged to have been committed, the skin of any such animal as is referred to in this section with any part of the skin of the head attached thereto, it shall be presumed until the contrary proved that such animal was killed in a cruel manner.

31. Cognizability of offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898)²², an offence punishable under clause (1), clause (13) or clause (14) of sub-section (1) of section 11 or under section 12 shall be a cognizable offence within the meaning of that Code.

32. Powers of search and seizure.—(1) If a police officer not below the rank of Sub-Inspector or any person authorised by the State Government in this behalf has reason to believe that an offence under clause (1) of sub-section (1) of section 11 in respect of any such animal as is referred to in section 30 is being, or is about to be, or has been, committed in any place, or that any person has in his possession the skin of any such animal with any part of the skin of the head attached thereto, he may enter and search such place or any place in which he has reason to believe any such skin to be, and may seize such skin or any article or thing used or intended to be used in the commission of such offence.

(2) If a police officer not below the rank of Sub-Inspector, or any person authorised by the State Government in this behalf, has reason to believe that *phooka* or ²³*doom dev* or any other operation of the nature referred to in section 12] has just been, or is being, performed or any animal within the limits of his jurisdiction, he may enter any place in which he has reason to believe such animal to be, and may seize the animal and produce it for examination by the veterinary officer in charge of the area in which the animal is seized.

33. Search warrants.—(1) If a Magistrate of the first or second class or a Presidency Magistrate or a Sub-Divisional Magistrate or a Commissioner of Police or District Superintendent of Police, upon information in writing, and after such inquiry as he thinks necessary, has reason to believe that an offence under this Act is being, or is about to be, or has been committed in any place, he may either himself enter and search or by his warrant authorise any police officer not below the rank of Sub-Inspector to enter and search the place.

(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898)²⁴, relating to searches shall, so far as those provisions can be made applicable, apply to searches under this Act.

34. General power of seizure for examination.—Any police officer above the rank of a constable or any person authorised by the State Government in this behalf, who has reason to believe that an offence against this Act has been or is being committed in respect of any animal, may, if in his opinion the circumstances so require, seize the animal and produce the same for examination by the nearest Magistrate or by such veterinary officer as may be prescribed, and such police officer or authorised person may, when seizing the animal, require the person in charge thereof to accompany it to the place of examination.

²² Now see the Code of Criminal Procedure, 1973 (2 of 1974).

²³ Substituted by Act 26 of 1982, s. 15, for the words "any" in clause (2) of section 32.

²⁴ Now see the Code of Criminal Procedure, 1973 (2 of 1974).

35. Treatment and care of animals.—(1) The State Government may, by general or special order, appoint infirmaries for the treatment and care of animals in respect of which offences against this Act have been committed, and may authorise the detention therein of any animal pending its production before a Magistrate.

(2) The Magistrate before whom a prosecution for an offence against this Act has been instituted may direct that the animal concerned shall be treated and cared for in an infirmary, until it is fit to perform its usual work or is otherwise fit for discharge, or that it shall be sent to a *pinjrapole*, or, if the veterinary officer in charge of the area in which the animal is found or such other veterinary officer as may be authorised in this behalf by rules made under this Act certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed.

(3) An animal sent for care and treatment to an infirmary shall not, unless the Magistrate directs that it shall be sent to a *pinjrapole* or that it shall be destroyed, be released from such place except upon a certificate of its fitness for discharge issued by the veterinary officer in charge of the area in which the infirmary is situated or such other veterinary officer as may be authorised in this behalf by rules made under this Act.

(4) The cost of transporting the animal to an infirmary or *pinjrapole*, and of its maintenance and treatment in an infirmary, shall be payable by the owner of the animal in accordance with a scale of rates to be prescribed by the District Magistrate, or, in presidency-towns, by the Commissioner of Police:

Provided that when the Magistrate so orders on account of the poverty of the owner of the animal, no charge shall be payable for the treatment of the animal.

(5) Any amount payable by an owner of an animal under sub-section (4) may be recovered in the same manner as an arrear of land revenue.

(6) If the owner refuses or neglects to remove the animal within such time as a Magistrate may specify, the Magistrate may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.

(7) The surplus, if any, of the proceeds of such sale shall, on application made by the owner within two months from the date of the sale, be paid to him.

36. Limitation of prosecutions.—A prosecution for an offence against this Act shall not be instituted after the expiration of three months from the date of the commission of the offence.

37. Delegation of powers.—The Central Government may, by notification in the Official Gazette, direct that all or any of the powers exercisable by it under this Act, may, subject to such conditions as it may think fit to impose, be also exercisable by any State Government.

38. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules providing for all or any of the following matters, namely:—

(a) the ²⁵[** * *] conditions of service of Members of the Board, the allowances payable to them and the manner in which they may exercise their powers and discharge their functions;

²⁶[(aa) the manner in which the persons to represent municipal corporations are to be elected under clause (c) of sub-section (1) of section 5;]

(b) the maximum load (including any load occasioned by the weight of passengers) to be carried or drawn by any animal;

(c) the conditions to be observed for preventing the over-crowding of animals;

(d) the period during which, and the hours between which, any class of animals shall not be used for draught purposes;

(e) prohibiting the use of any bit or harness involving cruelty to animals;

²⁶[(ea) the other methods of destruction of stray dogs referred to in clause (b) of sub-section (3) of section 11;

(eb) the methods by which any animal which cannot be removed without cruelty may be destroyed under sub-section (3) of section 13;]

(f) requiring persons carrying on the business of a carrier to be licensed and registered by such authority as may be prescribed and levying a fee for the purpose;

(g) the precautions to be taken in the capture of animals for purposes of sale, export or for any other purpose, and the different appliances or devices that may alone be used for the purpose; and the licensing of such capture and the levying of fees for such licences;

(h) the precautions to be taken in the transport of animals, whether by rail, road, inland waterway, sea or air and the manner in which and the cages or other receptacles in which they may be so transported;

(i) requiring persons owning or in charge of premises in which animals are kept or milked to register such premises, to comply with such conditions as may be laid down in relation to the boundary walls or surroundings of such premises to permit their inspection for the purpose of ascertaining whether any offence under this Act is being, or has been committed therein, and to expose in such premises copies of section 12 in a language or languages commonly understood in the locality;

(j) the form in which applications for registration under Chapter V may be made, the particulars to be contained therein, the fees payable for such registration and the authorities to whom such applications may be made;

²⁶[(ja) the fees which may be charged by the Committee constituted under section 15 for the registration of persons or institutions carrying on experiments on animals or for any other purpose;]

(k) the purposes to which fines realised under the Act may be applied, including such purposes as the maintenance of infirmaries, *pinjrapole* and veterinary hospitals,

(l) any other matter which has to be, or may be prescribed.

25. The word, "to be" inserted by Act 26 of 1982, S. 16 (w.e.f. 30-7-1982).

26. Inserted by Act 26 of 1982, S. 16 (w.e.f. 30-7-1982).

(3) If any person contravenes, or abets the contravention of, any rule made under this section, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

²⁷[***]

²⁸[38-A. Rules and regulations to be laid before Parliament.—Every rule made by the Central Government or by the Committee constituted under section 15 and every regulation made by the Board shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, as the case may be, or both Houses agree that the rule or regulation, as the case may be, should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.]

39. Persons authorised under section 34 to be public servants.—Every person authorised by the State Government under section 34 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

40. Indemnity.—No suit, prosecution or other legal proceeding shall lie against any person, who is, or who is deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860) in respect of anything in good faith done or intended to be done under this Act.

41. Repeal of Act 11 of 1890.—Where in pursuance of a notification under sub-section (3) of section 1 any provision of this Act comes into force in any State, any provision of Prevention of Cruelty to Animals Act, 1890 (11 of 1890), which corresponds to the provision so coming into force, shall thereupon stand repealed.

MINISTRY OF FOOD AND AGRICULTURE

(Department of Agriculture)

NOTIFICATION

New Delhi, the 23rd June, 1967.

S.O. 2005- In exercise of the powers conferred by section 31 of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960), the Central Government hereby makes the following rules, the same having been previously published, as required by the said section, namely:-

ANIMAL WELFARE BOARD (ADMINISTRATION)
RULES, 1962.

1. Short title: These rules may be called the Animal Welfare Board (Administration) Rules, 1962.

2. Definitions- In these rules, unless the context otherwise requires,-

- (a) "Act" means the Prevention of Cruelty to Animals Act, 1960 (59 of 1960);
- (b) "Board" means the Animal Welfare Board established under Section 47;
- (c) "Chairman" means the Chairman of the Board nominated under sub-section (3) of section 5;
- (d) "member" means a member of the Board; and
- (e) "Secretary" means the Secretary to the Board appointed under sub-section (1) of section 7.

3. Headquarters of the Board.- The headquarters of the Board shall be at New Delhi or at such other place as the Central Government may, after consultation with the Board direct.

33A. Vice-Chairman. - (1) 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.

(2) The Vice-Chairman shall exercise such powers and perform such functions as the Chairman may, with the previous approval of the Central Government, delegate to him from time to time.

4. Casual vacancies. - (1) Any casual vacancy arising in the office of a member shall be filled in the manner provided in one or the other of the clauses or sub-section (1) of section 5 according to the capacity in which such person had found a place in the Board as a member.

(2) A member appointed to fill a casual vacancy shall hold office so long as the member whose place he fills would have been entitled to hold office if the vacancy had not occurred.

5. Resignation. - (1) A member, other than the Chairman, may by a letter addressed to the Chairman, resign his membership.

(2) The Chairman may resign his membership by a letter addressed to the Secretary to the Government of India, Ministry of Food and Agriculture, (Department of Agriculture).

(3) A resignation shall take effect from the date of its acceptance or on the expiry of thirty days from the date of resignation, whichever is earlier.

6. Removal from the Board. - (1) The Central Government may remove from office any member of the Board who,

(a) absents himself from three consecutive meetings of the Board without the leave of the Board; or

(b) has been adjudged an insolvent or;

(c) has been convicted of an offence involving moral turpitude; or

(d) has become physically or mentally incapable of acting as such member.

* Ins. by Prevention of Cruelty to Animals (Amendment) Act, 1982 (25 of 1982) S.5(3)

(2) No person shall be removed from office as a member except after being given an opportunity of showing cause against such removal.

7. Disposal of business:- (1) All questions which the Board is required to consider shall be considered either at its meeting or by circulation of papers, as the Chairman may direct.

(2) When a question is referred by circulation of papers, any member may request that the question be considered at a meeting of the Board and thereupon the Chairman may direct that it be so considered.

Provided that if three or more members make such a request, the Chairman shall direct that it be so considered.

8. Meetings of the Board:- (1) The Board shall meet not less than twice a year or more often if the Chairman thinks it necessary for transaction of its business.

(2) The meetings shall ordinarily be held at the headquarters of the Board but the Chairman may, if necessary, fix the venue of the meetings at places other than the headquarters of the Board.

9. Annual general meeting:- (1) Of the meetings of the Board held annually, one shall be the Annual General Meeting.

* (2) At one of its General Meetings to be held sometime in August or September each year, the Secretary shall submit the annual report and the yearly accounts of the Board for the working of the preceding financial year and the budget for the next financial year for the approval of the Board.

10. Special meetings:- (1) The Chairman shall convene a special meeting of the Board on the written requisition of not less than eight members of the Board.

(2) Any requisition made by the members of the Board shall specify the object of the meeting proposed to be called and shall be left at the address of the Secretary or posted to his address.

* Substituted by Animal Welfare Board
(Administration) Amendment Rules, 1981.

(3) Upon such requisition, the Chairman shall give notice of a meeting to be held within thirty days after the receipt of such requisition.

11. Form of notice of meetings:- Every notice calling a meeting of the Board shall state the date, time and place at which such meeting will be held and shall be served upon every member of the Board not less than fourteen clear days before the day appointed for the meeting, other than the annual general meeting in which case the period of notice shall be not less than twenty-one days.

12. Quorum for meetings:- Eight members of the Board, including substitutes deputed under sub-section (2) of section 5 shall form a quorum at every meeting of the Board.

Provided that at any meeting in which less than eight members are present, the Chairman may adjourn the meeting to a date not less than fourteen days later and inform the members present and notify other members that he proposes to dispose of the business at the adjourned meeting irrespective of the quorum and it shall thereupon be lawful to dispose of the business at such adjourned meeting irrespective of the number of members attending.

13. Procedure at meetings.- (1) If the Chairman is not present at any meeting of the Board, the Vice-Chairman shall be the Chairman of the meeting. In the absence of the Chairman and the Vice-Chairman from any meeting of the Board, the members shall choose one among themselves to be the Chairman of the meeting.

(2) In case the difference of opinion amongst the members at the meeting of the Board, the opinion of the majority shall prevail.

(3) Each member shall have one vote and if there shall be equality of votes on any question to be decided at a meeting of the Board, the Chairman of the meeting shall have a casting vote.

(4) No business which is not on the agenda shall be considered at any meeting without the permission of the Chairman.

*Inserted by Annual Welfare Board (Administration)

14. Allowances and remuneration: (1) No remuneration or allowances shall be paid to any member of the Board on account of his services as such.

(2) A member of the Board who is not an official shall be entitled to draw in respect of any journey performed for the purpose of attending a meeting of the Board or of a committee or sub-committee thereof or any other association or society to which he is appointed or nominated as a representative of the Board or any other journey in connection with the work of the Board performed under the direction of the Chairman--

(a) where he is not a Member of Parliament, travelling and daily allowance at rates admissible to a Government servant of the first grade serving under the Central Government;

(b) where he is a Member of Parliament--

(i) travelling or conveyance allowance to recover any expenditure incurred by him in performing such journey at a rate not exceeding the allowance admissible to a Member of Parliament appointed to a committee set up by the Central Government,

(ii) daily allowance at a rate not exceeding the rate to which a Member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954.

(3) A member of the Board who is an official shall be entitled to draw in the circumstances mentioned under sub-rule (2) travelling and daily allowance in accordance with the travelling allowance rules applicable to him.

(4) Where a person who is not official or a member is asked by the Chairman of the Board to perform any journey for the purpose of attending a meeting of the Board or of a committee or sub-committee thereof or any other journey in connection with the work of the Board he shall in respect of such journey be entitled to the payment of travelling or conveyance allowance or daily allowance at the rates specified in sub-rule (2).

15. Powers of the Board to appoint Executive Committees and to co-opt persons therein. For the administration of its affairs and for carrying out its functions, the Board may by resolution appoint an Executive Committee consisting of such number of members as it may think fit to appoint thereof, and may by its resolutions made in this behalf define their functions and duties.

(2) The Board may co-opt a person representing the Ministry of Finance to the Government of India, as a member of the Executive Committee and such person shall be entitled to attend the meeting of the Committee and to take part in its discussions, but shall not have the right to vote.

(1) For rule 16, the following rule shall be substituted, namely:-

16. Powers of the Board to appoint other Committees and sub-committees and to co-opt persons therein. For the purposes of the Executive Committee referred to in rule 15, the Board may by resolution constitute such other Committee or Committees from amongst its members for the administration of its affairs and for carrying out its functions.

(2) The Board may co-opt such persons to the Committees or sub-committees appointed under sub-rule (1) as it considers necessary and suitable, and may permit them to attend the meetings of such Committees or sub-committees.

(3) A person co-opted under sub-rule (2) for any purpose shall have the right to take part in the discussions relevant to that purpose, but shall not have the right to vote.

17. Powers and duties of the chairman.-

(1) The Chairman shall preside at meetings of the Board.

(2) The Chairman shall be responsible for the proper functioning of the Board and the implementation of its decisions and the discharge of its duties under the Act.

* Substituted by Animal Welfare Board (Administration) Amendment Rules, 1963.

(3) The Chairman shall--

- (a) cause important papers and matters to be presented to the Board as early as practicable;
 - (b) issue directions as to the method of carrying out the decisions of the Board;
 - (c) cause to be maintained in account of the receipt and expenditure of the Board; and
 - (d) cause an annual report of the working of the Board to be prepared which after being approved at its annual General Meeting shall be submitted to the Central Government,
- (4) The chairman shall exercise administrative control over all employees of the board.
- (5) The Chairman shall exercise such administrative and financial powers as are specified in column 2 of the schedule to these rules subject to the limitation specified in column 3 thereof.

18. Powers of the secretary.-- (1) The Secretary shall work under the general control of the chairman who may delegate to him all or any of the following powers and duties:

- (a) convening of meetings of the Board under the directions of the Chairman;
- (b) drawing up agenda for each meeting under the Chairman's directions and supplying the same to each member of the Board, along with the notice of the meeting;
- (c) maintenance of minutes of meetings of the Board;
- (d) furnishing to the Central Government copies of all reports, including annual reports and returns and necessary documents required under the Act or the rules;
- (e) preparation of the annual budget of Board.

*Inserted by Animal Welfare Board (Administration) Amendment Rules, 1962.

(2) The Chairman may, with the permission of the Board, delegate to the Secretary any other function of the Board or of the Chairman.

(3) The Secretary shall exercise such administrative and financial powers as are specified in column 2 of the schedule to these rules subject to the limitation specified in column 1 thereof.

(4) The Secretary shall keep a record of the members of the Board and their addresses.

(5) If a member changes his address, he shall notify his new address to the secretary who shall thereupon enter his new address in the record, but if the member fails to notify his new address, the address on official record shall for all purposes be deemed to be the member's address.

19. Preparation and submission of annual budget estimates. (1) The budget estimates of the Board for every financial year beginning with the 1st day of April and ending on the 31st day of March following shall be prepared by the Secretary.

(2) A copy of the budget estimates so prepared shall be sent to each member of the Board.

(3) The Board shall consider and approve the budget estimates with such changes as it thinks fit at the meeting fixed for the consideration of the budget estimates.

(4) The budget estimates as approved by the Board shall be submitted to the Central Government for their formal approval before the 1st March or such other date as the Central Government may fix for the purpose.

(5) Subject to such orders as may be issued by the Central Government from time to time, no expenditure shall be incurred until the budget is sanctioned by the Central Government and expenditure authorised by a competent authority in the Board.

20. Supplementary estimates. If, during any financial year, for any reasons, substantial modification in the budget estimates as finally approved by the Central Government is likely to be involved, the Board shall submit for approval to the Central Government supplementary estimates in such form and on such date as the Central Government may direct.

21. Investment and withdrawal of moneys:-

(1) The bankers of the Board shall be the State Bank of India.

(2) All funds of the Board shall be paid into the Board's account and shall not be withdrawn except on cheques signed by the Chairman or any other member specifically authorised by the Chairman for the purpose and countersigned by the Secretary.

(3) Cheque books shall remain in the personal custody of the Secretary.

22. Permanent advance:- There shall be drawn from the bank and kept at the disposal of the Secretary a permanent advance of Rs. 500/- to be re-couped as and when required, to meet the petty expenditure of the office of the Board.

23. Contracts:- (1) The draft of every contract involving consideration exceeding Rs. 5,000/- shall be submitted to any legal adviser appointed by the Board for the purpose as to its legality and the correctness of its form. Such contracts shall be executed only with the prior approval of the Board or of any of its committees or sub-committees competent for the purpose and shall bear the seal of the Board.

(2) Neither the chairman nor the secretary nor any member of the Board shall be personally liable for any assurance or contract made under this rule but any liability arising under such assurance or contract shall be discharged from the moneys at the disposal of the Board.

* 24. Accounts and Audit:- (1) The Board shall maintain proper accounts and other relevant records.

(2) The accounts of the Board shall be audited annually by the Comptroller and Auditor General of India or by any person appointed by him in this behalf and any expenditure incurred by him in connection with such audit shall be payable by the Board to the Comptroller and Auditor General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him audit the accounts of the Board shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Board.

* Inserted by Animal Welfare Board (Administration) Amendment Rules, 1963.

(4) The Annual Report as approved by the Board and the accounts of the Board, as certified by the Comptroller and Auditor General of India or any person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government and the Government shall cause the same to be laid before each House of Parliament.

(5) The accounts of receipts shall include a statement of all sums received by the Board during the financial year which shall be shown under the following heads:-

- (a) money received from the Central and State Governments;
- (b) other moneys received by the Board;
- (c) interest received from the investment of such moneys as aforesaid.

(6) Total receipts shall be shown under each of the heads specified under sub-rule (5) and the opening balance shall also be stated.

(7) The expenditure incurred during the financial year shall be shown under the following heads:-

- (a) administration of the Board;
- (b) measures taken in connection with the functions of the Board specified in section 9, each item being shown separately;
- (c) Miscellaneous.

(8) The closing balance for the financial year shall be shown at the foot of the accounts on the expenditure side.

25. Legal advice:- The Board shall make its own arrangement to obtain legal advice in respect of contracts or agreements into which it may enter with other parties and other matters where such advice may be necessary.

26. Provident Fund:- The Board may, with the approval of the Central Government, establish and maintain a contributory provident fund for the benefit of its servants other than servants of the Government whose services may be lent to the Board and require any of its servants or any class of its servants to subscribe to the fund.

Annexed by Animal Welfare Board (Administration)
Amendment Rules, 1981.

Schedule of powers delegated to the Chairman and Secretary of the Board

| Sl. No. | Power | Limits and restrictions, if any | |
|---------|--|---|--|
| | | Chairman | Secretary |
| 1. | (a) To create temporary posts (for any specified period). (b) To make appointments to sanctioned posts. | Posts in the scale of pay the maximum of which does not exceed Rs. 2000/- | Posts in the scale of pay the maximum of which does not exceed Rs. 575/- |
| 2. | (a) To sanction grant of leave. (b) To make officiating arrangements. (c) To sanction annual increments under Fundamental Rule 25. | Do. Do. Do. | Do. Do. Full powers provided the increment has not already been withheld. |
| 3. | To authorize a member or any other person to proceed on work connected with the Board to any part of India. | Full powers. | |
| 4. | To grant travelling allowances to persons (other than members and employees) required to travel in the interest of the Board. | | According to the status of the person but not exceeding amounts admissible under the Supplementary Rules of the Government of India. |

25-

5. No authorized employees of the Board to proceed on duty to any part of the United States by grant of travel allowance in accordance with the Supplemental Rules of the Government of India.

Secretary

All P.O. orders from Secretary

6. No Government pay and travelling allowance, etc.

Travelling Allowance Bills of Officers

(I) Pay and travelling allowance bills of all Government officers

(II) Travelling Allowance Bills of

7. No sanction granted for the purchase of conveyances in accordance with the Rules made by the Government of India.

Secretary

(a) No Government vehicles in possession of other than members and staff of the Board
(b) No Government vehicles in possession of other than members and staff of the Board
All other except Secretary

8. No grant concession to persons residing in India for maintenance of motor cars for official use in accordance with the Rules made by Government of India.

Dd.

No.

9. To institute criminal proceedings against employees.

Full powers.

10. To sanction punishment inwards.

Posts in the scale of pay the maximum of which does not exceed Rs. 500/-

Posts in the scale of pay the maximum of which does not exceed Rs. 575/-

11. To sanction Travelling Allowance.

Full powers.

12. To sanction the grant or acceptance of an honorarium of the and to sanction the undertaking of work for which an honorarium or fee is sanctioned.

upto Rs. 1,000/- in any individual case.

upto Rs. 250/- in any individual case.

13. To sanction expenditure of interest on bills or contingent nature.

Maximum limit: Rs. 1,000/- recurring Rs. 5,000/- Non-Recur.

Maximum limit: (i) Also, upto Rs. 250/- Non-Recur. Rs. 1,000/- (ii) Contingent Expend. Rec. Rs. 1,000/- Non-Recur. Rs. 5,000/- per annum

14. To write off losses or (a) irreparable losses or losses of public money.

Rs. 1,000/-

50

| 1 | 2 | 3 | 4 |
|-----|---|--|---|
| | (b) Loss of revenue, irrevocable loans and advances. | | Rs. 1,000/- |
| 15. | (c) Deficiencies and depreciation in the value of stores included in the stock and other accounts. To sanction medical attendance fee and cost of medicines for the servants of the Board, subject to the rules made by the Board. | For the Secretary, Full powers. | Rs. 1,000/- Full for other staff |
| 16. | To appoint authorised medical attendants on the staff. | | Full powers |
| 17. | To declare a Board's servant to be a ministerial servant. | | Full powers. |
| 18. | (a) To retain non-ministerial Government servants in service after the age of 55 and not beyond the age of 60. (b) To retain a ministerial servant in the service of the Board after the age of 60 and not beyond the age of 65. | Full powers in the case of staff drawing pay in the scale the maximum of which is over Rs. 575/- and does not exceed Rs. 900/- | Full powers in the case of staff drawing pay in the scales the maximum of which does not exceed Rs. 575/- Full powers. |

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19. To retain ministerial Board's servant in service after the age of 55 and not beyond the age of 60.

Full powers in the case of staff drawing pay in the scales the maximum of which does not exceed Rs. 500/- and provided extensions are limited to one year at a time.

20. Power to order destruction of records.

Full powers

21. To order sale by auction or otherwise in the interest of the Board, of unserviceable stores or perishable articles.

Full powers.

22. Power to impose all the penalties.

Full power in the case of the staff appointed by Chairman. The staff concerned shall have the right to appeal to the Board from any orders passed against them in exercise of this power.

Full power in the case of the staff appointed by Secretary. The staff concerned shall have the right of appeal to the Chairman from any orders passed against them in exercise of this power.

23. Power to make small monthly payments to class IV servants for dusting offices, for doing cyclotyping work, etc., in addition to their own duties.

Full powers, provided the payment in each case does not exceed Rs. 15/- per m.

hs

24. Section 174 established funds for approved schemes.

25. Re-approval of funds.

26. Section 174(1) for payment of grants to be made in accordance with the provisions of section 174(1) of the Act.

Up to Rs. 5,000/- and the cost of the approved scheme exceeds Rs. 50,000/- and Rs. 2000/- within the limit of the scheme for Rs. 50,000/- or less, provided in all cases that the additional grant is not in excess of the amount and of the cost of the scheme.

Full power to re-approve the funds from any primary unit to another provided that the total sanctioned cost of each scheme is not exceeded thereby.

Full powers to re-approve the funds from the primary units.

Full powers to re-approve the funds from the primary units.

| 1 | 2 | 3 | 4 |
|---|---|---|---|
|---|---|---|---|

29. Attesting entries in service books.

Full powers

30. To sanction an advance to the servants of the Board out of Contingency Provident Fund.

(1) Amount exceeding three months pay of the subscribers.

Amount not exceeding three months pay of the subscriber.

(2) Before the expiry of 12 months after the final repayment of all previous advances together with the interest thereon.

31. Remission of Dis-allowance by audit and writing off over payments made to the servants of the Board.

Full powers, subject to the provisions of para 2 of General Financial Rules, Vol. I.

32. Grant of overtime allowances to staff.

Full powers.

(The 9th/11-12)
I am empowered by Secy.

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 655]

नई दिल्ली, शुक्रवार, मार्च 3, 2017/फाल्गुन 12, 1938

No. 655]

NEW DELHI, FRIDAY, MARCH 3, 2017/PHALGUNA 12, 1938

पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय

अधिसूचना

नई दिल्ली, 3 मार्च, 2017

का.आ. 729(अ).—पशुओं के प्रति क्रूरता निवारण अधिनियम, 1960 (1960 का 59) की धारा 4 की उप-धारा(1) और धारा 5क द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, एतद्वारा दिनांक 01.03.2017 से तीन वर्षों की अवधि के लिए सदस्यों के रूप में निम्नलिखित व्यक्तियों से युक्त भारतीय पशु कल्याण बोर्ड का पुनर्गठन करती है अर्थात् :

- | | |
|---|----------------------------------|
| 1. वन महा निदेशक एवं विशेष सचिव, पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय, नई दिल्ली | धारा 5(1)(क) के तहत सदस्य (पदेन) |
| 2. पशु पालन आयुक्त, कृषि मंत्रालय, नई दिल्ली | धारा 5(1)(ख) के तहत सदस्य (पदेन) |
| 3. संयुक्त सचिव या उनके प्रतिनिधि, गृह मंत्रालय, नई दिल्ली | धारा 5(1)(खक) के तहत सदस्य |
| 4. संयुक्त सचिव या उनके प्रतिनिधि, मानव संसाधन विकास मंत्रालय, नई दिल्ली | धारा 5(1)(खक) के तहत सदस्य |
| 5. वन महा-निरीक्षक (वन्यजीव), पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय, नई दिल्ली | धारा 5(1)(खख) के तहत सदस्य |
| 6. श्री मोहन सिंह आहलूवालिया, हरियाणा | धारा 5(1)(खग) के तहत सदस्य |
| 7. श्री राजीव गुप्ता, सेवानिवृत्त सचिव, युवा कार्य विभाग, भारत सरकार, नई दिल्ली | धारा 5(1)(खग) के तहत सदस्य |
| 8. श्री गिरीश शाह, समस्ता महाजन, मुंबई | धारा 5(1)(खग) के तहत सदस्य |
| 9. डा. आर.एस. चौहान, कॉलेज ऑफ़ वेटेरीनरी एंड एनिमल साइंसेस, जी.वी. पंत कृषि एवं प्रौद्योगिकी विश्वविद्यालय, उत्तराखंड | धारा 5(1)(ग) के तहत सदस्य |

1230 GI/2017

(1)

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|--|----------------------------|
| 10. वैद्य हितेश जानी, अध्यक्ष एवं प्रमुख चिकित्सक, पंचकर्म युजी विभाग, जामनगर, गुजरात आयुर्वेद विश्वविद्यालय | धारा 5(1)(घ) के तहत सदस्य |
| 11. डीजी, आईसीएमआर | धारा 5(1)(घ) के तहत सदस्य |
| 12. गुवाहाटी नगर निगम के प्रतिनिधि, अक्षम | धारा 5(1)(ङ.) के तहत सदस्य |
| 13. ----- नगर निगम के प्रतिनिधि, कर्नाटक | धारा 5(1)(ङ.) के तहत सदस्य |
| 14. श्री सुनील भागसिंघका, गौविज्ञान अनुसंधान केंद्र, देवलापर, नागपुर | धारा 5(1)(च) के तहत सदस्य |
| 15. श्री राम कृष्ण रघुवंशी, पीपल ऑफ एनिमल जनकल्याण समिति, चिदिशा, मध्य प्रदेश | धारा 5(1)(च) के तहत सदस्य |
| 16. संयुक्त सचिव (पशु कल्याण), पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय, भारत सरकार | धारा 5(1)(छ) के तहत सदस्य |
| 17. श्री अजीत शरद केलकर, इंदौर, मध्य प्रदेश | धारा 5(1)(छ) के तहत सदस्य |
| 18. श्री धनपाल सिंह, गायत्री परिवार, देव संस्कृति विश्वविद्यालय, हरिद्वार | धारा 5(1)(छ) के तहत सदस्य |

केंद्र सरकार एतद्वारा उक्त अधिनियम की धारा 5 की उप-धारा (3) के अनुसार भारतीय पशु कल्याण बोर्ड के अध्यक्ष पद के लिए वन महानिदेशक एवं विशेष सचिव को नामित करती है।

बोर्ड के शेष चार पदों के लिए धारा 5(1)(च) और धारा 5(1)(छ) के अंतर्गत अलग से नामांकन किया जाएगा।

[फा. सं. 11/14/2016-एडव्ल्यूडी]

एम. गौरी शंकर, उप सचिव (एडव्ल्यूडी)

टिप्पण: भारतीय पशु कल्याण बोर्ड के पुनर्गठन से संबंधित पूर्ववर्ती अधिसूचनाएं भारत के राजपत्र असाधारण में दिनांक 29.11.2007 की अधिसूचना सं.का.आ.2005(अ), दिनांक 29.12.2008 की अधिसूचना सं.का.आ.2981(अ), दिनांक 30.11.2009 की अधिसूचना सं.का.आ.3077(अ), दिनांक 01.12.2010 की अधिसूचना सं.का.आ.2882(अ), दिनांक 28.02.2014 की अधिसूचना सं.का.आ.602(अ), दिनांक 13.05.2015 की अधिसूचना सं.का.आ.1301(अ), दिनांक 23.12.2016 की अधिसूचना सं.का.आ.4156(अ) और दिनांक 26.12.2016 की अधिसूचना सं.का.आ.4165(अ) द्वारा प्रकाशित की गई थीं।

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 3rd March, 2017

S.O. 729(E).—In exercise of the powers conferred by sub-section (1) of Section 4 and Section 5A of the Prevention of Cruelty to Animals Act 1960 (59 of 1960), the Central Government hereby reconstitutes the Animal Welfare Board of India consisting of the following persons as its Members for a period of three years w.e.f. 01.03.2017, namely:-

- | | |
|---|---|
| 1. Director General of Forests & Special Secretary, Ministry of Environment and Forests, New Delhi | Member (ex-officio) under Section 5(1)(a) |
| 2. The Animal Husbandry Commissioner, Ministry of Agriculture, New Delhi | Member (ex-officio) under Section 5(1)(b) |

| | | |
|-----|---|-------------------------------|
| 3. | The Joint Secretary or his representative, Ministry of Home Affairs, New Delhi | Member under Section 5(1)(ba) |
| 4. | The Joint Secretary or his representative, Ministry of Human Resources Development, New Delhi | Member under Section 5(1)(ba) |
| 5. | The Inspector General of Forest (Wildlife), Ministry of Environment & Forests, New Delhi. | Member under Section 5(1)(bb) |
| 6. | Shri Mohan Singh Ahluwalia, Haryana. | Member under Section 5(1)(bc) |
| 7. | Shri Rajeev Gupta, Retired Secretary, Department of Youth Affairs, Government of India, New Delhi | Member under Section 5(1)(bc) |
| 8. | Shri Girish Shah, Samasta Mahajan, Mumbai | Member under Section 5(1)(bc) |
| 9. | Dr. R.S. Chauhan, College of Veterinary and Animal Sciences, G.B. Pant University of Agriculture and Technology, Uttarakhand. | Member under Section 5(1)(c). |
| 10. | Vaidya Hitesh Jani, Head & Chief Physician, Department of Panchkarma UG, Jamnagar, Gujarat Ayurved University. | Member under Section 5(1)(d) |
| 11. | DG, ICMR | Member under Section 5(1)(d) |
| 12. | Representative of Municipal Corporation of Guwahati, Assam. | Member under Section 5(1)(e) |
| 13. | Representative of Municipal Corporation of _____, Karnataka. | Member under Section 5(1)(e) |
| 14. | Shri Sunil Mansingha, Gauvigyan Anusandhan Kendra, Devlpar, Nagpur | Member under Section 5(1)(f) |
| 15. | Shri Ram Krishan Raghuvanshi, People for Animal Jankalyan Samiti, Vidisha, Madhya Pradesh | Member under Section 5(1)(f) |
| 16. | The Joint Secretary (Animal Welfare), Ministry of Environment, Forest and Climate Change, Government of India. | Member under Section 5(1)(h) |
| 17. | Shri Ajit Sharad Kelkar, Indore, Madhya Pradesh | Member under Section 5(1)(h) |
| 18. | Shri Dhan Pal Singh, Gayatri Parivaar, Dev Sanskriti Vishwavidhyala, Haridwar | Member under Section 5(1)(h) |

The Central Government hereby nominates the Director General of Forests and Special Secretary to be the Chairman of the Animal Welfare Board of India as per sub-Section (3) of Section 5 of the aforesaid Act.

Nominations under Section 5(1)(f) and Section 5(1)(g) for the remaining four positions of the Board shall be made separately.

[F.No. 11/14/2016-AWD]

S. GOWRI SHANKAR, Dy. Secy. (A.W)

Note: The earlier notifications regarding reconstitution of the Animal Welfare Board of India were published in the Gazette of India *vide* number S.O.2005(E) dated 29.11.2007, S.O.2981(E) dt.29.12.2008, S.O.3077(E) dt.30.11.2009, S.O. 2882(E) dt. 1.12.2010, S.O. 602(E) dt. 28.02.2014, S.O. 1301(E) dt. 13.05.2015, S.O. 4156(E) dt. 23.12.2016 and S.O. 4165(E) dt. 26.12.2016.

THE PARLIAMENT (PREVENTION OF DISQUALIFICATION) ACT, 1959

ACT NO. 10 OF 1959

[4th April, 1959.]

An Act to declare that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as, or for being, members of Parliament.

BE it enacted by Parliament in the Tenth Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Parliament (Prevention of Disqualification) Act, 1959.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “compensatory allowance” means any sum of money payable to the holder of an office by way of daily allowance (such allowance not exceeding the amount of daily allowance to which a member of Parliament is entitled under ¹[the Salary, Allowances and Pension of Members of Parliament Act, 1954 (30 of 1954)], any conveyance allowance, house-rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office;

(b) “statutory body” means any corporation, committee, commission, council, board or other body of persons, whether incorporated or not, established by or under any law for the time being in force;

(c) “non-statutory body” means any body of persons other than a statutory body.

3. Certain offices of profit not to disqualify.—It is hereby declared that none of the following offices, in so far as it is an office of profit under the Government of India or the Government of any State, shall disqualify the holder thereof for being chosen as, or for being, a member of Parliament, namely,—

(a) any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether *ex officio* or by name;

²[(aa) the office of a Leader of the Opposition in Parliament;]

³[(ab) the office of Deputy Chairman, Planning Commission;]

⁴[(ac) the office of ⁵[each leader and each deputy leader] of a recognised party and a recognised group in either House of Parliament;]

⁶[(ad) the office of the Chairperson of the National Advisory Council constituted by the Government of India in the Cabinet Secretariat *vide* Order No. 631/2/1/2004-Cab., dated the 31st May, 2004;]

(b) the office of Chief Whip, Deputy Chief Whip or Whip in Parliament or of a Parliamentary Secretary;

1. Subs. by Act 54 of 1993, s. 2, for the words “the Salaries and Allowances of Members of Parliament Act, 1954” (w.e.f. 27-8-1993).

2. Ins. by Act 33 of 1977, s. 12 (w.e.f. 1-11-1977).

3. Ins. by Act 54 of 1993, s. 3 (w.e.f. 19-7-1993).

4. Ins. by Act 5 of 1999, s. 5 (w.e.f. 5-2-1999).

5. Subs. by Act 18 of 2000, s. 5, for “each leader” (w.e.f. 7-6-2000).

6. Ins. by Act 31 of 2006, s. 2 (w.e.f. 18-8-2006).

¹[(ba) the office of chairperson of—

(i) the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992 (19 of 1992);

²[(ii) the National Commission for the Scheduled Castes constituted under clause (1) of article 338 of the Constitution;

(iia) the National Commission for the Scheduled Tribes constituted under clause (1) of article 338A of the Constitution;]

(iii) the National Commission for women constituted under section 3 of the National Commission for Women Act, 1990 (20 of 1990);]

(c) the office of a member of any force raised or maintained under the National Cadet Corps Act, 1948 (31 of 1948), the Territorial Army Act, 1948 (56 of 1948), or the Reserve and Auxiliary Air Forces Act, 1952 (62 of 1952);

(d) the office of a member of a Home Guard constituted under any law for the time being in force in any State;

(e) the office of sheriff in the city of Bombay, Calcutta or Madras;

(f) the office of chairman or member of the syndicate, senate, executive committee, council or court of a university or any other body connected with a university;

(g) the office of a member of any delegation or mission sent outside India by the Government for any special purpose;

(h) the office of chairman or member of a committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance;

³[(i) the office of chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (h), if the holder of such office is not entitled to any remuneration other than compensatory allowance, but excluding (i) the office of chairman of any statutory or non-statutory body specified in Part I of the Schedule ⁴, (ii) the office of chairman or secretary of any statutory or non-statutory body specified in Part II of the Schedule and (iii) the office of deputy chairman of the non-statutory body specified in Part III of the Schedule;]

(j) the office of village revenue officer, whether called a *lambardar*, *malguzar*, *patel deshमुख* or by any other name, whose duty is to collect land revenue and who is remunerated by a share of, or commission on, the amount of land revenue collected by him, but who does not discharge any police functions.

⁵[(k) the office of Chairman, Deputy Chairman, Secretary or Member (by whatever name called) in any statutory or non-statutory body specified in the Table;

1. Ins. by Act 54 of 1993, s. 3 (w.e.f. 27-8-1993).

2. Subs. by Act 28 of 2013, s. 2, for sub-clause (ii) (w.e.f. 20-9-2013).

3. Subs. by Act 54 of 1993, s. 3, for clause (i) (w.e.f. 19-7-1993).

4. Subs. by Act 20 of 1992, s. 2, for "and (ii) the office of chairman or secretary or any statutory or non-statutory body specified in Part II of the Schedule;" (w.e.f. 17-5-1992).

5. Ins. by Act 31 of 2006, s. 2 (w.e.f. 18-8-2006).

(l) the office of Chairperson or trustee (by whatever name called) of any Trust, whether public or private, not being a body specified in the Schedule;

(m) the office of Chairman, President, Vice-President or Principal Secretary or Secretary of the Governing Body of any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law relating to registration of societies, not being a body specified in the Schedule.]

¹[*Explanation 1*].—For the purposes of this section, the office of ²[chairman, Deputy Chairman or secretary] shall include every office of that description by whatever name called.

³[*Explanation 2*.—In clause (aa), the expression “Leader of the Opposition” shall have the meaning assigned to it in the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977 (33 of 1977).]

⁴[*Explanation 3*.—In clause (ac), the expressions “recognised party” and “recognised group” shall have the meanings assigned to them in the Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998 (5 of 1999).]

4. Temporary suspension of disqualification in certain cases.—If a person being a member of Parliament who immediately before the commencement of this Act held an office of profit declared by any law repealed by this Act not to disqualify the holder thereof for being such member, becomes so disqualified by reason of any of the provisions contained in this Act, such office shall not, if held by such person for any period not extending beyond a period of six months from the commencement of this Act disqualify him for being a member of Parliament.

5. Repeals.—The Parliament (Prevention of Disqualification) Act, 1950 (19 of 1950), the Parliament Prevention of Disqualification Act, 1951 (68 of 1951), the Prevention of Disqualification Act, 1953 (1 of 1954), and any provision in any other enactment which is inconsistent with this Act are hereby repealed.

1. *Explanation* re-numbered as *Explanation 1* thereof by Act 33 of 1977, s. 12 (w.e.f.1-11-1977).

2. Subs. by Act 54 of 1993, s. 3, for “chairman or secretary” (w.e.f. 27-8-1993).

3. *Explanation 2* ins. by Act 31 of 1977, s. 12 (w.e.f. 1-11-1977).

4. *Explanation 3* ins. by Act 5 of 1999, s. 5 (w.e.f. 7-1-1999).

THE SCHEDULE

[See section 3(i)]

PART I

BODIES UNDER THE CENTRAL GOVERNMENT

Air-India International Corporation established under section 3 of the Air Corporations Act, 1953 (27 of 1953).

Air Transport Council constituted under section 30 of the Air Corporations Act, 1953 (27 of 1953).

Board of Directors of the Export Risks Insurance Corporation ¹* * * Limited.

Board of Directors of the Heavy Electricals ¹* * * Limited.

Board of Directors of the Hindustan Cables ¹* * * Limited.

Board of Directors of the Hindustan Insecticides ¹* * * Limited.

Board of Directors of the Hindustan Machine Tools ¹* * * Limited.

Board of Directors of the Hindustan Shipyard Limited.

Board of Directors of the ²[Hindustan Chemicals and Fertilizers Limited].

Board of Directors of the National Coal Development Corporation (Private) Limited.

Board of Directors of the National ³[Industrial] Development Corporation ¹* * * Limited.

Board of Directors of the National Instruments ¹* * * Limited.

Board of Directors of the National Small Industries Corporation ¹* * * Limited.

Board of Directors of the Neyveli Lignite Corporation (Private) Limited.

Board of Directors of the Sindri Fertilizers and Chemicals ¹* * * Limited.

Board of Directors of the State Trading Corporation of India ¹* * * Limited.

Central Warehousing Corporation established under section 17 of the Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (28 of 1956).

Coal Board established under section 4 of the Coal Mines (Conservation and Safety) Act, 1952 (12 of 1952).

Coal Mines Labour Housing Board constituted under section 6 of the Coal Mines Labour Welfare Fund Act, 1947 (32 of 1947).

Commissioners for the Port of Calcutta.

Committee for the allotment of land in the township of Gandhidham.

Company Law Advisory Commission constituted under section 410 of the Companies Act, 1956 (1 of 1956).

1. The brackets and word "(Private)" omitted by Act 58 of 1960, s. 3 and Sch. II (w.e.f. 26-12-1960).

2. Subs. by s. 3 and Sch. II, *ibid.*, for "Nangal Fertilizers and Chemicals (Private) Limited," (w.e.f. 26-12-1960).

3. Ins. by s. 3 and Sch. II, *ibid.* (w.e.f. 26-12-1960).

Cotton Textiles Fund Committee constituted under the Textile Funds Ordinance, 1944 (34 of 1944).

Dock Labour Board, Bombay, established under the Bombay Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948).

Dock Labour Board, Calcutta, established under the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948).

Dock Labour Board, Madras, established under the Madras Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948).

Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952).

Indian Air Lines Corporation established under section 3 of the Air Corporations Act, 1953 (27 of 1953).

Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948).

Licensing Committee constituted under rule 10 of the Registration and Licensing of Industrial Undertakings Rules, 1952, made under the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Mining Boards constituted under section 12 of the Mines Act, 1952 (35 of 1952).

National Co-operative Development and Warehousing Board established under section 3 of the Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (28 of 1956).

Rehabilitation Finance Administration constituted under section 3 of the Rehabilitation Finance Administration Act, 1948 (12 of 1948).

Tariff Commission established under section 3 of the Tariff Commission Act, 1951 (50 of 1951).

Trustees of the Port of Bombay.

Trustees of the Port of Madras.

Trustees or Commissioners of any major Port as defined in the Indian Ports Act, 1908 (15 of 1908), other than the Port of Calcutta, Bombay or Madras.

BODIES UNDER STATE GOVERNMENTS

Andhra Pradesh

Agricultural Improvement Fund Committee constituted under section 3 of the Hyderabad Agricultural Improvement Act, 1952.

Co-operative Agricultural and Marketing Development Fund Committee.

Livestock Purchasing Committee.

Assam

Adhi Conciliation Boards constituted under section 2A of the Assam Adhiars Protection and Regulation Act, 1948.

Assam Evacuee Property Management Committee constituted under section 12 of the Assam Evacuee Property Act, 1951.

Assam Text Book Committee.

Bihar

Mining Board for Coal Mines.

Text Book and Education Literature Committee.

Bombay

Allocation Committee (Allopathic) under the Employees' State Insurance Scheme.

Allocation Committee (Ayurvedic) under the Employees' State Insurance Scheme.

Board to conduct over-all supervision of the business and affairs of the *Narsinggiriji* Mills, Sholapur.

Bombay Housing Board constituted under section 3 of the Bombay Housing Board Act, 1948.

Bombay State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948).

Bombay State Electricity Consultative Council constituted under section 16 of the Electricity (Supply) Act, 1948 (54 of 1948).

Medical Service Committee under the Employees' State Insurance Scheme.

Pharmaceutical Committee under the Employees' State Insurance Scheme.

Regional Transport Authority for Ahmedabad, Aurangabad, Bombay, Nagpur, Poona, Rajkot and Thana constituted under section 44 of the Motor Vehicles Act, 1939 (4 of 1939).

Saurashtra Housing Board constituted under section 3 of the Saurashtra Housing Board Act, 1954.

State Transport Authority constituted under section 44 of the Motor Vehicles Act, 1939 (4 of 1939).

Vidarbha Housing Board constituted under section 3 of the Madhya Pradesh Housing Act, 1950.

Kerala

Board of Examiners appointed under rule 8 of the Travancore-Cochin Boiler Attendants Rules, 1954.

Panel of Assessors constituted under rule 63 of the Travancore-Cochin Boiler Attendants Rules, 1954.

Panel of Assessors constituted under the Travancore-Cochin Economiser Rules, 1956.

Madhya Pradesh

Madhya Pradesh Housing Board constituted under section 3 of the Madhya Pradesh Housing Board Act, 1950.

Mahakoshal Housing Board.

¹[*Tamil Nadu*]

Committee to select Books for Study for S.S.L.C. Examination.

Landing and Shipping Fees Committees for Minor Ports.

Local Committee constituted under regulation 10A of the Employees' State Insurance (General) Regulations, 1950.

Madras Board of Transport.

²[Tamil Nadu State Electricity Board] constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948).

Madras State Electricity Consultative Council constituted under section 16 of the Electricity (Supply) Act, 1948 (54 of 1948).

Port Conservancy Boards.

Port Trust Boards of Minor Ports.

State Board of Communications.

Text Books Committee.

³[*Karnataka*]

Board of Management, Mysore Iron and Steel Works, Bhadravathi.

Board of Management of Industrial Concerns.

Orissa

Appeal Committee under the Board of Secondary Education.

Orissa Board of Communications and Transport.

Regional Transport Authority constituted under section 44 of the Motor Vehicles Act, 1939 (4 of 1939).

State Transport Authority constituted under section 44 of the Motor Vehicles Act, 1939 (4 of 1939).

Punjab

Punjab State National Workers (Relief and Rehabilitation) Board.

Rajasthan

City Improvement Trust, Kota constituted under the City of Kota Improvement Act, 1946.

Excise Appellate Board, Ajmer.

Rajasthan State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948).

Urban Improvement Board, Jaipur.

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1. Subs. by the Madras State (Alteration of Name) (Adaptation of Laws on Union Subject) Order, 1970, for "Madras" (w.e.f. 14-1-1969).
 2. Subs. by the Madras State (Alteration of Name) (Adaptation of Laws on Union Subject) Order, 1970, for "Madras State Electricity Board" (w.e.f. 14-1-1969).
 3. Subs. by the Mysore State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1974, s. 3 and Sch., for "Mysore" (w.e.f. 1-11-1973).

Uttar Pradesh

Government Cement Factory Board.

Local Committees for Agra, Kanpur, Lucknow and Saharanpur appointed under section 25 of the Employers' State Insurance Act, 1948 (34 of 1948).

Sub-Committee to select books for Educational Expansion Department.

U.P. Sugar and Power Alcohol and Labour Housing Board constituted under section 10 of the U.P. Sugar and Power Alcohol Industries Labour Welfare and Development Fund Act, 1950.

West Bengal

Licensing Board constituted under the regulations made under rule 45 of the Indian Electricity Rules, 1956.

West Bengal Housing Board constituted under the West Bengal Development Corporation Act, 1954.

BODIES IN UNION TERRITORIES

Delhi Development Authority constituted under section 3 of the Delhi Development Act, 1957 (61 of 1957).

Delhi Electricity Power Control Board constituted under section 5 of the Bombay Electricity (Special Powers) Act, 1946, as applied to Delhi.

Delhi State Electricity Council constituted under section 16 of the Electricity (Supply) Act, 1948 (54 of 1948).

PART II

BODIES UNDER THE CENTRAL GOVERNMENT

Advisory Committee for the Air-India International Corporation appointed under section 41 of the Air Corporations Act, 1953 (27 of 1953).

Advisory Committee for the Indian Airlines Corporation appointed under section 41 of the Air Corporations Act, 1953 (27 of 1953).

Central Silk Board constituted under section 4 of the Central Silk Board Act, 1948 (61 of 1948).

Coffee Board constituted under section 4 of the Coffee Act, 1942 (7 of 1942).

Coir Board constituted under section 4 of the Coir Industry Act, 1953 (45 of 1953).

Development Council for Acids and Fertilizers established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Alkalis and Allied Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Indian Central Coconut Committee constituted under section 4 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Drugs, Dyes and Intermediates established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Food Processing Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Heavy Electrical Engineering Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Internal Combustion Engines and Power Driven Pumps established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Light Electrical Engineering Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Machine Tools established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Non-ferrous Metals including alloys established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Oil-based and Plastic Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Sugar Industry established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Textiles made of artificial Silk including artificial Silk Yarn established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Textiles made of Wool, including woollen yarn, hosiery, carpets and druggets established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Durgah Committee, Ajmer, constituted under section 4 of the Durgah Khawaja Saheb Act, 1955 (36 of 1955).

Indian Central Arecanut Committee.

Indian Central Coconut Committee constituted under section 4 of the Indian Coconut Committee Act, 1944 (10 of 1944) (now dissolved).

Indian Central Cotton Committee constituted under section 4 of the Indian Cotton Cess Act, 1923 (14 of 1923) (now dissolved).

Indian Central Jute Committee.

Indian Central Oilseeds Committee constituted under section 44 of the Indian Oilseeds Committee Act, 1946 (9 of 1946).

Indian Central Sugarcane Committee.

Indian Central Tobacco Committee.

Indian Lac Cess Committee constituted under section 4 of the Indian Lac Cess Act, 1930 (24 of 1930).

Rubber Board constituted under section 4 of the Rubber Act, 1947 (24 of 1947).

Tea Board constituted under section 4 of the Tea Act, 1953 (29 of 1953).

BODIES UNDER STATE GOVERNMENTS

Andhra Pradesh

Market Committee constituted under section 4 of the Hyderabad Agricultural Market Act No. II of 1339F.

Market Committee constituted under section 4A of the Madras Commercial Crops Markets Act, 1933.

Bihar

Bihar State Board of Religious Trusts.

Bihar Subai Majlis Awqaf.

Bodh Gaya Temple Advisory Committee constituted under section 15 of the Bodh Gaya Temple Act, 1949.

Body Gaya Temple Management Committee constituted under section 3 of the Bodh Gaya Temple Act, 1949.

Kerala

Administration Committee for Coir Purchase Scheme.

Malabar Market Committee constituted under section 4A of the Madras Commercial Crops Markets Act, 1933.

Tapioca Market Expansion Board.

¹[*Tamil Nadu*]

Area Committee for Hindu Religious and Charitable Endowments constituted under section 12 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951.

Tamil Nadu State Wakf Board constituted under section 9 of the Wakf Act, 1954 (29 of 1954).

Punjab

State Marketing Board constituted under section 3 of the Patiala Agricultural Produce Markets Act, 2004.

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³[TABLE

[See section 3(k)]

| <i>S. No.</i> | <i>Name of body</i> |
|---------------|--|
| (1) | (2) |
| 1. | The Tripura Khadi and Village Industries Board, a body constituted under the Tripura Khadi and Village Industries Act, 1966. |
| 2. | The Uttar Pradesh Development Council. |
| 3. | The Irrigation and Flood Control Commission, Uttar Pradesh. |
| 4. | The Indian Statistical Institute, Calcutta. |
| 5. | The West Bengal Handicrafts Development Corporation Limited. |
| 6. | The West Bengal Small Industries Development Corporation Limited. |

1. Subs. by the Madras State (Alteration of Name) (Adaptation of Laws on Union Subject) Order, 1970, for "Madras" (w.e.f. 14-1-1969).

2. Ins. by Act 20 of 1962 and omitted by Act 54 of 1993, s. 4 (w.e.f. 19-7-1993).

3. Ins. by Act 31 of 2006, s. 3 (w.e.f. 18-8-2006).

| (1) | (2) |
|-----|---|
| 7. | The West Bengal Industrial Development Corporation Limited. |
| 8. | The Sriniketan Santiniketan Development Authority, a body constituted under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Bengal Act No. 13 of 1979). |
| 9. | The Haldia Development Authority, a body constituted under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Bengal Act No. 13 of 1979). |
| 10. | The West Bengal Minorities Development and Finance Corporation, a body constituted under the West Bengal Minorities Development and Finance Corporation Act, 1995. |
| 11. | The Hooghly River Bridge Commissioners, constituted under the Hooghly River Bridge Act, 1969 (West Bengal Act No. 36 of 1969). |
| 12. | The Board of Wakf, West Bengal, a body constituted under the Wakf Act, 1995 (43 of 1995). |
| 13. | The State Fisheries Development Corporation Limited, West Bengal. |
| 14. | The West Bengal State Haj Committee, constituted under the Haj Committee Act, 2002 (35 of 2002). |
| 15. | The Asansol Durgapur Development Authority, West Bengal, a body constituted under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Bengal Act No. 13 of 1979). |
| 16. | The West Bengal Pharmaceutical and Phytochemical Development Corporation Limited. |
| 17. | The West Bengal Handloom and Powerloom Development Corporation Limited. |
| 18. | The West Bengal Khadi and Village Industry Board. |
| 19. | The Society for Self-employment for Urban Youth, a society registered under the West Bengal Societies Registration Act, 1961 (West Bengal Act No. 26 of 1961). |
| 20. | The Tirumala Tirupathi Devasthanams Board. |
| 21. | The Agricultural and Processed Food Products Export Development Authority, an authority constituted under section 4 of the Agricultural and Processed Food Products Export Development Authority Act, 1985 (2 of 1986). |
| 22. | The National Agricultural Co-operative Marketing Federation of India Limited (NAFED). |
| 23. | The Indian Farmer Fertilizers Co-operative Limited (IFFCO). |
| 24. | The Krishak Bharati Co-operative Limited (KRIBHCO). |
| 25. | The National Co-operative Consumers Federation of India Limited (NCCF). |
| 26. | The Auroville Foundation established under sub-section (1) of section 10 of the Auroville Foundation Act, 1988 (54 of 1988). |
| 27. | The National Commission of Enterprises in the Unorganised Sector. |
| 28. | The Planning Board (Asiatic Society) established under sub-section (1) of section 8 of the Asiatic Society Act, 1984 (5 of 1984). |
| 29. | The Delhi Rural Development Board. |
| 30. | The Maulana Azad Education Foundation, |

(1)

(2)

31. The Indira Gandhi National Centre for the Arts.
 32. The Dr. Ambedkar Foundation.
 33. The Bihar State Board of Religious Trust, a body constituted under the Bihar Hindu Religious Trust Act, 1950 (Bihar Act No. 1 of 1951).
 34. The Research and Information System for the Non-Aligned and Other Developing Countries.
 35. The Indian Institute of Psychometry.
 36. The Uttar Pradesh Film Development Council.
 37. The Uttar Pradesh Provincial Co-operative Federation.
 38. The Uttar Pradesh Co-operative Federation Limited.
 39. The National Co-operative Union of India.
 40. The Uttar Pradesh Krishi and Gram Vikas Bank.
 41. The Uttar Pradesh Co-operative Bank Limited.
 42. The Indian Council for Cultural Relations.
 43. The Board of Control — A.N. Sinha Institute of Social Studies, Patna.
 44. All India Council for Sports.
 45. The Howrah Improvement Trust.
 46. The Dalit Sena, 12, Janpath, New Delhi.
 47. The Social Justice Trust, 12, Janpath, New Delhi.
 48. The Bahujan Foundation (Charitable Trust), Lucknow, Uttar Pradesh.
 49. The Bahujan Prerna Charitable Trust, Delhi.
 50. The Central Wakf Council, established under section 9 of the Wakf Act, 1995 (43 of 1995).
 51. The Nehru Memorial Museum and Library (NMML).
 52. The Jalianwala Bagh Memorial Trust.
 53. The Haj Committee of India constituted under section 3 of the Haj Committee Act, 2002 (35 of 2002).
 54. The Mallickghat Phoolbazar Parichalan Committee.
 55. The West Bengal Fisheries Corporation Limited.]
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(Annexure IV)

Ministry of Law and Justice
Department of Legal Affairs

Shastri Bhawan,
New Delhi-110001

OFFICE MEMORANDUM

Lok Sabha Secretariat may refer to their OM No. 21/14/4/2018-CII dated 8th February, 2019 forwarding the point-wise reply of the Ministry of Environment, Forests and Climate Change in respect of the Animal Welfare Board of India and requested the opinion of this Department on the issue whether the nomination/election of Six Members of Parliament to the Animal Welfare Board (AWB) of India would attract disqualification from membership of the House from the angle of 'Office of Profit' under Article 102(1) in the Constitution of India.

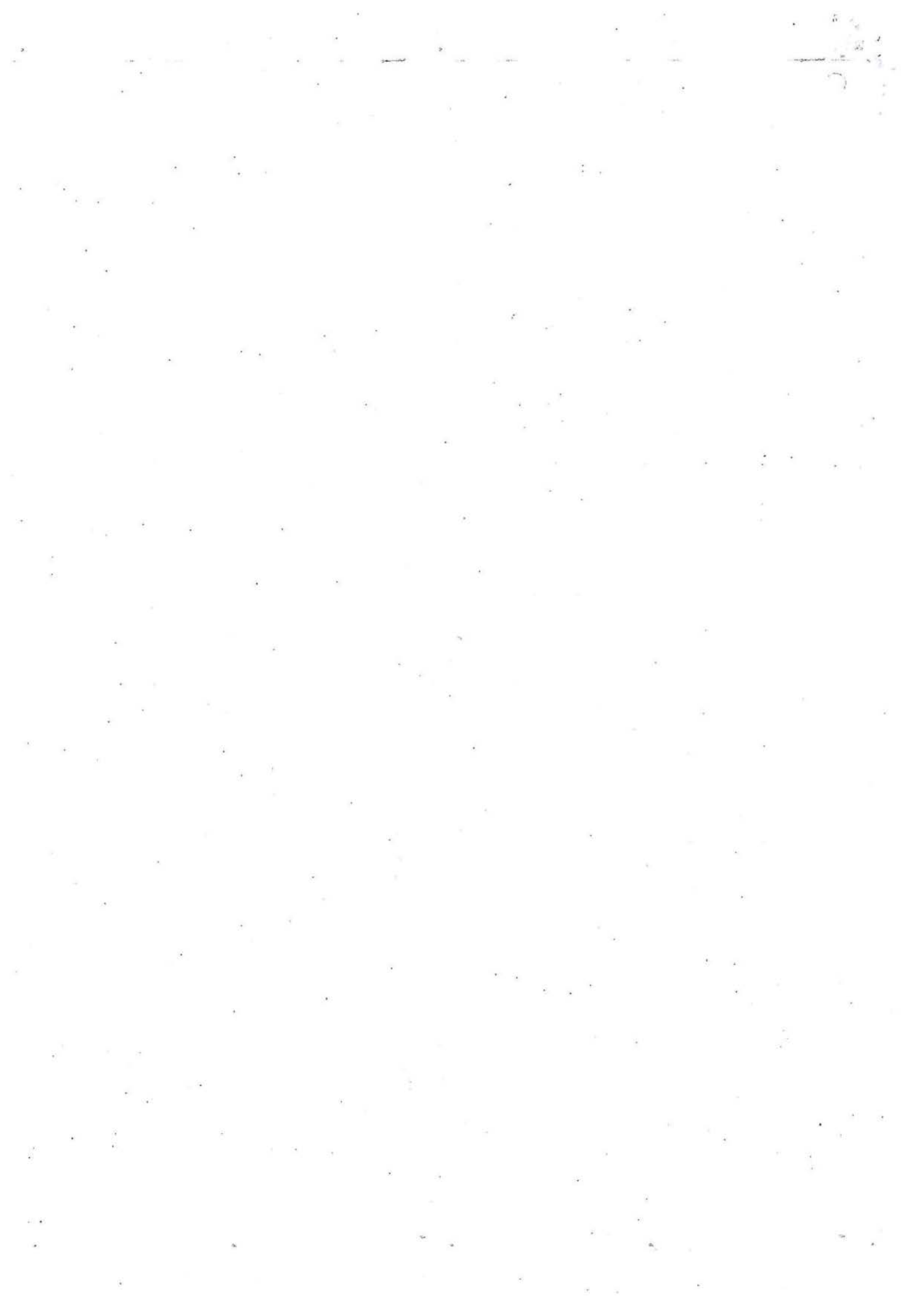
The Comments of this Department are enclosed herewith as Annexure.

Arti Chopra
(Arti Chopra)

Deputy Legal Adviser

Shri S. Lal Engzau Ngaihte, Committee Officer, Committee Branch-II, Lok Sabha Secretariat, G-013, Parliament House Annexe, New Delhi-110001

U.O. No. (E.O. No.) 325214/LS/2018 dated 22.02.2019



- 1 -

Ministry of Law and Justice
Department of Legal Affairs

E.O. No. 325214/LS/2019

Lok Sabha Secretariat vide their OM No. 21/14/4/2018-CII dated 8th February, 2019 has forwarded the point-wise reply of the Ministry of Environment, Forests and Climate Change in respect of the Animal Welfare Board of India and requested the opinion of this department on the issue whether the nomination/election of Six Members of Parliament to the Animal Welfare Board (AWB) of India would attract disqualification from membership of the House from the angle of 'Office of Profit' under Article 102(1) in the Constitution of India.

2. We have perused the matter and the point-wise reply of the Ministry of Environment, Forests and Climate Change given vide its OM dated 19.12.2018 to the queries raised by Lok Sabha Secretariat in respect of the Animal Welfare Board of India. It is noted that as per the Department, the Animal Welfare Board of India is a statutory advisory body established under section 4 of the Prevention of Cruelty to Animals Act, 1960 (the PCA Act). The functions of the Board include the promotion of animal welfare generally for the purpose of prevention of cruelty and for protecting animals from being subjected to unnecessary pain or suffering, in particular. It is stated that from ensuring that animal welfare laws in the country are diligently followed, to providing grants to Animal Welfare Organizations and advising the Government of India on animal welfare issues, the Board has been the face of the animal welfare movement in the country for the last 50 years and has helped in the implementation of Prevention of Cruelty to Animals Act, 1960 and rules made thereunder.

3. Section 5(1)(i) of the Act provides that the Board shall consist *inter-alia* the "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)." It is stated that 4 Members of Lok Sabha and 2 Members of Rajya Sabha are appointed by the government after election by the Lok Sabha and Rajya Sabha, respectively and their term as non-official Member in the Board is three years and the term of member elected as per section 5(1)(i) is co-terminus with his ceasing to be Member of Parliament [section 6(2)(b)]. It is stated that MPs have not been nominated to the Board since 2007 and that Government exercises control over the appointment and removal from the office and over the performance and functions of the office as per section 6(2)(d) of the Act.

4. With respect to the details of expenses payable to the Members of Parliament, it is stated that as per AWBI Administration Rules 1962, travelling or conveyance allowance to recoup any expenditure incurred by him in performing such journey at a rate not exceeding the allowance admissible to a Member of Parliament appointed to a Committee set up by the Central Government. Daily allowances at a rate not exceeding the rate to which a Member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954. No facilities have been provided to them and as per Rule 14(1) of the AWBI Administration Rules, 1962, no remuneration shall be paid to any Member of the Board on account of his services as such.

5. It is stated that the Board neither has powers of appointment/ removal nor wields influence or power by way of patronage and does not exercise executive, legislative or judicial powers. However, it is stated that the Board exercises powers of implementation of PCA Act and Rules made thereunder. It is stated to have powers of disbursement of funds to Animal Welfare Organizations under section 9(g) of the Act.

6. Attention is drawn towards Article 102(1) in the Constitution of India, which provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder. The essential ingredients for attracting the said article, as settled by numerous cases, are that there must be an office, such office must be an office of 'profit', it must be under the Government of India or the Government of a State, such office must not be excluded from the operation of this sub-clause by a law made by Parliament. To decide the issue, therefore, it is imperative to examine the nature of Government control, functions of the Board and the allowances receivable by the Member.

7. Attention is also drawn to the case of *Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa*, (1971) 3 SCC 870, wherein the Apex Court analyzed the ingredients of Article 102(1)(a) and held as under.

"That Article says that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by

Parliament by law not to disqualify its holder. Therefore before the provisions of that Article can be attracted, it must be established that he was holding an office under the Union or the State Government and that office was an office of profit and thereafter we must see whether the disqualification relating to that office has been removed by any Parliamentary legislation. In other words, the office in question must have been held under a Government and to that some pay, salary, emoluments or allowance is attached." The word 'profit' connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit.

The Court also reiterated the tests laid down in several decisions for finding out whether an office in question is an office under a Government and whether it is an office of profit. "Those tests are: (1) Whether the Government makes the appointment; (2) Whether the Government has the right to remove or dismiss the holder; (3) Whether the Government pays the remuneration; (4) What are the functions of the holder? Does he perform them for the Government and (5) Does the Government exercise any control over the performance of those functions?"

8. In the recent case of *U.C. Raman v. P.T.A. Rahim*, (2014) 8 SCC 934, the Court has extracted the relevant para of the judgment in the case of *Jaya Bachchan case* [(2006) 5 SCC 266] as under and reiterated the principles laid therein:

"An office of profit is an office which is capable of yielding a profit or pecuniary gain. Holding an office under the Central or State Government, to which some pay, salary, emolument, remuneration or non-compensatory allowance is attached, is 'holding an office of profit'. The question whether a person holds an office of profit is required to be interpreted in a realistic manner. Nature of the payment must be considered as a matter of substance rather than of form. Nomenclature is not important. In fact, mere use of the word 'honorarium' cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient. Payment of honorarium, in addition to daily allowances in the nature of compensatory allowances, rent free accommodation and chauffeur driven car at State expense, are clearly in the nature of remuneration and a source of pecuniary gain and hence constitute profit. For deciding the question as to whether one is holding an office of profit or not, what is relevant is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain. If the 'pecuniary gain' is 'receivable' in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not. If the office carries with it, or entitles the holder to, any pecuniary gain other than reimbursement of out-of-pocket/actual expenses, then the office will be an office of profit for the purpose of Article 102(1)(a). This position of law stands settled for over half a century commencing from the decisions of *Ravanna Subanna v. G.S. Kaggeerappa* [AIR 1954 SC 653], *Shivamurthy Swami Inamdar v. Agadi Sanganna Andamappa* [(1971) 3 SCC 870], *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev* [(1992) 4 SCC 404] and *Shibu Soren v. Dayanand Sahay* [(2001) 7 SCC 425]."

9. The Court, in the said case, negated the plea that the word "profit" should include even status and influence, etc. besides the pecuniary profits and reiterated that an "office of profit" is an office which is capable of yielding a profit or pecuniary gain only and the same includes the pecuniary gain not only received but also "receivable" in connection with the office. As in the said case amount was only compensatory in nature by way of TA and daily allowances, the same was held to not amount to remuneration in the form of pay, salary, emoluments, remuneration, commission or anything of such nature.

10. In the present matter, the AWBL is a Statutory Advisory Body established as per section 4 of the Act. Functions of the Board are as per section 9 of the PCA Act. The Board has a fixed composition and the term of the non-official Member in the Board is three years and the term of member elected as per section 5(1)(i) is co-terminus with his ceasing to be Member of Parliament [section 6(2)(b)]. The Government is stated to exercise control over their removal from the office and over the performance and functions of the office as per section 6(2)(d) of the Act.

11. Attention is drawn to the relevant functions specified in clause (d), (f) and (h) of section 9, which appear to be executive functions performed by the Board on behalf of the Government. This is more so, when the administrative Department itself has stated that they are responsible for implementation of the Prevention of Cruelty to Animals Act, 1960. Other relevant functions are specified in clauses (g), (i) and (j) of section 9 of the PCA, which empower the Board to grant financial assistance and make disbursement of funds. The Member of the Board thus appears to be holding an 'office'.

12. With respect to the issue of allowance and 'office of profit', attention is drawn to the reply of Ministry, wherein it is stated that as per Rule 14(1) of the AWBI Administration Rules 1962, no remuneration shall be paid to any Member of the Board on account of his services as such. Only travelling or conveyance allowance to recoup any expenditure incurred by the Member in performing such journey at a rate not exceeding the allowance is admissible to a Member of Parliament appointed to a Committee. Daily allowances at a rate not exceeding the rate to which a Member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954 is payable and no facilities have been provided to them. Thus, the allowances payable to a member appear to be in consonance with the compensatory allowances permissible to the Members of Parliament and the ingredient of 'profit' or 'pecuniary gain' is absent in the present case.

13. In view of the above, on the basis of the information furnished by the administrative Ministry, we are of the view that the election of Members of Parliament to Animal Welfare Board of India may not be considered as an 'office of profit' and may not incur disqualification in terms of Article 102(1) (a) of the Constitution of India.

14. If approved, we may inform the Lok Sabha Secretariat accordingly.

May kindly see.

Achopra
(Arti Chopra)
Deputy Legal Adviser
18.02.2019

Additional Secretary (Sh. S.R. Mishra)

S.Mishra
21.2.19

L.S

AS (SRM)
S.Mishra
22.2.19

Sh
22/2/19

through Advice
B. Section

DLA (A.C.S)
Achopra
22/2/19
Lok Sabha Secretariat

विधि कान विभाग
Dept. of Legal Affairs
No. 325214/LS/1701/19
By. No. 325214/LS/1701/19
दिनांक: 22/02/2019



No.17 (6) /2018 – Leg. III
Government of India
Ministry of Law and Justice
Legislative Department

Shastri Bhawan, New Delhi.
Dated the 17th September, 2019

Office Memorandum

Subject: – Election/nomination of Members of Lok Sabha to the Animal Welfare Board of India.

The undersigned is directed to refer to the Lok Sabha Secretariat, Committee Branch – II, Joint Committee on Offices of Profit O.M No. 21/14/4/2018/C II dated the 17th July, 2019 requesting this Department to re-examine the opinion of this Department in the light of clause (i) of section 3 of the Parliament (Prevention of Disqualification) Act, 1959 (10 of 1959).

2. In this regard, it may be mentioned that clause (i) of section 3 of the Parliament Prevention of Disqualification Act, 1959 (10 of 1959) exempts the office of chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (h), if the holder of such office is not entitled to any remuneration other than compensatory allowance. However, this exemption is not available to the chairman of the bodies specified in Part I of the Schedule to the Act and chairman and secretary to the bodies specified in Part II of the Schedule to the Act.

3. In the light of the above provisions, the nomination of a Member of Lok Sabha to the Animal Welfare Board of India may not attract disqualification from the angle of 'office of profit'. However, it is noteworthy to mention that in the reply to the list of points provided by the administrative Ministry, against the query at serial number 7 (iii), they have stated that the allowance payable to the Member of Parliament as a Member of the Board are not covered under the compensatory allowance defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959.

4. Further, considering the powers of the Animal Welfare Board of India which involves disbursement of funds, it may attract the tests laid down by the Apex Court in the case of Shivamurthy Swami Inamdar Vs. Sanganna Andanappa (1971) 3 SCC 870 and the guiding principles laid down by the Joint Committee on Offices of Profit, in their Tenth Report (Seventh Lok Sabha), which are being followed by the

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Committee time and again. Therefore, it appears that the nomination of the Member, Lok Sabha to the Animal Welfare Board of India may attract disqualification from the angle of 'office of profit'.

5. In view of the above, the Committee may consider and take necessary decision in the matter.


(R.S. Jayakrishnan)
Deputy Legislative Counsel
Tel. No. 23381588

Lok Sabha Secretariat
(Attn. Shri Munish Kumar Rewari, Additional Director),
Committee Branch - II,
Joint Committee on Offices of Profit,
G - 013, Parliament House Annexe Extension Building,
Parliament House Annexe,
New Delhi - 110 001.

No. 11/11/2007-AWD
Government of India
Ministry of Fisheries, Animal Husbandry and Dairying
Department of Animal Husbandry and Dairying

Krishi Bhawan, New Delhi
Dated 18th November, 2019


Subject: Oral evidence of the representatives of the Ministries of Animal Husbandry, Dairying and Fisheries and Law and Justice (Legislative Department and Department of Legal Affairs) in connection with the nomination of six Members of Parliament to the Animal Welfare Board of India.

The undersigned is directed to refer to the Office Memorandum No. 21/6/1/2/2019/CII dated 15th November, 2019 and to enclose the inputs as required by the Committee. It is further informed that the following officials will be attending the meeting of the Committee along with the Secretary, Animal Husbandry and Dairying.

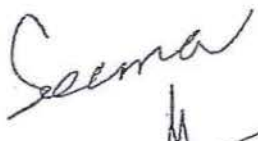
2. The names of the officials who will be attending the meeting are as under:

| Sl. No. | Name of the Officials | Designation |
|---------|-----------------------|--|
| 01 | Shri Atul Chaturvedi | Secretary, Department of Animal Husbandry and Dairying |
| 02 | Dr. O.P. Chaudhary | Joint Secretary |
| 03 | Dr. Sujit Kumar Dutta | Deputy Commissioner(AW) |
| 04 | Dr. Neelam Bala | Secretary, Animal Welfare Board of India |
| 05 | Shri Prachi Jain | Assistant Secretary, Animal Welfare Board of India |
| 6 | Shri Rajunder | UDC, Supporting Staff |

Enclosure: Annexure


(S.K. Dutta)
Deputy Commissioner (Animal Welfare)

Director,
Committee Branch-II
(Joint Committee on Office of Profit)
Parliament House Annexe
G-013, PHA Extn. New Delhi-110001


18/11/19



Annexure

Written opinion of the Ministry of Fisheries, Animal Husbandry and Dairying on the issue in order to examine the same from the angle of "Office of Profit" in connection with the nomination of six Members of Parliament to the Animal Welfare Board of India.

The Animal Welfare Board of India is a statutory body established under Section 4 of the Prevention of Cruelty to Animals Act, 1960. The functions of the Board include the promotion of animal welfare generally for the purpose of prevention of cruelty and for protecting animals from being subjected to unnecessary pain or suffering, in particular. Section 5 (1) (i) of the Act provides that the Board shall consist *inter alia* the following persons :

"(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. Accordingly, it is the mandate of the Law that six members of Parliament shall be in the Board. Further, clause 14 of the Administrative Rules, 1962, which were framed under section 38 of the Prevention of Cruelty to Animals Act, 1960, provides as under :

"14. Allowances and Remuneration -

(1) No remuneration shall be paid to any member of the Board on account of his service as such.

(2) A member of the Board who is not an official shall be entitled to draw in respect of any journey performed for the purpose of attending a meeting of the Board or of a committee or sub-committee thereof or any other association or society to which he is appointed or nominated as a representative of the Board or any other journey in connection with the work of the Board performed under the direction of the Chairman :

(a) Where he is not a Member of Parliament, travelling and daily allowance at rates admissible to a Government servant of the first grade serving under the Central Government.

(b) Where he is a member of Parliament :

(i) Travelling or conveyance allowance to recoup any expenditure incurred by him in performing such journey at a rate not exceeding the allowance admissible to a Member of Parliament appointed to a committee set up by the Central Government.

(ii) Daily allowance at a rate not exceeding the rate to which a Member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954."

3. From the said rule, it is apparently clear that no pecuniary gain or advantage has been given to any member of the Board including Member of Parliament and whatever is given, is only in the nature of compensatory allowance for contribution in achieving and proceeding towards the objectives of the Board.

4. The Member of Parliament to be nominated in the Animal Board of India has merely advisory role and they have been provided only compensatory allowance *i.e.* out of pocket expenses and actual expenses incurred for attending meetings of the Board.

5. The Ministry of Law and Justice in their opinion dated 12/01/2016 had opined that the members of Parliament, if nominated as member to the Animal Welfare Board of India, may incur disqualification in terms of sub-clause (a) of clause (1) of article 102 of the Constitution of India. This was communicated by the MoEF &CC to the Secretary

AWBI vide letter No. 11/11/2007-AWD dated 24th May, 2018. The reliance of the said opinion of Ministry of Law and Justice was derived from the section 9 of the Prevention of Cruelty to Animals Act, 1960 (copy enclosed).

9. Thereafter, the then Chairman, AWBI vide his letter dated 18th October, 2018 wrote directly to the Chairman of Joint Committee on Office of Profit Committee. However, Lok Sabha Secretariat vide letter 30th November, 2018 sought comments from the MoEF & CC. The MOEF & CC provided the point wise reply to the Committee vide letter No. 11/11/2007-AWD dated 19/12/2018. In the information, the MoEF & CC communicated the views of Law Ministry to the Joint Committee of Office of Profit.

10. However, the Animal Welfare Subject has been transferred to the Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture vide Cabinet Secretariat notification No. S.O. 1531 (E) dated 4th April, 2019. Later on after the creation of New Ministry of Fisheries, Animal Husbandry and Dairying, the Animal Welfare and Prevention of Cruelty to Animal Act, 1960 is administered by Department of Animal Husbandry and Dairying.

11. It is pertinent to mention that the then Chairman Shri S.P. Gupta, IAS (Retired) resigned from the post of Chairman on 25.01.2019. The Department of Animal Husbandry and Dairying nominated Dr. O.P. Chaudhary, Joint Secretary has been nominated as member of the Board and also Chairman of the Board vide Notification S.O. 1795(E) dated 21st May, 2019.

12. In the conclusion, the Department of Animal Husbandry and Dairying is of the opinion that the Department will follow the opinion of Ministry of Law and Justice on the matter of Office of Profit.

-10-

Ministry of Law and Justice
Legislative Department
Leg. III Section

Subject: Election of four members of Lok Sabha and two members of Rajya Sabha as Members to the Animal Welfare Board of India, Chennai-disqualification from the angle of Office-of Profit- regarding.

The proposal of the Ministry of Environment, Forest and Climate Change seeking comments on the proposal mentioned in the subject cited above has been examined in this Department.

2. The Animal Welfare Board of India has been constituted as per the provisions contained in section 5 of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960). As per clause (i) of sub-section (1) of section 5 of the said Act, the Board shall consist of six Members of Parliament, four to be elected by the House of People (Lok Sabha) and two by the Council of States (Rajya Sabha).

3. Section 9 of the Prevention of Cruelty to Animals Act, 1960 provides for functions of the Animal Welfare Board of India which, inter alia, include the following:-


(a) to encourage by the grant of financial assistance, or otherwise, the formation or establishment of pinjarapoles, rescue homes, animal shelters sanctuaries and the like;

(b) to give financial assistance 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.

4. In this regard, the attention of the Ministry of Environment, Forest and Climate Change was drawn to the recommendations made in the Tenth Report (Seventh Lok Sabha), presented to Lok Sabha on 7th May 1984, wherein it is stated that if the Body, in which office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licenses etc, or gives powers of appointment, grant of scholarship etc, then the office in question will entail disqualification.

5. Having regard to the functions of the Animal Welfare Board as stated in para 3 above and keeping in view of the aforesaid recommendations of the Committee, it appears that the Members of Parliament, if nominated as member to the Animal Welfare Board of India, may incur disqualification in terms of sub-clause (a) of clause (1) of article 102 of the Constitution.

6. This issue with the approval of the Secretary, Legislative Department.


(Veena Kothavale)
Additional Legislative Counsel,
Tel. 23384834

Ministry of Environment, Forest and Climate Change
Legislative Department U.O.No.17(9)/2015-Leg.III dated 12/1/2016

123/US(AW)/2016
18/1/16

As per copy
18/1/16

18/1/16

18/1/16

18/1/16

18/1/16

18/1/16

18/1/16

CONFIDENTIALEXTRACTS OF THE MINUTES OF THE SECOND SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (17TH LOK SABHA) HELD ON WEDNESDAY, 20TH NOVEMBER, 2019

The Committee met on Wednesday, 20th November, 2019 from 1500 hrs. to 1615 hrs. in Committee Room 'D', First Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. Satya Pal Singh - Chairperson

MEMBERSLOK SABHA

2. Dr. Manoj Rajoria
3. Smt. Aparajita Sarangi
4. Shri Mahendra Singh Solanky
5. Shri Shyam Singh Yadav

RAJYA SABHA

6. Shri Vijayasai Reddy

REPRESENTATIVES OF THE MINISTRIESMinistry of Animal Husbandry, Dairying and Fisheries

| S. No. | Name | Designation |
|--------|-----------------------|--|
| 1. | Shri Atul Chaturvedi | Secretary |
| 2. | Dr. O. P. Chaudhary | Joint Secretary |
| 3. | Dr. Sujit Kumar Dutta | Deputy Commissioner (AW) |
| 4. | Dr. Neelam Bala | Secretary, Animal Welfare Board of India |
| 5. | Shri Prachi Jain | Assistant Secretary, Animal Welfare Board of India |

MINISTRY OF LAW AND JUSTICE
(i) Department of Legal Affairs

| S. No. | Name | Designation |
|---------------|-----------------------------|---------------------------------|
| 1. | Shri Anoop Kumar Mendiratta | Law Secretary |
| 2. | Shri S.R. Mishra | Additional Secretary |
| 3. | Shri R.S. Verma | Additional Secretary |
| 4. | Shri Ajay Goyal | Joint Secretary |
| 5. | Shri Vijay Verma | Joint Secretary |
| 6. | Dr. Rajiv Mani | Joint Secretary & Legal Adviser |
| 7. | Dr. Anju Rathi Rana | Joint Secretary & Legal Adviser |

(ii) Legislative Department

| S. No. | Name | Designation |
|---------------|------------------------|---------------------------------------|
| 1. | Shri K. Biswal | Additional Secretary |
| 2. | Ms. Veena Kothavale | Joint Secretary & Legislative Counsel |
| 3. | Shri R.S. Jayakrishnan | Deputy Legislative Counsel |

SECRETARIAT

1. Shri B.Srinivasa Prabhu - Joint Secretary
2. Shri Kusal Sarkar - Director
3. Shri Munish Kumar Rewari - Additional Director

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee and apprised them about the agenda of the sitting.

3. Thereafter, the Chairperson welcomed the representatives of the Ministry of Animal Husbandry, Dairying and Fisheries and Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) and took up the first agenda pertaining to election / nomination of six Members of Parliament to the Animal Welfare Board of India. The Secretary, Ministry of Animal Husbandry, Dairying and Fisheries stated that it is a statutory advisory body established under Sec 4 of the Prevention of Cruelty to Animals Act, 1960. The main functions of the Board is to encourage, by granting financial assistance or otherwise viz., formation or establishment of Pinjrapoles, rescue homes, animal shelters, sanctuaries etc. No honorarium is given to Hon. Members. Only travelling and daily allowance are given for attending the meeting of the Board which are not more than the compensatory allowance as defined in Sec. 2(a) of the MSA Act of 1959. The Committee was of the considered opinion that such election of MP in the Animal Welfare Board should be in the exempted category. The Ministry of Animal Husbandry, Dairying and Fisheries was advised to move a file to Ministry of Law and Justice, accordingly.

Thereafter, the representatives of the Ministry of Animal Husbandry, Dairying and Fisheries withdrew.

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| 4. | xx | xx | xx | xx |
| 5. | xx | xx | xx | xx |
| 6. | xx | xx | xx | xx |

The Committee then adjourned.

xx

Does not pertain to this Report.

CONFIDENTIAL

EXTRACTS OF THE MINUTES OF THE SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (17TH LOK SABHA) HELD ON 18TH OCTOBER, 2022

The Committee sat on Tuesday, 18 October, 2022 from 1500 to 1540 hrs. in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

Present

Dr. Satya Pal Singh - *In the Chair*

Members

Lok Sabha

2. Dr. Manoj Rajoria
3. Shri Balashowry Vallabhaneni

Rajya Sabha

4. Ms. Dola Sen
5. Shri Hardwar Dubey

Secretariat

1. Shri Vinay Kumar Mohan -- Joint Secretary
2. Shri Naval Kishore Verma -- Director
3. Shri Uttam Chand Bharadwaj -- Additional Director

2. At the outset, the Hon'ble Chairperson of the Joint Committee on Offices of Profit welcomed the Members of the Committee to the sitting of the Committee and apprised them about the agenda of the sitting i.e. consideration and adoption of the draft Report regarding examination of election of Members of Parliament to the 'Animal Welfare Board of India' (AWBI) under the administrative domain of the Ministry of Fisheries, Animal Husbandry and Dairying (Department of Animal Husbandry and Dairying). The Committee unanimously adopted the draft Report without any modification. The Committee authorised the Chairperson to finalise the Report, as per the factual verification from the Ministry / Department concerned and present the same to both the Houses of Parliament during Winter Session.

The Committee then adjourned.
