

# **ABC Rules, 2023 – At the crossroads of law and Logic**

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## **Abstract**

The study thoroughly examines the ABC 2023 and highlights the issues, which the Animal Welfare Board of India should immediately consider to make Animal Birth Control more effective. Besides, this study captures several points highlighting the difficulty in implementation, execution and practicality of the current ABC 2023 rule and at the end provides recommendations for a future guideline/rule. The focus here is with respect to stray dogs which has been one of the most controversial topics in the recent past.

## **Background**

The Animal Birth Control Rules (ABC) 2023 have been notified by the Central Government on March 10th, 2023, under the Prevention of Cruelty to Animal Act, 1960. These rules supersede the Animal Birth Control (Dog) Rules, 2001, and address the 2009 guidelines of the Supreme Court issued during the hearing between the Animal Welfare Board of India and People for Elimination of Stray Troubles and various other judgments. The primary goalpost is to regulate and streamline the Animal Birth Control (ABC) program and address animal welfare issues.

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## Issues with ABC Rules, 2023

As soon as this rule was passed, it started a heated debate about its effectiveness. Many RWAs and Societies got into several conflicts with Animal Feeders, and there were many isolated legal disputes. In some places, it led to avoidable situations that disrupted the peace and harmony.

We have provided here a section wise list of issues associated with ABC Rule, 2023, are provided below.

### **Rules 3 and 10(3) – No Animal Birth Control Programme shall be carried without constitution of Local Animal Birth Control Monitoring Committee.**

#### Issues

- So far, to our knowledge, there is hardly any RWA/AOA/Local body have constituted 'Local Animal Birth Control Monitoring Committee', which shows, not only the practical difficulties faced by the Local bodies but also the relative importance of constituting a committee for this purpose verses duties of Local bodies towards other responsibilities.
- This literally means, the Local bodies are struck in the first step itself in the implementation of these Rules, for various reasons.
- Please note, this provision on mandatory constitution of 'Local Animal Birth Control Monitoring Committee' is not a new one because, Rule 4 of Animal Birth Control (Dogs) Rules, 2001, itself mandated this provision two decades ago; then why the AWBI has kept quiet so long and not followed up with the monitoring of execution of this provision by Local bodies?

### **Rule 8(2) – In case of street animals, the local authority shall be responsible for deworming and immunisation.**

#### Issues

- At least 70% of dog vaccination against rabies should be carried out annually to keep up the herd immunity among dog population

to eliminate rabies.

- The deworming should be carried out every 6 to 9 months.
- Practically, can these statutory requirements be scrupulously carried out periodically by the Local body which has other more important and essential responsibilities towards its residents?
- Has any local body in our country has carried out these responsibilities periodically for every stray dogs within its entire jurisdiction so far?

**Rule 10(17) prescribes that; the local authority should keep the dogs in kennels for at least 4 days after the sterilization surgery, for post-operative care.**

Issues

- Experts claim that the male dogs can remain fertile for up to 6 weeks after the sterilization operation.
- Then the 4 days confinement criteria for male dogs after de-sexing operation seem to be unscientific.
- On the contrary, if we increase the post-operative period up to 6 weeks for male dogs, the financial and other logistic burden to the Local Authority might multiply to the point of exhaustion.
- In either case, it will be more feasible to reimagine this section of the Rule. The common area managed by Strays where male dogs can be segregated from female dogs is the right place for the six to eight weeks duration.

**Rule 11(1)(a) – The local authority in consultation with the Monitoring Committees shall decide the control of excess population of street dogs through animal birth control program in a specific area or region.**

Issues

- The term 'excess dog population' has not been defined in this Rules.
- Who, and how the local bodies will calculate and arrive at 'excess'

street dog population in a specified area or region?

- Since there is no Committee, and/or no 'real-time data' on dog population (both stray and owned dogs) in majority of the Local bodies, how could they plan the capture for neutering and vaccination of dogs?
- Does the control of so called 'excess street dogs population' through ABC alone will eliminate the dog mediated rabies and stabilize the stray dog population in a community?

**Rule 11(6) – Only a stipulated number of animals, according to the housing capacity of the Animal Birth Control Center, shall be captured.**

Issues

- Please note the requirement of infrastructure in items number (viii) of Schedule-II include pre-operation preparation areas, Operation Theatres, post-op care, kennels, kitchen, store rooms for rations and medicines, parking area, residential rooms for veterinarians and attendants, quarantine wards, ambulances, etc.
- Does the capturing of stipulated number of animals, according to actual housing capacity of the local bodies can have any impact on the rabies elimination and stabilization of stray dog population in the society?
- Since the housing capacity of required magnitude is lacking or no such housing facility according to the prescribed norms in majority of local bodies (and in all Gram Panchayats), what is the feasibility of implementation of this provision? Or should these provisions be kept on hold, till such time these facilities are in place?
- Who is responsible to for monitoring it? Who is responsible for sponsoring and funding it if such facilities are not in place? Is there any special budget allocation?

**Rule 11(7) – Dogs from only one area shall be brought for sterilisation**

**and/or immunisation at a given time in Animal Birth Control Center.**

Issues

- When the stray dogs are running here and there during dog-catching operations, is it possible to adhere to this provision in the field?
- If a dog of different area was caught, will the dog catcher release them without bringing it to the shelters?
- Who knows which stray dog is from the which area?

**Rule 11(9) – Street dogs under the age of six month and female animals with puppies of less than two months shall not be captured for sterilisation.**

Issues

- While catching stray dogs for sterilization, the dog-catchers may not be able to assess the age of the dog he is catching at spur of the moment.
- It seems some small variety dogs mature even before six months of age and the bitches sterilization is the most important one for dog population control. Hence we may miss the opportunity by this Rule, and the age criteria for catching the stray dogs seem to be illogical.
- In usual practice, the dogs are caught only for sterilization and there is no separate programme for mass vaccination of stray dogs in any Local body at present. But it is widely accepted and WHO also suggests that, every dog including the puppies should be vaccinated if we want to eliminate rabies before 2030. So why don't we utilize every dog catching opportunity for mass vaccination of dogs?

**Rule 11(16) – A 'V' shaped notch shall be made on the right ear of each dog during sterilization for identification of the dog as sterilized and immunized.**

## Issues

- How to identify the stray dogs for subsequent booster doses of ARV, since ARV booster doses should be given annually for elimination of dog mediated rabies?
- In the absence of any identity tag for dogs and any such records maintained against it, how does local authorities track the stray dogs for booster dosages?

**Rule 11(19) – The dogs shall be released at the same place from where they were captured after neutering.**

## Issues

- These dogs which have undergone the ordeal of capture, surgery, vaccination and confinement, will suspect everyone coming nearby for whatever reason, and react violently towards them.
- Compliance of this Rule will certainly augment the dog menace issue in the community rather than solving it.
- What is the guarantee that dog will not do it again? If it causes any fatality or serious injury to any member of the community or other animals, will it not put everyone at risk, thereby violating the fundamental rights of the people living?
- If causing an injury to the Animal goes against the law, causing a harm to innocent humans trigger any provisions to protect the humans? Can they be kept in a common shelter run by local authority where both humans and animals can be kept safe at an arm's length?

**Rule 16(5) – The suspected rabid dog shall be isolated till it dies a natural death.**

## Issues

- This Rule contradicts the provision given under Rule 15(1) which states that the incurably ill dogs shall be euthanized. Please note, rabies is an incurable infectious disease in dogs.

- This Rule also contradicts Sec. 25 r/w the Schedule made under Sec. 2(o) and 38 of the Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009, which suggests euthanasia for rabid dogs.
- Apart from these legal tussles, this Rule also hampers the elimination of source of infection which is the logical measure for control of any infectious disease among animals.

**Rule 16(6) – If the dog is found to have some other disease or is furious, it would be handed over to the Animal Welfare Organisation who shall cure and release the dog after ten days.**

Issues

- Can anyone guarantee that the ferocious and rabies suspected stray dog will not be a danger to the society in future, both in terms of rabies infection and revival of its aggressive prone behaviour if released back after it has undergone the trauma of capture and confinement.
- Who will take the responsibility for the morbidity and mortality in human beings if these dogs revert back to their feral state or develop rabies subsequently? Does it not violate the provisions of human rights, Article 14 and Article 21 of Indian constitution?

**Rule 16(8) – If handed over to an Animal Welfare Organisation, it shall be reimbursed by the local authority for keeping and treating such dogs.**

- There is no logic in local body reimbursing the cost of keeping such dogs to an Animal Welfare Organisation, because, literally it is not a duty cost upon them by the local body, and the Animal Welfare Organisations are doing it as a charitable service to satisfy their own beliefs and conscience. Why should the tax-payers (who vehemently fight for removal of dog menace in the society) money be donated to them?
- This practice of reimbursement may also lead to a profit making business by the unscrupulous and ill-motivated animal welfare organizations?

- Who ensures that Animal Welfare Organizations are acting in accordance of laws? There is a provision of Section 18, but daily monitoring of such provisions and violations is not neither possible for AWBI, nor for any RWA or law enforcement agencies.

**Rule 19(1) – The infrastructure and reimbursement of expenses for a Cat Birth Control program shall be provided by the local authority.**

Issues

- This provision not only favours profits making ill-motivated Animal Welfare Organisations and corrupt government authorities, but also creates hindrance to the already embarrassing implementation of stray dog ABC-ARV programme of the local body.
- Can we have a separate birth control programme for each and every animal like monkeys, pigs etc.?

**Rule 20(1) – RWA or AOA or Local Body’s representative of that area are responsible to make arrangement for feeding of community animals residing in that area or premises**

Issues

- Please interpret this Rule with definition of "Owner" in Rule 2(1)(o), which says, any person or association can be considered as owner with or without the consent.
- Is this not an unreasonable and undemocratic responsibility to force the unwilling person / organisation to comply with something which does no benefit to the person, organisation or the society?
- Nowhere in the Rules, the clarification about who is the ‘Local body representative’ given. Is the person is an Elected Representative or Official of the Local body?
- The inclusion of words ‘community animals residing in that area’ seems to be a farfetched and vague statement, and can be exploited by the dogmatic animal extremists to create chaos among people living within the gated campus.



**Rule 20(1) speaks about responsibility of RWA / AOA / Local Body's representative of that area, to feed community animals.**

Issues

- Please interpret this Rule with Rule 2(j) which says, 'Community Animals' means any animal born in a Community for which no ownership has been claimed, excluding wild animals.
- Rule 2(2) says, when the 'words' not defined in this Rule, the definition given in the Prevention of Cruelty to Animals Act, 1960 and the Wildlife Protection Act, 1972, shall apply.
- Since the word 'animal' has not been defined in this Rule, we have to take the definition of 'animal' from the PCA Act, 1960 or Wildlife Protection Act, 1972.
- According to Sec. 2(a) of the PCA Act, 1960, "animal" means any living creature other than a human being.
- Also according to 2(1) of Wildlife Protection Act, 1972, "animal" includes amphibians, birds, mammals and reptiles and their young, and also includes, in the cases of birds and reptiles, their eggs.
- If we interpret Rule 20(1) on feeding community animals with respect to the definition of animals, it will give rise to a bizarre situation which is an unacceptable responsibility. Besides pest control will become difficult to execute. Many municipal corporations and government pay a hefty amount for rat elimination. Is it illegal as per ABC Rules, 2023?

**Rule 20(1)(i) and (ii) says, RWA / AOA to designate feeding spots and feeding time which is likely to be least frequented by children and senior citizens.**

Issues

- Had this been practically possible, majority of RWAs / AOAs would have complied with this provision by this time, and there would not be flooding of litigations in various Courts.
- In a cosmopolitan city where, finding a secluded open space for recreation of residents of gated community itself is a herculean

task due to exorbitant cost of land and high density of population, finding a suitable feeding spot as per the criteria is very difficult.

- Now, most of the residents in gated communities are in diversified jobs which results in population movement all 24 hours and hence finding a suitable time as per the criteria is also an impossible task in densely populated big cities.

**Rule 20(1)(iii) speaks about designated feeder who feeds community animals or intends to feed those animals and provides care to street animals as a compassionate gesture.**

- If the designated dog feeder is an outsider living in the vicinity, can he/she, whose real character, motive and behaviour is unknown, be allowed to enter the gated campus at his/her will, on the pretext of voluntary feeder? Will it not breach the gated communities security? What happens when the feeding takes place in wrong spots or littered and not cleared by the dog-feeder?

**Rule 20(2) – If there is any conflict between the RWA or AOA and the animal caregivers or other residents, an Animal Welfare committee shall be formed with officials from Veterinary, Police, SPCA, Animal Welfare Organisation, local authority, RWA and the Complainant, and whose decision shall be final.**

Issues

- In a cosmopolitan city, there may be hundreds of RWAs and AOAs, and more than 99% of them are unwilling and/or unable to implement these provisions.
- Under such scenario, is it practically possible to constitute this committee for each and every time the dispute occurs for every RWA / AOA in the city?
- Will it not completely choke the bandwidth of these organizations as there are lakhs of such societies and each of them has their own complexity? Is it practical and feasible? How many across the country will be able to do it? What happens

when these government departments do not respond?

**Rule 20(3) – If RWA or AOA is aggrieved by the decision of the Committee, the appeal shall be filed to the State Board and its decision shall be the final.**

Issues

- Can the State Board take a decision on thousands and thousands of such disputes in the State as a whole, without having any idea of locally prevailing situation?
- Is it not undemocratic and unjustified for a State authority to take decision and enforce them on the unwilling organizations, in matters on which it has very little knowledge about ground reality?
- If the state board's decision leads to creation of feeding spots near kids play area or the pathway used by elderly people, resulting in a fatal injury or serious disability, who will take the responsibility?

**Rule 22(1) says 'more irksome' State law or Local body Bye-law than ABC Rules, 2023, will have no effect legally.**

Issues

- It is true that the laws enacted by the States and Local bodies can be superseded by the Central law, but how the Judiciary can decide if a provision in another Central law or this ABC Rules itself is having a contradicting and more 'irksome' provision? Besides which benchmark is being used to decide irksome and who decides it?
- Sec. 25 read with Schedule made under Secs. 2(o) and 38 of the Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009, (Central law) suggests euthanasia for rabid dogs, which is more irksome.
- Rabies in dog is an incurable illness, and Rule 15(1) of the ABC Rules, 2023, itself suggests euthanasia of incurable illness which contradicts Rule 16(5) (which suggests no euthanasia for rabies

infected dog). Hence the provisions are conflicting.

**The crux of the ABC Rules, 2023, preaches 'ABC-ARV' strategy alone for rabies elimination and the stray dog population control.**

Issues

- The control of free-roaming dogs and mass vaccination of street dogs are not addressed at all in any meaningful way in the ABC Rules, 2023.
- The objective of 'Zero by 30' is not achievable if we follow only the strategies provided in ABC Rules, 2023.
- There is no solution to overall elimination of dog menace with this law.
- On the contrary, to make the dog menace worse, the Rules 11(19) and 16(6) suggest releasing of neutered stray dogs and wrongly rabies suspected / furious stray dogs, back to their previous original habitats.
- Besides, this also generates conflict between humans and animals, includes the provision of intervention of non-state actors inside gated communities, generates animosity within the communities resulting in legal disputes across the country.
- The ABC 2023 rules are impractical and need due diligence. One piece of rule cannot violate the provisions of another part of the law or rule. If it violates Article 21 and 14, it will need a serious review. A balanced rule or law is more appropriate for a peaceful coexistence.

## **Claims & Contrarian Views related to Strays**

**To claim that the neutered dogs will not chase other dogs for Mounting / humping seems to be false because, it's not necessarily a sexual behavior.**

Issues

- After they are neutered, male dogs continue to mount and even masturbate because they have learned that the behavior feels good.
- The puppies can begin humping behavior at any age and this behaviour can be a normal part of play, a way to express excitement, or a way to exert dominance, or it could be a response to stress or nervousness, and it might also be a habitual or compulsive behavior of the dogs.

**Claiming that, 'neutering makes the dog docile' is a deliberate lie and misinformation which misguide the public and make them susceptible for dog-bite incidences.**

#### Issues

- Because, a dog chasing any moving objects is a natural predatory basic instinct (sometimes it can also stem from fear) which is not driven by sex hormones alone.

#### **Additional Points to Ponder**

These are some of the questions which the Government needs to navigate through. These are some ethical, moral and fundamental questions where we need to find a balance and overcome the dilemma.

#### Questions

- Every developed country in the world including the Japan and Singapore does not allow free-roaming dogs on streets.
- In the name of sympathy, dharma, sentiments and religious beliefs, can a civilized society allow vaccinated (even rabies-free) stray dogs to bite and cause public health hazards leading to morbidity and mortality in human beings?
- Is this not a dogmatic attitude of the animal extremists in India, who always go to the Courts under the guise of ahimsa for each and every reasonable stray dog control measure, forgetting the horrible incidences which cause untold human sufferings,

especially the young children and senior citizens?

- The privilege of feeding animals should come with a set of obligations towards society.

## Recommendations

- Divide the dogs into two categories. The strays who are not taken care by anyone and community animals which has an owner associated within the community.
- Create common dog shelters where local authority can keep the strays and neuter and vaccinate them. All strays should be moved to a common dog shelter for monitoring and safekeeping.
- For community dogs, give a separate identity tag to the stray and link the stray to the feeder's Adhaar card with contact details. This can be a microchip inserted under the skin. The feeder is considered as owner of the stray and the rules applicable to pets will be applied here. If the feeder is not contactable or absconding, then the community dog becomes stray dog.
- Aggressive community or stray dogs should be kept separately in dog shelters after removal from the community. They should never be sent back.
- If there are more than three complaints from the community residents about the particular stray, the community animal should be taken away by local authority and put in the common dog shelter and converted to Stray.
- If the community dog bites or injures anyone, it becomes a stray dog and sent to the dog shelter if the victim produces evidence of injury. Besides, the associated feeder will take the responsibility for any medical expense of the victim.
- If the community animals are not neutered or vaccinated or not taken care by the designated feeder associated with the stray, the feeder should be punished as per the various provisions of endangering lives of the community or individuals.
- The community animals without any feeder should be considered as Stray and sent to the common dog shelter run by the local authority.

## Conclusion

The stray dog issue needs immediate attention and their population can grow exponentially. If that happens, the food scarcity and spread of rabies will put the nation at risk and healthcare system will crumble. Besides it may have massive economic impact if it paralyses the nation. The response should come from Municipal Corporations, Panchayats, AWBI, Animal Husbandry and Public Health on war footing to resolve this, capture the database of strays and rabies, and control them. We can fix when we pass the rules on the basis of ground reality and practical implications. Besides the rules need immediate attention to balance the Animal and Human rights as both go hand in hand and cooperation of people will required. Empathy cannot be forced, it needs to be nurtured and a balance law can create harmony, remove the barriers for empathy and enable a healthy atmosphere for Animal Birth Control.