

**GOA HUMAN RIGHTS COMMISSION  
PANAJI – GOA**

**ANNUAL REPORT  
2015 – 2016**

**Introduction**

This is the fifth Annual Report of the State Human Rights Commission for the year 2015-2016.

2. The Protection of Human Rights Act, 1993 provides for the constitution of National Human Rights Commission and State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and the matters connected therewith or incidental thereto.

3. As per Section 2 (1) (d) “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the courts in India. The Constitution of India has also guaranteed a right to life to all persons under Article 21. This right has been given a new dimension by the Court in the last three decades by interpreting the right to life in a liberal way. It has been held in catena of cases that the right to life includes the right to live with a dignity and decency and also in a clean and healthy environment. Thus, any infringement of fundamental right also amounts to violation of human rights.

4. This Commission has made several recommendations from time to time in respect of the violation of basic human rights such as delay in payment of pension to the Government servants, delay in payment of salaries to the government servants, police atrocities against public members, illegal detentions of the persons by the Police allegedly involved in commission of crimes, blocking of right of access of the persons to reach their respective properties, etc. These recommendations were widely reported by press which made public members aware about their fundamental rights and also about the basic human rights which are available to them under the law. In absence of State Human Rights Commission in the State of Goa, the persons whose human rights were allegedly violated by the public functionaries were constrained to approach before the normal court of law which involves long and cumbersome procedure apart from being a costly affair. The establishment of State Human Rights Commission has fulfilled the aspirations of the people of Goa who, now, have an easy access to justice to ventilate their grievances against public servants in the matter of violation of human rights.

4. The Government of Goa has allotted adequate office premises to the Commission consisting of 609.39sq.mts in the Old Education Department Building at

Panaji and has also provided adequate infrastructure for smooth functioning of the Commission.

5. During this period the staff members brought on deputation are indicated below:

<b>Sr. No.</b>	<b>Name of Post</b>
1.	Section Officer
2.	Legal Assistant
3.	Accountant
4.	Stenographer Grade-I
5.	Sr. Assistant
6.	Stenographer Grade-II
7.	Assistant
8.	Jr. Assistant
9.	Drivers

6. The strength of the staff members are indicated below:

<b>Sr. No.</b>	<b>Name of Post</b>
1.	Secretary
2.	Under Secretary
3.	Section Officer
4.	Legal Assistant
5.	Accountant
6.	Stenographer Grade-I
7.	Sr. Assistant
8.	Stenographer Grade-II
9.	Assistant
10.	Jr. Assistant
11.	Bailiff
12.	Peon
13.	Drivers

7. During this period, the Police Investigation Team consisting of six Police Personnel headed by Shri Kiran Poduval, Dy. Superintendent of Police assisted the Commission as indicated below:

<b>Sr. No.</b>	<b>Name of Post</b>
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1.	Dy. Supdt. of Police
2.	Police Sub-Inspector
3.	Head Constable
4.	Police Constable
5.	Police Constable
6.	Lady Police Constable

8. **Constitution of Commission**

The Goa Human Rights Commission was constituted in the month of March, 2011 to exercise the powers conferred upon and to perform the functions assigned to the State Commission under Chapter IV of The Protection of Human Rights Act, 1993. Section 21 (2) of the said Act lays down that the State Human Rights Commission shall consists of

- (a) A Chairperson who has been a Chief Justice of a High Court.
- (b) One Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years' experience as District Judge.
- (c) One Member to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The constitution of the Commission during this period was as under:

- (i) Justice Prafulla Kumar Misra, Chairperson (Former Chief Justice of Patna High Court).
- (ii) Shri A. D. Salkar, Member (Former District Judge of State of Goa).
- (iii) Shri J. A. Keny, Member (Former Member of the Goa Public Service Commission).

Section 27 of the said Act mandates that the Government shall make available an Officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission and such Police and Investigative Staff under an Officer not below the rank of Inspector General of Police and such other Officers and Staff as may be necessary for efficient performance of the functions of the State Commission. Police Officer of the rank of Inspector General of Police has not been provided by the State Government to this Commission so far as there are no sufficient number of Police Officers of the rank of Inspector General of Police with police force. Presently, Officer of the rank of Dy. Superintendent of Police is functioning as head of Police Investigation Team.

## 9. **Functions of State Commission.**

Section-12 read with Section 29 of The Protection of Human Rights Act, 1993 provides for the functions of the State Human Rights Commission which inter alia includes the following functions:-

- (a) *To inquire suomotu or on a petition presented to it by the victim of any person on its behalf or on directions or on order of any Court into the complaint of:
 
  - (i) *Violation of human rights or abetment thereof; or*
  - (ii) *Negligence in the prevention of such violation, by a public servant;**
- (b) *To intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;*
- (c) *To visit notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of State Government, where persons are detained or lodged for purpose of treatment, reformation or protection, for the study of living conditions of inmates thereof and make recommendation thereon to the Government;*
- (d) *To review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;*
- (e) *To review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;*
- (f) *To spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, media, seminars and other available means;*
- (g) *To encourage the efforts of non-governmental organisations and institutions working in the field of human rights;*
- (h) *To such other functions as it may consider necessary for the promotion of human rights.*

## 10. **Procedure adopted by the State Commission**

The Goa Human Rights Commission has notified its own Regulation namely Goa Human Rights Commission (Procedure) Regulations, 2011,

which is published under Section 10 and Section 29 of The Protection of Human Rights Act, 1993. One of the most important functions of the State Commission is to inquire suo motu or on a petition presented to it by the victim into the complaint of violation of human rights by a public servant. The State Commission has devised a simple procedure for receiving and dealing with complaints. A complaint can be filed either in person or through post or via e-mail. The State Commission does not charge any fee from the people for filing complaints.

#### **11. Powers of the Commission**

The State Commission while inquiring into the complaints under the Act have powers of civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely:

- (a) Summoning and enforcing the attendance of witnesses and examining them on oath;*
- (b) Discovery and production of any document;*
- (c) Receiving evidence on affidavits;*
- (d) Requisitioning any public record or copy thereof from any court or office;*
- (e) Issuing commissions for the examinations of witnesses or documents;*
- (f) Any other matter which may be prescribed.*

#### **12. Complaints not ordinarily entertainable.**

As per Regulation 9 of the Goa Human Rights Commission (Procedure), Regulations, 2011, the Commission may not entertain complaints:-

- (a) which are vague or anonymous or pseudonymous or trivial in or frivolous in nature;*
- (b) which are pending before any other Commission;*
- (c) which raise dispute of civil nature, such as property rights or contractual obligations;*
- (d) which relate to service matters or industrial disputes;*
- (e) which are not against any public servant;*
- (f) which do not make out any specific violation of human rights;*
- (g) which are covered by a judicial verdict or decision of the Commission;*
- (h) which are outside the purview of the Commission.*

#### **13. Grants by State Government**

As per Section 33 of The Protection of Human Rights Act, 1993, the State Government shall pay to the State Commission by way of grants such sums of money and the State Commission may spend such sums as it thinks fit for performing the functions under Chapter V. However, the Goa Human Rights Commission preferred to seek the provision in the Budget and powers are vested in the Secretary to the Commission who has also been delegated with powers of Head of Department to incur the expenditure on the affairs of the Commission and all the expenditure incurred are being pre-audited by the Directorate of Accounts. This arrangement was preferred by the Commission at par with the Goa Public Service Commission. During this period a Budget provision of Rs. 249.00 lakhs (Rupees Two hundred and forty nine lakhs only) was made. The Commission spent an amount of Rs. 179.32 (Rupees One hundred seventy nine lakhs and thirty two thousand only).

The Commission is also required to prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with

Comptroller and Auditor General of India. However, as stated earlier, all the expenditure made, by the Commission is out of the provision in the Budget Estimates of 2015-16, and pre-audited by the Directorate of Accounts.

Hence, it is not necessary to prepare its Annual Statement of Accounts and submit the same to the State Government as per provisions in The Protection of Human Rights Act, 1993.

**14.** During the period under consideration, the Police Investigation Team headed by Shri Kiran D. Poduval, Dy. Superintendent of Police investigated 20 cases of human rights violation as per the directions of this Commission. The Commission looks into such reports at the time of deciding the complaints.

**15.** During this period the Commission disposed off 137 cases for the period 2015-2016, 62 complaints pertaining to the period of 2014-2015, 28 for the period of 2013-2014, 11 for the period of 2012-2013 and 3 for the period of 2011-2012.

**16. Few cases based on complaints for the period which have been disposed off during this year by making recommendations as indicated below:**

**Proceeding No.15/2011:**

This case has been disposed off on 10/02/2016. In this case, the Complainants alleged that the Mapusa Police had arrested the Complainants on the basis of false and fabricated complaints and the Complainants were subjected to inhuman brutalities in violation of the guidelines of the Hon'ble Supreme Court of India. It was further alleged that Police Inspector Shri Rajesh Kumar ordered the staff to beat the Complainant No.2 and as per his orders, the Complainant No.2 was assaulted with slaps and punches and later on the Police Inspector Shri Rajesh Kumar also assaulted the Complainant No.2 with belt. It was also alleged that the Complainant No.2 was handcuffed while taking into Institute of Psychiatry and Human Behaviour, Bambolim. The Commission formulated following points for determination:

- (a) Whether the Complainant No.1 was arrested before or after the sunset on 26/03/2011? If the Complainant No.1 was arrested after the sunset, whether exceptional circumstances existed to arrest the Complainant No.1 and further whether written report was made and whether prior permission of Judicial Magistrate First Class within whose local jurisdiction the offence was committed or arrest was made was obtained?
- (b) Whether the arrest of the Complainants was justified in the facts and the circumstances of the present case?
- (c) Whether there is sufficient material to establish the fact as to whether the Mapusa Police have assaulted the Complainants during the course of arrest and during their custody with the Police?
- (d) Whether the Police were justified in handcuffing the Complainant No.2?

The Commission answered the above points as indicated below:

**Point No. (a)**“We therefore find that there is sufficient evidence on record to indicate that the Complainant No.1 was arrested by the police on 26/03/2011 after the sunset. There is nothing on record to indicate that exceptional circumstances existed to place the Complainant No.1 on arrest after the sunset. Admittedly, the police neither made any report in writing nor obtained prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made. Thus we find that the arrest of the Complainant No.1 after the sunset was totally uncalled for and unwarranted which is

against the mandate of law. We record our dissatisfaction in the manner in which the Complainant No.1 was arrested after the sunset.”

**Point No.(b):** It appears that the Complainants were arrested only because the Complainants challenged the authority of the police for visiting their house for the purpose of investigation in Crime No. 109/2011 u/s 498A of IPC read with Section 34 of IPC and allegedly assaulted the police personnel during the course of investigation. It is apparent that the police have abused their powers and have acted in a high handed manner while dealing with the Complainants and placing them under arrest. It was totally unfair on the part of the police to arrest the Complainants in the set of circumstances of this case.

**Point No.(c):** There are no grounds to discard or disbelieve the evidence of the Complainants when they have stated that they were assaulted by the police. The Complainants have proved that they were assaulted by the police during the course of arrest and during the custody with police.

**Point No.(d):** In the present case, there was no necessity to handcuff the Complainant No.2. It is not the case of the police that the Complainant No.2 is a hardened criminal and would have escaped if not handcuffed. It is apparent that the police have failed to observe the directions issued by the Hon'ble Supreme Court in the above cited judgement reported in 1980 AIR SC 1535 (Supra). Article 21 of the Constitution of India totally prohibits the use of third degree method by the Police Officials. It is obligatory on the State and its machinery to respect and protect life and liberty of an individual. Police have no right or assault or disrespect any individual in the name of investigation or interrogation. The police are bound to respect human values and human rights. The Complainant No.2 is a Government servant. He is living with his mother having roots in the State of Goa. The Complainants had to

suffer mental torture and physical discomfort on account of high-handedness of the police who have misused their powers by curtailing the liberty of the Complainants

without justification. The records indicate that Article 21 of the Constitution of India has been infringed and also the basic human rights of the Complainants have been seriously violated by the police.

The Commission made the following recommendation:



- (i) *The State of Goa through its Chief Secretary shall pay an amount of Rs.5,000/- (Rupees five thousand only) to the Complainants as compensation within a period of 30 days. It shall be open to the State Government to recover the amount of compensation from the erring police officials after fixing responsibility.*
- (ii) *The Director General of Police shall initiate appropriate action against the Police Inspector Shri Rajesh Kumar and other concerned Police Officials within 30 days for non-observance of the directions issued by the Hon'ble Supreme Court in the case reported in 1980 AIR SC 1535.*

**Proceeding No. 172/2013 & 261/2013 :**

In proceeding No.172/2013, this Commission took cognizance on the basis of a complaint received from one Mr. R. S. Chaurasia, BachpanBachaoAndolan, L-6, Kalkaji, New Delhi. The commission forwarded this complaint to the Crime Branch, Panaji – Goa and called for the comments and suggestions for taking remedial steps.

In proceeding No.261/2013, this Commission took suomotu cognizance on the basis of media report which appeared in the Time of India dated 27/11/2013 under the heading “Tourist was offered child for sex for Rs.50/- on Goa beach”. As it appeared to the Commission that there was rampant child abuse in the State of Goa. This Commission called upon the Secretary (Home), Government of Goa and the Director General of Police, Panaji – Goa to furnish report indicating about the steps taken by the State Government and the State Police to prevent and curb the menace of child abuse within the State of Goa.

Both the above proceedings were disposed off by common inquiry report/order on 18/08/2015 by making following recommendations:

- (i) *Once the complaint is received by the Police relating to commission of any offence against children or women, the police shall register FIR forthwith and investigate the matter in right perspective.*
- (ii) *In case missing report is filed in respect of children or women , the police shall conduct preliminary inquiry into the matter and in case the child or woman is not traced within four weeks, the police shall register FIR and conduct investigation and take the same to its logical end.*

- (iii) *The Investigation Agency shall publish photographs of missing persons in the news-paper; telecast on the television within one week. The photographs of missing persons shall be given wide publicity at prominent outlets of the city. However, in case of minor/child such photographs shall not be published without written consent of the parents/guardians.*
- (iv) *The Investigation Agency shall conduct inquiry into the whereabouts from the “extended family of relatives, neighbours, etc.”*
- (v) *The State Police shall establish Anti-Human Trafficking Unit to deal with the cases of human trafficking exclusively.*
- (vi) *In case missing child is not recovered within four months from the date of filing FIR, the matter may be forwarded to Anti-Human Trafficking Unit in order to enable the said Unit to take up more intensive investigation regarding the missing child.*
- (vii) *Once the child is recovered, the Police Authorities shall carry out further investigation to find out whether there is an involvement of any trafficking by which the child was missing and if, on investigation such links are found, the police shall take appropriate action*
- (viii) *An Officer not below the rank of DIG should be deployed as Nodal Officer for the State for handling the cases of missing children.*
- (ix) *Department of Women & Child Development may establish a child helpline through NGOs or other agencies with necessary support from Government in the Districts.*

**Proceeding No. 85/2014:**

This case has been disposed off on 21/10/2015. In this case the Complainant Master SubhamSuryakantNaik is the son of Shri SuryakantNaik who was working as Headmaster at KeertiVidyalaya, Siolim – Goa. He was placed under suspension since 24/02/2014. The grievance of the Complainant is that his father has not been paid salary since the month of February, 2014 till date (as on the date of filing of the present complaint). The Complainant has stated that due to non-payment of salary for several months great harassment and mental torture has been caused to him and to his family members. This Commission formulated two questions for determination as indicated below:

(a) Whether the delay in payment of Subsistence Allowance can be attributed to the Respondent No.1?

(b) Whether the Respondent No.1 is responsible for inordinate delay in payment of monthly salaries of the father of the Complainant for the period indicated above?

This Commission came to the conclusion that it was the father of the Complainant who was responsible for delay in payment of subsistence allowance. As far as delay in payment of monthly salaries to the father of the Complainant is concerned, we were satisfied that it was the Respondent No.1/the Headmaster, KeertiVidyalaya High School, Siolim was responsible for delay in payment of salary to the Complainant.

This Commission made the following recommendation:

*The School Managing Committee of KeertiVidhyalaya High School, Siolim, Bardez - Goa through Respondent No.1 shall pay compensation of Rs.5,000/- (Rupees five thousand only) to the father of the Complainant within a period of 30 days.*

#### **Proceeding No. 89/2014:**

This case has been disposed off on 10/02/2016. In this case the Complainant was the brother of the deceased Shri Amit Kumar Tiwari. The Respondents have stated that on 23/01/2014 at 17.20 hrs a phone call was received at Pernem Police Station from unknown person informing that a dead body of a male person was seen lying on the side of kachha road, BH-17 Highway near Mulvir Garage, Malpem, Pernem. This case was registered as unnatural death u/s 174 of Cr.P.C. After conducting the inquiry, the Pernem Police registered the case as motor vehicle accident u/s 379, 304(A) of IPC and u/s 134(a) (b) of Motor Vehicle Act at Pernem Police Station against unknown driver of unknown vehicle on 25/01/2014. The Complainant suspected that his brother was murdered and it was not a case of death by motor vehicle accident. In the facts and circumstances of this case, the Commission was satisfied that this matter required reinvestigation by Crime Branch of Goa Police and the Commission made the following recommendations:

- (i) *The Secretary (Home), Secretariat, Porvorim - Goa shall within 30 days direct that this case be reinvestigated by Crime Branch.*
- (ii) *The Director General of Police shall initiate disciplinary action against PSI Shri UdayGaude for alleged lapses in conducting investigation in the case within 30 days.*

**17. Few important cases in which the Commission took Suo Motu cognizance during the period from 01/04/2015 to 31/03/2016:**

**Proceeding No. 110/2015:**

In this case one Shri Antonio Fernandes of Anjuna, Bardez-Goa brought to the notice of this Commission about the unhygienic condition prevailing in the vicinity of the premises of Goa Medical College, Bambolim. This Commission directed Shri Kiran Poduval, Dy.S.P., Investigation Cell attached to this Commission to visit Goa Medical College and premises at Bambolim and to submit his report. Accordingly,

Shri Kiran Poduval visited the site and submitted his report. In his report, Shri Kiran Poduval made observations relating to deplorable and unhygienic conditions prevailing at Goa Medical College and Hospital, Bambolim as indicated below:

- (i) *The Goa Medical College and Hospital situated at Bambolim houses the old complex as well as the new blocks. The old complex consist of the (1) the Out Patient Department (OPD) Block, Blood Bank etc. The OPD Block has departments such as Skin, ENT, Orthopaedic, V.D. etc. Near the canteen area and pharmacy area food waste and medical waste was dumped in a corner. Spit marks tobacco/paan was also seen on the wall and at the corner near the canteen area.*
- (ii) *Scrap material such as construction debris, old furniture, old metal parts of equipment etc. were dumped under staircase and at other places in the OPD premises thus giving a shabby and unhygienic appearance to the building.*
- (iii) *Scrap material and construction debris was seen strewn/dumped around the entire new blocks.*

Taking suomotu cognizance of the matter on the basis of report of the Investigation Team we called upon the Dean, Goa Medical College and Hospitals, Bambolim to take immediate remedial steps to keep the hospital premises of Goa Medical College and its surrounding area clean and tidy and to submit detailed report. Accordingly, the Dean, Goa Medical College & Hospitals has submitted his report on 20/11/2015. In its report the Dean, Goa Medical College & Hospitals has indicated steps taken by him to keep the hospital premises of Goa Medical College and its surrounding clean. In pursuance to the directions of this Commission, the Dean Goa Medical College and Hospitals, Bambolim took effective steps to keep the premises of Goa Medical College & Hospitals and its surrounding area clean and hygienic. This Commission directed that the Dean, Goa Medical College & Hospitals, Bambolim shall continue to keep the Hospital premises clean, tidy and hygienic to prevent health hazards, to the patients, visitor and the staff

members of the Goa Medical College & Hospitals. Scrap material and unserviceable equipment, etc must be disposed off at least once in a year by following the laid down procedure and must not be piled below staircases outside operation theatres and corridors.

**Proceeding No. 165/2015:**

In this case, the Complainants brought to the notice of this Commission about the lack of beds in Goa Medical College as a result of which patients are made to sleep on the floor in unhygienic conditions. The Complainants have suggested about the

remedial steps to be taken by the Authorities to prevent violation of human rights of the patients. Parties are heard and the matter is posted for Inquiry Report.

**Proceeding No. 191/2015:**

In this case, it was reported over telephone by the Special Judge, NDPS Court, Mapusa that some prisoners were produced before him from Central Jail, Colvale and they had complained to the Special Judge that they were severely beaten by the staff members of the Central Jail, Colvale. It was reported that the injuries were visible on the body of the prisoners and that some other prisoners were also beaten.

On the basis of such information, this Commission directed Shri Kiran Poduval, Dy.S.P. Investigative Cell attached to this Commission to visit the Central Jail, Colvale immediately and conduct inquiry and submit his report within three days. Accordingly, Shri Kiran Poduval, Dy.S.P. Investigative Cell attached to this Commission submitted his report to the Commission.

On perusal of the report of the Investigation Cell, this Commission took Suo Motu cognizance of the matter and called for urgent detailed report from (1) the Chief Secretary, Secretariat, Porvorim – Goa and (2) Inspector General of Prisons, Panaji – Goa. After hearing the Parties, this Commission made following recommendations:

- (i) *The State of Goa shall pay a compensation of Rs.10,000/- (Rupees ten thousand only) for those prisoners who have suffered grievous injuries and Rs.5,000/- (Rupees five thousand only) to each of the victim prisoners who have suffered minor injuries. It shall be open to the State Government to recover the said amount from the erring Jail Staff.*

- (ii) *The Inspector General of Prisons shall initiate Disciplinary Action against the erring Jail Staff within 30 days.*

**18. The other important cases based on complaints for the period from 01/04/2015 to 31/03/2016.**

**Proceeding No. 141/2015:**

In this case, the Complainant made a grievance about inhuman treatment which was meted out to the police personnel who were posted for duty during the Goa Assembly Session. It was stated that the police personnel were not served lunch boxes and they were made to carry their own meal which is infeasible since they have to

travel from far flung places. It was also a grievance of the Complainant that the police personnel are also not provided any facility to answer nature's call.

Taking cognizance of the complaint this Commission issued notices to (1) the Director General of Police, Panaji – Goa, (2) the Chief Secretary, Secretariat, Porvorim – Goa and (3) the Home Secretariat, Secretariat, Porvorim – Goa.

After hearing the Parties, it was observed by this Commission that the police personnel are human beings and are entitled to be treated as such. It was observed that in absence of the provision for providing meals and drinking water to the police personnel while on duty for long hours during Assembly Session and not providing basic toilet facilities to them is a clear infringement of Article-21 of the Constitution of India and also would amount to violation of their basic human rights. This Commission made the following recommendations:

- (i) *The Police Personnel posted for bandobast duty during Legislative Assembly Sessions shall be provided meals/food packets in future.*
- (ii) *Adequate number of mobile toilets should be made available to them in future wherever regular toilet facilities are not available.*

This Annual Report for the year 2015-2016 is presented to the State Government as per Section 28 (1) of The Protection of Human Rights Act, 1993.

Sd/-  
(A. D. Salkar)  
Chairperson

Sd/-  
(J. A. Keny)  
Member

Dated: 28/02/2017  
Place: Panaji – Goa

