

This Act is applied to the Chota Nagpur Division, see  
Bihar Govt. Notfn. No. 785-A-10/40-J, 27.5.3.40

# ACT No. XXV OF 1938.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 1st  
December, 1938.)

**An Act to amend the law relating to the prevention of  
cruelty to animals.**

Act of 1890.

**W**HEREAS it is expedient further to amend  
the Prevention of Cruelty to Animals Act, 1890,  
for the purposes hereinafter appearing; It is hereby  
enacted as follows:—

1. This Act may be called the Prevention of Cruelty Short title.  
to Animals (Amendment) Act, 1938.

Act of 1890.

2. In section 2 of the Prevention of Cruelty to Amendment of  
section 2, Act  
XI of 1890.  
Animals Act, 1890 (hereinafter referred to as the said  
Act), at the end of clause (1) the word "and" shall  
be omitted, and after clause (2) the following clause  
shall be added, namely:—

"(3) *phooka* or *doom dev* 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."

3. For section 3 of the said Act the following section Substitution  
of new section  
for section 3,  
Act XI of  
1890.  
shall be substituted, namely:—

"3. If any person—

- (a) overdrives, beats, or otherwise treats any  
animal so as to subject it to unnecessary  
pain or suffering, or
- (b) binds, keeps, carries or consigns for carriage  
any animal in such manner or position  
as to subject it to unnecessary pain or  
suffering, or
- (c) offers for sale or without reasonable cause  
has in his possession any live animal  
which is suffering pain by reason of  
mutilation, starvation, thirst, over-crowd-  
ing or other ill-treatment, or

Penalty for  
cruelty to  
animals, and  
for sale of  
animals killed  
with unneces-  
sary cruelty.

(d) offers

1

Price anna 1 or 1½d.

Applied to British Baluchistan. See Notfn. no 317-F. 27.2.12/38,  
Gaz. of 2 1938, Pt I, p. 2146

Prevention of Cruelty to Animals [ACT XXV  
(Amendment).

(d) offers for sale any dead animal or part of a dead animal which he has reason to believe has been killed in an unnecessarily cruel manner, or

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

he shall be punished, in the case of a first offence, with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to one month and, in the case of a second or subsequent offence committed within three years of the previous offence, with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both."

Insertion of new section 3A in Act XI of 1890.

Penalty for overloading animals.

4. After section 3 of the said Act the following section shall be inserted, namely :—

" 3A. (1) If any person overloads any animal, he shall be punished with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to one month.

(2) If the owner of any animal, or any person who, either as a trader, carrier or contractor or by virtue of his employment by a trader, carrier or contractor, is in possession of, or in control of the loading of, any animal, permits the overloading of such animal, he shall be punished with fine which may extend to one hundred rupees."

Substitution of new section for section 4, Act XI of 1890.

Penalty for practising *phooka*.

5. For section 4 of the said Act the following section shall be substituted, namely :—

" 4. (1) If any person performs upon any cow or other milch animal the operation called *phooka* or *doom dev*, or permits such operation to be performed upon any such animal

in

in his possession or under his control, he shall be punished with fine which may extend to five hundred 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 Government :

Provided that in the case of a second or subsequent conviction of a person under this section he shall be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to two years.

(2) A Court may order payment out of any fine imposed under this section of an amount not exceeding one-tenth of the fine to any person other than a police officer or officer of a society or institution concerned with the prevention of cruelty to animals who has given information leading to the conviction."

6. In section 6 of the said Act, the brackets and figure "(1)" at the beginning of sub-section (1) shall be omitted, and sub-sections (2) to (6) shall be omitted. Amendment of section 6, Act XI of 1890.

7. After section 6 of the said Act the following sections shall be inserted, namely :— Insertion of new sections 6A, 6B and 6C in Act XI of 1890.

"6A. For the purposes of sections 3A and 6, an owner or other person in possession or control of an animal shall be deemed to have permitted an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence, and, for the purposes of section 4, if he fails to prove that he has exercised such care and supervision. Interpretation.

6B. (1) The Provincial 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. Treatment and care of animals.

(2) The

*Prevention of Cruelty to Animals* [Act XXV  
(Amendment).

- (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 section 15 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 section 15.
- (4) The cost of transporting an 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) If the owner refuses or neglects to pay such cost or to remove the animal within such time as a Magistrate may prescribe, the Magistrate may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.
- (6) The

of 1938.] *Prevention of Cruelty to Animals*  
(Amendment).

- (6) 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.

6C. If any person—

- (a) incites any animal to fight, or  
(b) baits any animal, or  
(c) aids or abets any such incitement or baiting,

Penalty for baiting or inciting animals to fight.

he shall be punished with fine which may extend to fifty rupees.

*Exception.*—It shall not be an offence under this section to incite animals to fight if such fighting is not likely to cause injury or suffering to such animals and all reasonable precautions are taken to prevent injury or suffering from being so caused.”

8. In section 7 of the said Act—

- (a) after the word “owner”, in both places where it occurs, the words “or is in charge” shall be inserted;

Amendment of section 7, Act XI of 1890.

- (b) after the word “rupees” the following words shall be added, namely:—

“where he is the owner of the animal, or to fifty rupees where he is in charge of but not the owner of the animal”.

9. Section 7A of the said Act shall be renumbered as sub-section (1), and after the said sub-section the following sub-section shall be added, namely:—

Amendment of section 7A, Act XI of 1890.

- “(2) If a police officer, not below the rank of sub-inspector, or any person specially authorised by the Provincial Government in this behalf has reason to believe that *phooka* or *doom dev* has just been or is being performed on 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

*Prevention of Cruelty to Animals* [ACT XXV  
(Amendment).

examination by the Veterinary Officer in charge of the area in which the animal is seized."

Amendment of  
section 8, Act  
XI of 1890.

10. In sub-section (1) of section 8 of the said Act,—

- (a) for the word "class" the words "or second class, Presidency Magistrate," shall be substituted;
- (b) for the words and figures "against section 4, section 5 or section 6" the words "against this Act" shall be substituted; and
- (c) for the words "above the rank of a constable" the words "not below the rank of sub-inspector" shall be substituted.

Amendment of  
section 10,  
Act XI of  
1890.

11. Section 10 of the said Act shall be renumbered as sub-section (1), and after the said sub-section the following sub-section shall be added, namely:—

"(2) Any police officer above the rank of a constable who finds any animal so diseased, or so severely injured, or in such a physical condition that it cannot, in his opinion, be removed without cruelty, may, if the owner is absent or refuses to consent to the destruction of the animal, forthwith summon the Veterinary Officer in charge of the 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 its destruction is desirable, the police officer may, after obtaining orders from a Magistrate, destroy the animal or cause it to be destroyed."

Amendment of  
section 12,  
Act XI of  
1890.

12. In section 12 of the said Act, for the figures and word "9, 10 and 11" the following shall be substituted, namely:—

"4 and 13, sections 9 and 10, and sections 6A, 7A, 8 and 15 so far as they relate to offences under section 4"

13. After

OF 1938.] *Prevention of Cruelty to Animals*  
(Amendment).

13. After section 12 of the said Act the following sections shall be added, namely :—

Insertion of new sections 13, 14, 15, 16 and 17 in Act XI of 1890.

“ 13. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under section 4 shall be a cognizable offence within the meaning of that Code.

Offence under section 4 to be cognizable.

14. Any police officer above the rank of a constable or any person authorised by the Provincial 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 designated in this behalf by rules made under section 15; 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.

General power of seizure for examination.

15. (1) The Provincial 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.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the Provincial Government may make rules—

- (a) prescribing the maximum weight of loads to be carried or drawn by any animal ;
- (b) prescribing conditions to prevent the overcrowding of animals ;
- (c) prescribing the period during which, and the hours between which, buffaloes shall not be used for draught purposes ;
- (d) prescribing the purposes to which fines realized under this Act may be applied, including such purposes as the maintenance of infirmaries, *pinjrapoles*, and veterinary hospitals ;
- (e) prohibiting the use of any bit or harness involving cruelty ;

(f) requiring

*Prevention of Cruelty to Animals* [ACT XXV OF 1938.]  
(Amendment).

- (f) requiring persons carrying on the business of a farrier to be licensed and registered ;
- (g) requiring persons owning, or in charge of, premises in which animals are kept or milked to register such premises, to comply with prescribed conditions as to the boundary walls or surroundings of such premises, to permit their inspection for the purpose of ascertaining whether any offence against section 4 is being, or has been, committed therein, and to expose in such premises copies of section 4 of this Act in a language or languages commonly understood in the locality ; and
- (h) prescribing the manner in which cattle may be impounded in any place appointed for the purpose, so as to secure the provision of adequate space, food and water.

(3) If any person contravenes, or abets the contravention of, any rule made under this section, he shall be punished with fine which may extend to fifty rupees.

Persons  
authorised  
under section  
14 to be  
public servants.

16. Every person authorised by the Provincial Government under section 14 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

**XLV of 1860.**

Indemnity.

17. 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, in respect of anything in good faith done or intended to be done under this Act."

**XLV of 1860.**