

**GOA HUMAN RIGHTS COMMISSION
PANAJI – GOA**

**ANNUAL REPORT
2017 – 2018**

Introduction

This is the seventh Annual Report of the State Human Rights Commission for the year 2017-2018.

2. The Protection of Human Rights Act, 1993 provides for the constitution of National 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.

5. 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.

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) Shri A. D. Salkar, Member (Former District Judge of State of Goa).
- (ii) 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.

6. **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.*

7. 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 suomotu 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.

8. 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.*

9. 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;*

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- (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.*

10.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. 233.47 lakhs (Rupees Two hundred thirty three lakhs and forty seventhousand only) was made. The Commission spent an amount of Rs.233.34 lakhs. (Rupees two hundred thirty three lakhs and thirty four 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 2017-2018, 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.

11. During this period the Commission received 275 complaints. The Commission disposed off 395 cases during this period.

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

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Proceeding No.218/2014:

This case has been disposed off on 08/11/2017.

The Complainant had approached this Commission alleging that the CBI Officials of Goa had violated her basic human rights.

2. Taking cognizance of the complaint, this Commission issued notices to (1) Mr.DhirajKshetrapal, Dy. Superintendent of Police, Central Bureau of Investigation, Bambolim – Goa/Respondent No.1 and (2) Superintendent of Police, Central Bureau of Investigation, Bambolim – Goa/Respondent No.2. In pursuance to the notices, the Respondents have filed their respective replies denying the allegations made by the Complainant.

3. Brief facts of the case of the Complainant are as follows:

The Central Bureau of Investigation Team from Bambolim, Goa headed by Dy.S.P. ShriDhirajKshetrapal conducted search of her house and offices of her husband on 19/20th September, 2015 without any complaint against them and without any inquiry or any preliminary investigation. She along with her family were out of station on leave to Delhi. She was scheduled to return from her leave on 20th September evening by Delhi-Goa flight. On 19th September, 2014, morning her husband was informed by Mr.Kshetrapal on phone that they had a Search Warrant against them to search their house and office premises. They conveyed Mr.Kshetrapal that they were supposed to return the day after, but they would explore the possibility to return on that day itself by preponing their return to cooperate with CBI team. They booked an alternate flight on 19th itself costing them Rs.40,000/- extra and reached Goa by 5.00 p.m. They kept Mr.Kshetrapal informed about their movements over the phone as they had sealed their house and respective offices.

After arriving at Goa Airport they again called up Mr.Kshetrapal who in turn asked them to come to NCAOR. They were asked to wait in front of the office and after that CBI team led by Mr.Kshetrapal arrived and took them to their house. They broke the seal, took the keys from them opened it and entered into the house. They handed over all the keys to them and extended full cooperation without any interference in their operation. The CBI team began throwing out all their papers and valuables and searching for her educational degrees and work experience certificates along with her husband's educational degrees and his work experience certificates. It is also the case of the Complainant that there was no complaint against her and that there was no PE against her. It is stated that no opportunity was given to her to defend herself and straight away

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Search Warrant was obtained against her. She has also stated that while CBI team was conducting the search, she requested Mr.Kshetrapal to tell them about their crime to which he showed them a copy of FIR in which several NCAOR high officials were listed as accused and the name of her husband also appeared in the list. It is stated that the name of the Complainant was not figuring as an accused in the said FIR. The Complainant has also stated that after searching the house for several hours, they collected all their original degree certificates, all original work experience certificates, bank/financial details and land deed papers pertaining to both of them. It is further stated that when all the team members led by Mr.Kshetrapal started to sign their initials on the original certificates, they requested them not to do so as that would harm their certificates forever and they would not be able to show and use the original degrees and experience certificates anywhere. To this Mr.Kshetrapal replied "Don't worry as this process would better ensure the authenticity of original documents as CBI officials are signing it". They requested the CBI officials either to seal it within an envelope or to sign it on the reverse of those documents, but they refused to do so by reacting angrily and asking them '**not to teach us**'.

5. The Complainant has further stated that she had written several complaints to Dr.ShaileshNayak, Secretary, MoES and Chairman, GC, NCAOR since 06/03.2013 against Dr. S. Rajan, Director, NCAOR for discriminating due to her gender and for harassing her. Instead of acting on her complaints, Dr.Rajan and Dr.Nayak began to harass and victimize her and they were bent upon to remove her from her service by hook or by crook. She further states that she fears that CBI may be working in collusion with these extremely influential people to tamper with her original degrees and experience certificates or her husband's degrees and his certificates so as to remove her or her husband or both of them from their services.

6. The Complainant has also stated that they sat quietly in one corner of their house and watched CBI team searching their house and their offices till 2.00 a.m. in the morning. She further states that while preparation of list of seized items, the CBI officials started preparing a list of vague items clubbing original certificates and works certificates under category of 'etc'. It is also the case of the Complainant that in case the CBI officials write on original degrees and certificates as 'etc', then it would give huge scope to CBI for adding or removing any document seized from their house.

7. *The Complainant in her complaint has stated as follows:*

"we urged them that we can sign only when all the items are well defined and 'etc' word is removed, to this Mr.Kshetrapal threatened us to arrest for non-cooperation. Finally, he called his additional SP who loudly ordered "arrest them". I requested to talk to him and told him over the phone that in that case we are ready to sign with a comment that we are signing in fear of getting arrested."

8. The Complainant has further stated that after finishing search at her house, Mr.Kshetrapal threatened several times that if she does not accompany him and his team to the office for search, he would write that we are in-cooperative in search and that it would harm them further. It is also stated that they along with their eight year old son were under tremendous torture for several hours through extremely barbarian attitude of CBI team led by Mr.Kshetrapal. It is also stated they continuously made defaming and threatening remarks against them in front of their eight year old child and did not hesitate in misbehaving at all.

9. It is the case of the Respondents that based on sourced information received by the CBI ACB Goa Branch regarding large scale irregularities in recruitment of Scientists in NCAOR, by way of gross violation and flouting laid down procedure and showing favouritism, two Preliminary Enquiries i.e. PE 4(A)/2013 and PE 1(A)/14 were registered by CBI/ACB, Goa and enquiries were conducted. The enquiries revealed the commission of offence of criminal conspiracy, cheating and abuse of official position by public servants and showing undue favour to certain individuals in the matter of Scientist Recruitment, over a continuous period which forms a Recruitment Scam in NCAOR. Accordingly, an FIR RC 6 (A)/2014 was registered on 05/08/2014 u/s 120-B r/w 420 IPC and Sec.13(2) r/w 13(1)(d) of PC Act, after getting orders from the competent Authority of CBI Head Office, Delhi. The investigation was entrusted to Respondent No.1, i.e. Mr.DhirajKshetrapal, DYSP, CBI ACB Goa. It is alleged in the FIR that during the year 2002, FIR named accused A-1 Shri P. C. Pandey, the then Director, NCAOR (now retired) entered into a criminal conspiracy with A-2 Dr. T. V. P. BhaskarRao, then Scientist 'F' (now retired), A-3 Shri M. Sudhakar, then Scientist 'F', NCAOR and A-4 Shri Narayan SateriDalvi, the then Administrative Officer, NCAOR (now retired) and by abusing their respective official positions as public servants, recruited A-5 Dr.Dhananjay Kumar Pandey (D. K. Pandey) as Scientist "C" in NCAOR, by grossly violating and flouting the

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laid down procedures and thereby showed undue favour to A-5 Dr. D. K. Pandey, who is reported to be closely associated to A-1 Dr. P. C. Pandey. The appointment of A-5 Shri D. K. Pandey as Scientist-C was done illegally without following the prescribed procedure and he was not possessing the required working experience. Further during the year 2004, it is alleged that A-5 Dr. D. K. Pandey, by abusing his official position, in collusion with other accused persons had even got his wife Smt. AnjuPandey, illegally recruited as Scientist on Contract basis in NCAOR and finally got her posted as Scientist in the year 2012, without having prescribed educational qualifications and work experience. It is alleged that forged and bogus work experience certificates of Dr.AnjuPandey were also used during her selection process and the Selection Committee has been influenced in manipulating the selection process and got her selected. It is further alleged that Dr.AnjuPandey had worked in Indian School of Mines, Dhanbad and her services were terminated due to financial irregularities to the tune of Rs.9 lakhs. It is also alleged in the FIR that A-7 Dr. S. Rajan also joined the conspiracy of illegal recruitment of Scientists by the predecessors and wrongly recruited A-6 Shri Anil Kumar, also. Many other illegal recruitments were also reported which are pointing towards a recruitment scam in NCAOR.

10. It is also the case of the Respondents that the criminal case RC 6(A)/2014-Goa was registered on 05/08/2014 and as a part of investigation of the case, searches were carried out at the office and residence of the beneficiary accused persons viz; Dr. D. K. Pandey and Dr. N. Anil Kumar by following all legal formalities, after obtaining search warrants from the jurisdictional Court. Inscrutinizing documents were seized from the office/residence of the said accused persons, during the searches on 19/09/2014 and further investigation is under progress.

11. It is further the case of the Respondent that the Complainant Dr.AnjuPandey is the wife of accused Dr. D. K. Pandey and as per source information received, she was also reportedly another beneficiary in getting illegally recruited, which is also being probed. The Complainant and her husband who are educated persons, holding senior posts as Scientists in NCAOR, instead of cooperating with the investigating agency in carrying out the legal work of investigation/searches, that too being carried out as per the orders of the Hon'ble Court of Special Judge of CBI cases, Goa, had adopted a totally non-cooperative attitude and created hindrance at every steps of search proceedings, which were also brought out in the search list prepared, in presence of independent

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witnesses, who were also eye witnesses to the entire episode/misdeeds of the Complainant.

12. It is further the case of the Respondents that two preliminary inquiries were conducted by CBI ACB Goa which pointed out a recruitment scam going on in NCAOR since 2002 by way of illegal recruitment of Scientists of various categories including that of Dr. D. K. Pandey, the husband of the Complainant as one of the beneficiary. During the course of preliminary inquiries conducted, source information was also received regarding the illegal recruitment of the Complainant, Dr. Anju Pandey, along with a role played by her husband D. K. Pandey. It was alleged that forged and bogus work experience certificates were used during her selection process and Selection Committee was influenced in manipulating the selection process, it is also reflected in the FIR. The FIR was submitted before the Hon'ble Special Judge of CBI Cases, Goa and searches were carried out, after obtaining Search Warrants which were issued by the Court after getting satisfied about its requirement.

13. It is further stated by the Respondents that it was informed by the Complainant and her husband that they will return to Goa on 20/09/2014 in the evening and as such the premises were sealed in presence of witnesses, so as to avoid breaking open the house and conduct searches. However, the Complainant and her husband returned on 19/09/2014 evening itself by preponing their programme and in order to avoid inconvenience to them the searches were taken up without further delay by de-sealing the premises and continued the search proceedings at late evening itself on 19/09/2014. The Respondents have also stated that there was a total non-cooperation from the Complainant right from refusing to sign the Search Warrant issued by the Court for having seen the warrant which was shown to them by the Investigating Officer. The searches were carried out by following all legal formalities and with due regards to the petitioner and family members which were witnessed by independent witnesses consisting of Lady Officer from Indian Oil Corporation and another Officer of the same department of the petitioner i.e. NCAOR. Apart from them, two Lady PCs were present during the search who were drafted into the team, as an abundant precaution for maintaining the due courtesy to the lady occupants.

14. The Respondents have denied the allegation about the tempering of original

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degree and experience certificates. It is stated that it is only a legal procedure followed by CBI during search and seizure, wherein independent witnesses had initialled the documents seized on the date of search, so as to avoid even slightest chance of subsequent tempering of records even on the part of CBI itself.

15. Arguments were heard. We have also gone through the written arguments filed by the Complainant. We have also perused the entire records of this case.

16. The short question for determination of this Commission is whether the Respondent No.1/Mr.DhirajKshetrapal and his team have violated the basic human rights of the Complainant and her family during the course of the search of the premises of the house and the office of the Complainant and her husband.

17. Section 2 (1) (d) of the Protection of Human Rights Act, 1993 defines "human rights". It reads as follows:

'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 courts in India.

18. The main grievance of the Complainant is that the CBI team made endorsement on the front side of the original degree certificates and original work experience certificates. The Complainant in her written arguments has contended that the CBI Officials have deliberately signed and ordered the witnesses also to sign on front of all their original degrees and certificates. It is further contended that these degrees include doctorate degree of her husband from University of Cambridge and her 20 years of experience certificates. It is her contention that these degrees are unusable anywhere now as they are not in their original form and legally cannot be called "original". She has also contended that the CBI has misused their powers to torture and harass them. In reply the Respondents contended that the CBI has followed the legal procedure during searches and seizure of the documents. We have given our anxious consideration to the rival contentions of the Parties. In our considered opinion, there was nothing to prevent the CBI team from making endorsements on the reverse side of the original certificates. As rightly contended by the Complainant, the said original certificates tantamount to losing its original character and sanctity. We put on record our displeasure about the manner in which the CBI Officials had made endorsements on the front side of the original certificates which could have been easily avoided. The purpose of seizure of the

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original certificates would have been served in case such endorsements were made on the reverse side of the original certificates. We hope and trust that the CBI Officials shall avoid in making such endorsements on original certificates in future during the course of their investigations.

19. It is also the grievance of the Complainant that the CBI Officials have misused their powers and have abused the Complainant during the course of search and seizure. It is the contention of the Complainant that there was no complaint against her and there was also no preliminary inquiry against her. The records indicate that the CBI Officials have conducted the raid after obtaining warrant for the search. The records also indicate that the search was carried in presence of the witnesses. It is the case of the Respondents that the Complainant Dr. Anju Pandey is the wife of the accused Dr. D. K. Pandey and as per source information received, she was also reportedly another beneficiary in getting illegally recruited which is also being probed. This being the position, the contention of the Complainant that there was no complaint against her cannot be accepted. These allegations in our opinion do not disclose violation of basic human rights of the Complainant as defined u/s 2 (1) (d) of the said Act.

With the above observations, the proceeding was disposed off.

Proceeding No. 13/2012:

This case had been disposed off on 12/09/2017.

This is a complaint filed by the Complainant against (1) Shri Vijay Kavlekar, Police Sub-Inspector (2) Shri Diogo Gracias, Police Sub-Inspector and (3) Shri Salgaonkar, Police Constable attached to Anjuna Police Station, Anjuna, Bardez - Goa. The Complainant has alleged that on 13/05/2012, he sent his caretaker Shri Antonio Fernandes to Mapusa at about 5.00 p.m. to bring cake for feast litany on two-wheeler. On the way to Parra Junction an incident took place between the said Antonio and the driver of Maruti Wagon-R relating to rash and negligent driving by the driver of Wagon-R which would have resulted in a fatal accident. The Police were informed about the incident and the Police took the said Antonio along with the occupants of Maruti Wagon-R at Anjuna Police Station. The incident was narrated by the said Antonio to the Complainant and hence the Complainant went to the Anjuna Police Station at about 6.00 p.m. The Complainant has alleged that Shri Vijay Kavlekar, Police Sub-Inspector behaved in a rude manner with the Complainant and shouted at the said Antonio with abusive

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words. The said Shri Vijay Kavlekar, Police Sub-Inspector also shouted and abused the Complainant and gave a threat that he will put the Complainant behind the bars if the Complainant defend Antonio. It is further alleged that after some time, one more Police Sub-Inspector by name DiogoGracias came at the Police Station and questioned the Complainant in rude manner and both the PSIs suddenly put the Complainant and Antonio in the cabin of Police Sub-Inspector and again started questioning and abusing the Complainant and Antonio. Both the PSIs Mr.Kavlekar and DiogoGracias started giving slaps on the face, backside of the head and neck and also started giving fist blows on chest and stomach and ShriKavlekar also gave kicks on the hip of the Complainant. Immediately Police Constable Mr.Salgaonkar joined them and he also started giving slaps and fist blows to the Complainant.

2. Taking cognizance of the complaint, this Commission issued notices to the (1) Chief Secretary, Govt. of Goa, Secretariat, Porvorim, (2) The Secretary (Home), Govt. of Goa, Secretariat, Porvorim – Goa, (3) The Superintendent of Police (North), Porvorim – Goa, (4) Shri Vijay Kavlekar, Police Sub-Inspector, Anjuna Police Station, (5) ShriDiogoGracias, Police Sub-Inspector, Anjuna Police Station, and (6) ShriSalgaonkar, Police Constable, Anjuna Police Station, Anjuna, Bardez – Goa. The Respondent No.4, 5 and 6 have filed a joint reply dated 08/11/2012. The Respondent No.3 has filed reply dated 10/07/2013. The Respondents have denied the allegations made by the Complainant. It is the case of the Respondent No.4, 5 and 6 that they discharged their duties as officials of Goa Police and they have acted in good faith and in compliance with law. It is further stated that the Complainant has falsely concocted a story vis-à-vis these Respondents. The Complainant has examined himself as CW1 and has also examined three more witnesses namely; Shri Antonio L. Fernandes (CW2), Mrs.Arminda E. Fernandes as CW3 and Ms. Sheena Fernandes as CW4 in support of his case. The Respondent No.4/Shri Vijay Kavlekar, Police Sub-Inspector has examined himself as RW1 and has also examined one more witness namely ShriDiagoGracias, Police Sub-Inspector as RW2 in support of their case.

3. We have perused the records of this case. We have also heard both the Parties. In addition to oral arguments, both the Parties have filed written submissions which are on record.

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4. The Complainant(CW1) in his Affidavit-in-Evidence has stated that PSI Shri Vijay Kavlekar shouted and abused him and gave threat that he will put the Complainant behind bar if he defends Shri Antonio. He has also deposed that another PSI by name ShriDiagoGracias questioned him in a rude manner and both the PSIs took him and the said Antonio in the cabin of PSI and again abused them. It is also in the evidence of the Complainant that both PSIs ShriKavlekar and ShriDiagoGracias started giving slaps on his face, backside of his head and neck and also started giving fist blows on his chest and stomach. He has also deposed that thereafter Constable ShriSalgaonkar joined them and he also started giving slaps and fist blows. The next witness Shri Antonio L. Fernandes (CW2) has stated that PSI ShriDiagoGracias who was not on duty came at the Police Station and questioned ShriJoaquimInacioFernandes in a rude manner and both PSIs suddenly took him and ShriJoaquimInacioFernandes in the cabin of PSI and again started questioning and abusing both of them. He has further stated that both PSIs ShriKavlekar and ShriDiagoGracias started giving slaps on the face, backside of the head and neck of JoaquimInacioFernandes and also started giving fist blows on his chest and stomach and that Mr.Kavlekar also gave kicks on his hip. He has further stated that thereafter, Constable ShriSalgaonkar joined them and he also started giving slaps and fist blows. The bare perusal of the evidence of Shri Antonio L. Fernandes (CW2) would show that it is almost identical in nature to the evidence of the Complainant (CW1). Moreover, Shri Antonio L. Fernandes (CW2) is also an interested witness being Caretaker of the house of the Complainant situated atChapora, Bardez – Goa.

5. The other witnesses examined on behalf of the Complainant are Mrs.Arminda E. Fernandes (CW3) who is the wife of the Complainant,Ms. Sheena Fernandes (CW4) is the daughter of the Complainant. The evidence of both these witnesses is also identical in nature to the evidence of the Complainant (CW1) and Shri Antonio L. Fernandes (CW2). Again, CW3 and CW4 are also interested witnesses being the wife and daughter of the Complainant. Admittedly, the present incident of assaulting and abusing the Complainant (CW1) and Shri Antonio L. Fernandes (CW2) had taken place inside the cabin of the Police Sub-Inspector. Both CW3 and CW4 were not inside the cabin of the PSI at the relevant time of the incident. It is thus doubtful that CW3 and CW4 had actually seen the incident of assault by the PSIs ShriKavlekar and ShriDiagoGracias and also the Constable ShriSalgaonkar. We are therefore not inclined to place implicit reliance on the evidence of Shri Antonio L. Fernandes (CW2), Mrs.Arminda E. Fernandes (CW3) and Ms. Sheena Fernandes (CW4).

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6. The Complainant (CW1) in his cross-examination has denied the suggestions put to him that his statement in para-9, 10, 11, 12, 13, 14, 15, 17 and 18 are false. Admittedly, the Complainant was examined by a Doctor at Asilo Hospital. It is also an admitted fact that the Complainant left the Hospital against medical advice. The Complainant (CW1) has also denied the suggestion that he left Asilo Hospital against medical advice as the Doctor on duty told him that he shall have to undergo Alcohol Detection Test. It was also suggested to the Complainant (CW1) that he created law and order problem at the place of incident and also at the Police Station of Anjuna under the influence of alcohol which suggestion has been denied by this witness (CW1). The Complainant has produced a Medical Certificate issued by Senior Physician of Asilo Hospital, Mapusa which is on record at **Exhibit CW1**. As per the said Medical Certificate, the patient was admitted on 13/05/2012 at 8.30. p.m. and discharged on 14/05/2012 at 1.10 p.m. against medical advice. It appears that the Complainant went against medical advice as he was under the influence of alcohol. In the facts and the circumstances of this case the possibility of the Complainant provoking the incident cannot be ruled out.

7. It is the case of the Respondents that the Complainant appeared at the Police Station and after initial discussions with Shri Antonio came to see the Respondent No.4 (Shri Vijay Kavlekar) and the Complainant was abusive and arrogant and said "All Police are thieves and he is having good touch/relation with the politicians and he will show the Police his powers." It is further the case of the Respondents that the Complainant was heavily drunk and was not allowing the Officers on duty to carry out their duties by shouting in a loud voice and creating commotion at the Police Station. It is also the case of the Respondents that the Complainant was threatening the Staff with dire consequences and therefore as a preventive measure to avert the commission of cognizable offence by the Complainant, he was placed under arrest u/s 151 of Cr.P.C. and proceeding u/s 107 of Cr.P.C. were sought to be initiated.

8. The records thus indicate that the Complainant was placed under arrest by Anjuna Police by invoking the provisions of Section 151 of Cr.P.C. The question for determination is whether the Police were justified in arresting the Complainant by taking protective shelter of Section 151 of Cr.P.C. We are not able to persuade ourselves that there was any need to arrest the Complainant by invoking the provisions of Section 151 of Cr.P.C. in the facts and the circumstances of this case. Admittedly, the incident had taken place inside the cabin of the Police Sub-Inspector. Therefore, even assuming that the Complainant was creating law and order problem, it is difficult to believe that the

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Complainant would have committed cognizable offence at the Police Station. We are therefore satisfied that the Anjuna Police were not justified in arresting the Complainant. It appears that the Complainant was behaving in arrogant manner and therefore the Police arrested him to settle score with the Complainant. The conduct of the Police in arresting the Complainant is not justified. We hope and trust that the said PSIs Shri Vijay Kavlekar and ShriDiagoGracias and the Police Constable ShriSalgaonkar shall not repeat such conduct in future and shall behave in a responsible manner befitting public servant while dealing with public members.

In the facts and circumstances of this case, we made the following recommendation:

The Director General of Police shall issue a warning in writing to PSIs Shri Vijay Kavlekar and ShriDiagoGracias and the Police Constable Shri Salgaonkar not to repeat such conduct in future.

Proceeding No. 250/2016:

This case had been disposed off on 21/12/2017.

The Complainant had approached this Commission complaining about the working conditions of the police constabulary in the State of Goa. The Complainant has stated that the policemen are made to work for long hours which is taking toll on their personal lives. On account of long hours of work and related stress, lot of policemen are suffering from health problems like hypertension, diabetics and depression. The working and living condition of the staff of some Police Stations and barracks is inhuman which amounts to violation of their human rights.

2. Taking cognizance of the complaint, this Commission issued notices to (1) The Chief Secretary, Government of Goa, Secretariat, Porvorim – Goa/Respondent No.1 and (2) the Director General of Police, Police Headquarters, Panaji – Goa/Respondent No.2. Both the Respondents have filed their respective replies. The Respondent No.1 in its reply has stated that in view of long hours of work and denial of facility of availing public holidays and weekly offs, the non-gazetted personnel of police are granted compensatory leave upto a maximum of 30 days in a year over and above their existing entitlement. It is further stated that in case it is not possible to grant compensatory leave, compensatory payment in form of day's emoluments (pay plus dearness allowances/additional dearness

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allowances) is sanctioned for number of days of leave denied to them subject to such compensatory payment being limited a maximum of 30 days in a year. Respondent No.1 has further stated that as far as the question of shortage of police personnel is concerned, the matter is pending before the Hon'ble Supreme Court in Writ Petition (Civil) No.183/2013, Manesh Kumar v/s Union of India &Ors. The Apex Court has issued notices to all the States/Union Territories to submit details as regards to the number of vacancies of police personnel in the State and the matter is sub-judice.

3. The case of the Respondent No.2 is more or less on the same lines as that of Respondent No.1. In addition, the Respondent No.2 has stated that the grievances of police personnel are heard by the Superiors at all levels including their working conditions, health problem, service matters, etc. and the same are sorted out. Every care has been taken of the physical and mental fitness of the police personnel. It is also stated that the proposals for creation of various posts totally 4629 have been moved to the Government for sanction which, if sanctioned, would improve the working conditions of the police personnel.

4. During the pendency of this proceeding, this Commission directed the Secretary of the Commission to visit and inspect the Old Goa Police Station in North and Colva Police Station in South along with Under Secretary of the Commission and the Police Inspector attached to the Commission. Accordingly, the Secretary conducted the inspection and has submitted its report.

5. We have heard both the Parties. We have also perused the entire records of this case. On the basis of the inspection report it is apparent that there are certain shortcomings which are indicated below:-

- (i) The Police Station buildings of both the Police Stations are very old, overcrowded and not suitable/sufficient to accommodate the total staff working at Police Station.
- (ii) The strength of Police personnel is not sufficient to cope up with the workload of the Police Stations.
- (iii) There is need to fix the duty timing/working hours of constabulary staff i.e. 08 hrs. shift to resolve the problems of stress, hypertension, diabetics etc.

- (iv) The police personnel at the Police Stations are required to maintain law and order and also investigate the crimes simultaneously. The Police therefore are not able to investigate the crimes effectively, in absence of separate investigating machinery.
- (v) The barracks at both the Police Stations are having less area which is not sufficient to accommodate the staff members.
- (vi) There is no fridge facilities at the Police Stations. There is also no canteen facilities at the Police Stations. The staff members cannot preserve their eatables/food, which they bring from homes, in absence of canteen facilities.
- (vii) The rest rooms for ladies at both Police Stations are very small which is inadequate and affect their privacy.

6. The random inspections of only two Police Stations show that the working conditions of the Police personnel are not satisfactory and require drastic improvements. It is not practicable to this Commission to carry out inspections of all the Police Stations in the State of Goa. We would appreciate if the Respondents would conduct inspections of all the Police Stations in the State of Goa to ascertain shortcomings and take appropriate steps to improve the working conditions of the Police personnel at the Police Stations, more particularly women Police staff members.

With the above observations, the proceeding is disposed off.

Proceeding No. 45/2017

This case had been disposed off on 14/02/2018.

The main grievance of the Complainant/Dr. (Ms.) Odette Lobo is that she is suffering from mental agony and mental torture on account of noise pollution caused by two huge A/C compressors installed by "Yes Bank", situated at Ground Floor, 18th June Road, Opp. HDFC Bank, Panaji-Goa.

2. The Complainant is residing at E/511, Heliodoro Salgado Road, Near Susheela Bldg., Panaji-Goa. The Complainant has stated that the said "Yes Bank" has installed 11 A/C compressors and among them two big ones, which is hardly 2 metres away facing

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directly to their bedrooms of their old house which are causing noise much more than the normal levels of 55 dB during the day time and 40 dB at night time resulting in vibrations of their bedroom windows, thereby disturbing their sleep. The Complainant has filed several complaints before the concerned authorities, complaining about the noise pollution created by the A/C compressor unit boxes and the Generator Genset. It is the case of the Complainant that the said "Yes Bank" had not obtained permission/consent from the Goa State Pollution Control Board and also from the Corporation of the City of Panaji.

3. Taking cognizance of the complaint, this Commission called for report from the Member Secretary, Goa State Pollution Control Board, Dempo Towers, 1st Floor, EDC Complex, Patto Plaza, Panaji-Goa/ the Respondent. The Respondent filed its reply stating therein amongst other things that the officials of the technical section of the Board inspected the site from time to time for monitoring of noise levels and made observations regarding the noise levels. It is stated that the inspection team came to the conclusions which are indicated in para 11 (a) to 11 (m) of the reply.

4. We have heard both the parties. We have also perused the entire records of this case.

5. On the basis of the inspections carried out by the Goa State Pollution Control Board it is apparent that the Ambient Noise Level of the AC Compressors and DG sets were exceeding the permissible limits, thereby violating the provisions of Noise Pollution (Regulation & Control) Rules 2000.

6. In the case of In Re: Noise Pollution-Implementation of the Laws for Restricting Use of Loudspeakers and High Vol, Appellant V/s Union of India (Uoi) and anr. reported in AIR 2005 Supreme Court, 1316, the Hon'ble Supreme Court has observed as follows:

"Article-21 of the Constitution guarantees life and personal liberty to all persons. It is well settled by repeated pronouncements of this court as also the High Courts that right to life enshrined in Article-21 is not of mere survival or existence. It guarantees a right of persons to life with human dignity. Therein are included, all the aspects of life which go to make a person's life meaningful, complete and worth living. The human life has its charm and there is no reason why the life should not be enjoyed along with all permissible pleasures. Anyone who wishes to live in peace, comfort and quiet within his house has a right

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to prevent the noise as pollutant reaching him. No one can claim right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours and others. Any noise which has the effect of materially interfering with the ordinary comforts of life just by the standard of a reasonable man is nuisance. How and when a nuisance created by noise becomes actionable has to be answered by reference to its degree and surrounding circumstances, the place and the time."

It is further observed, "Noise is more than just a nuisance. It constitutes a real and present danger to people's health. Day and night, at home, at work, and at play, noise can produce serious physical and psychological stress. No one is immune to this stress. In the modern days noise has become one of the major pollutants and it has serious effects on human health. Effects of noise depend upon sound's pitch, its frequency, and time pattern and length of exposure. Noise has both auditory and non-auditory effects depending upon the intensity and the duration of the noise level. It affects sleep, hearing, communication, mental and physical health. It may even lead to the madness of people. Noise can disturb our work, rest sleep and communication. It can damage our hearing and evoke other psychological and possibly pathological reactions."

7. In the case of Church of God (Full Gospel) in India, Petitioner V/s K.K.R. Majestic Colony Welfare Association and Others, Respondents, the Hon'ble Supreme Court has observed as under:

"Under the Environment (Protection) Act, 1986 rules for noise pollution level are framed which prescribe permissible limits of noise in residential, commercial, industrial areas or silence zone. The question is whether the appellant can be permitted to violate the said provisions and add to noise pollution? In our view to claim such a right itself would be unjustifiable. In these days, the problem of noise pollution has become more serious with the increasing trend towards industrialisation, urbanization and modernisation and is having many evil effects including danger to health. It may cause interruption of sleep, affect communication, loss of efficiency, hearing loss or deafness, high blood pressure, depression, irritability, fatigue, gastro-intestinal problems, allergy, distraction, mental stress and annoyance,

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etc. It also affects animals alike. The extent of damage depends upon the duration and the intensity of noise. Sometimes it leads to serious law and order problem. Further, in an organized society, rights are related with duties towards others including neighbours.”

8. The observations made by the Apex Court in the above cited rulings are squarely applicable to the facts and the circumstances of the present case before us. The allegations made by the Complainant prima facie disclose a clear infringement of the fundamental rights of the Complainant as guaranteed by Article 21 of the Constitution of India and it also amounts to violation of basic human rights of the Complainant. The concerned authorities are duty bound to take serious note of the complaints from the aggrieved parties.

9. We, therefore, make following recommendation:-

The concerned authorities authorised by the State Government including the District Magistrate and the Superintendent of Police or any other officer not the below the rank of Deputy Superintendent of Police shall act on the complaints of the aggrieved parties in respect of noise pollution and take appropriate action against the violator in accordance with law, as and when such complaints are filed before the concerned authorities.

A copy of this Inquiry Report be forwarded to 1) The District Magistrate, North Goa, Panaji-Goa, 2) The District Magistrate, South Goa, Margao-Goa, 3) The Superintendent of Police (North), Porvorim-Goa and 4) The Superintendent of Police (South), Margao-Goa, for information and necessary action.

Proceeding No. 165/2015

This case has been disposed off on 07/04/2017

We have heard the Complainant No.1/Adv. Satish Sonak and Adv. Mrs. Harsha Naik for the Respondents. We have also perused the records of this case.

2. The main grievance of the Complainants is that the basic human rights of the patients at Goa Medical College and Hospital, Bambolim – Goa are being violated by the Respondents. The Complainants have stated that due to lack of beds in Goa Medical College, the patients are made to sleep on the floor in unhygienic conditions. The Complainants have alleged that the lack of beds is a result of inaction on the part of the Respondents to make necessary provisions and also due to carelessness, lack of foresight and indifference of the Respondents. The Complainants have also stated that the State is

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under legal and moral obligation to provide such bed facilities which are basic foundation of medical attention.

3. The reliefs sought for by the Complainants are reproduced below:

- A. *Instead of making patients sleep on the floors in and around the Neurology Ward and/or any other ward, patients should be shifted to other wards where occupancy is available or should be housed in private wards of GMC free of cost and/or in the GMC rooms meant for VIPs.*
- B. *In the alternate, they should be transferred to other government-run medical institutions in the state where adequate beds and medical facilities are available.*
- C. *The criteria for allotting beds in GMC should be clearly formulated as " who urgently needs the medical treatment and not who is influential person". The term 'VIP' should mean Very Important Patient and not Very important Person or Very Important Politician.*
- D. *The patient should not be kept on the floor of a hospital or on trolley.*
- E. *In order to ensure availability of bed in an emergency at state-level hospitals, there should be a centralised communication and coordination system, so that the patient can be sent immediately to the hospital where the bed is available in respect of the treatment which is required.*
- F. *As an interim measure, the respondents be directed during the pendency of these proceedings to submit by way of interim report factual details of number of beds presently available, number of patients who seek admission every day and provisions proposed to be made in time bound manner to make available necessary additional beds and incidental medical facilities in GMC at Bambolim.*
- G. *As an interim measure, an enquiry committee may be constituted consisting of eminent doctors or/and health experts to report the possibilities of cross-infection and other health hazards in event of patients being made to sleep on the floor. Such report should also incorporate suggestions for betterment of the facilities.*

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H. Compensation should be determined and awarded to the patients whose human rights were violated by making them to sleep on the floor in unhygienic conditions.

I. Any other relief fit in the context of the case be granted.

4. This Commission issued notices to (1) the Secretary (Health), Secretariat, Porvorim – Goa and (2) the Dean (Goa Medical College & Hospitals, Bambolim – Goa. During the pendency of this proceeding, the Respondent no.1/Dean Goa Medical College was called upon to furnish details of beds available in various Departments and Statistics relating to number of patients seeking admission so that clear picture of the patients seeking admission in the Hospital can be ascertained. The Respondent No.2/Secretary (Health) was also directed to submit his reply indicating therein the steps taken by the Government to increase the bed capacity of Goa Medical College. In pursuance to the directions of this Commission, the Respondents have filed a detailed reply. The Respondents have denied all the allegations made by the Complainants. It is stated by the Respondents that in keeping in mind the fundamental rights of the citizens of India, the doctors at Goa Medical College focus on providing medical services to the patients who come to Goa Medical College irrespective of whether they are from within the State or outside the State. The Respondents have further stated that accommodating patients on the floor and/or on the trolley in the absence of beds in the ward does not amount to negligence. The Respondents have also given the details about the availability of wheel chairs and stretchers in various departments of the Goa Medical College.

5. It is the grievance of the Complainants that the patients are made to sleep on the floor in unhygienic conditions at Goa Medical College & Hospital in violation of their basic human rights. We do not find any force in this grievance of the Complainants. It is the contention of the Respondents that accommodating patients on floor and/or trolley in absence of beds in the wards does not amount to violation of human rights of the patients. In support of this contention, the Respondents have placed reliance on a decision of the **Hon'ble Supreme Court of India** in the case of **PaschimBangalKhetMazdoorSamity of ORS v/s State of Bengal and ANR** has observed as follows:

“The Constitution envisages the establishment of a welfare state at the federal level as well as at the state level. In a welfare state the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state.

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The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government Hospitals run by the States and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government Hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21. In the present case there was breach of the said right of Hakim Seikh guaranteed under Article 21 when he was denied treatment at the various Government hospitals which were approached even though his condition was very serious at that time and he was in need of immediate medical attention. Since the said denial of the right of Hakim Seikh guaranteed under Article 21 was by officers of the State in hospitals run by the State, the State cannot avoid its responsibility for such denial of the constitutional right of Hakim Seikh. In respect of the deprivation of the constitutional rights guaranteed under Part III of the Constitution, the position is well settled that adequate compensation can be awarded by the court for such violation by way of redress in proceedings under Article 32 and 226 of the Constitution. (See :RudalSah v. State of Bihar, 1983 (3) SCR 508 NilabatiBehara V. State of Orissa. 1993 (2) SCC 746 : Consumer Education and Research Centre v. Union of India, 1995 (3) SCC 42). Hakim Seikh should, therefore, be suitably compensated for the breach of his right guaranteed under Article 21 of the Constitution. Having regard to the facts and circumstances of the case, we fix the amount of such compensation at Rs.25,000/-. A sum of Rs.15,000/- was directed to be paid to Hakim Seikh as interim compensation under the orders of this Court dated April 22, 1994. The balance amount should be paid by respondent No.1 to Hakim Seikh within one month."

"We may now come to the remedial measures to rule out occurrence of such incidents in future and to ensure immediate medical attention and treatment to persons in real need. The Committee has made the following recommendations in this regards:-

- (i) The Primary Health Centres should attend the patients and give proper medical aid if equipped.*
- (ii) At the hospitals the Emergency Medical Officers in consultation with the Specialist concerned on duty in the Emergency Department should admit a patient whose condition is moribund/serious. If necessary the patient concerned may be kept on the floor or on the trolley beds and then loan can*

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be taken from the cold ward. Subsequent necessary adjustment should be made by the hospital authorities by way of transfer/discharge.

- (iii) *A Central Bed Bureau should be set up which should be equipped with wireless or other communication facilities to find out where a particular emergency patient can be accommodated when a particular hospital finds itself absolutely helpless to admit a patient because of physical limitations. In such cases the hospital concerned should contact immediately the Central Bed Bureau which will communicate with the other hospitals and decide in which hospital an emergency moribund/serious patient is to be admitted.*
- (iv) *Some casualty hospitals or Traumatology Units should be set up at some points on regional basis.*
- (v) *The intermediate group of hospitals, viz., the district, the sub-division and the State General Hospitals should be upgraded so that a patient in a serious condition may get treatment locally."*

It is further observed by the Hon'ble Supreme Court in the case of **PaschimBangalKhetMazdoorSamity of ORS v/s State of Bengal and ANR** as follows:

"It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused, this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. (See :Khatri (II) v. State of Bihar, 1981 (1) SCC 627 at p. 631). The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services, the said constitutional obligation of the State has to be kept in view. It is necessary that a time-bound plan for providing these services should be chalked out keeping in view the recommendations of the Committee as well as the requirements for ensuring availability of proper medical services in this regard as indicated by us and steps should be taken to implement the same. The State of West Bengal alone is a party to these

proceedings. Other States, though not parties, should also take necessary steps in the light of the recommendations made by the Committee, the directions contained in the Memorandum of the Government of West Bengal dated August 22, 1995 and the further directions given herein."

6. The grievances made by the Complainants are general in nature. The Complainants have not sighted any specific instance of violation of human rights of any patient/patients. The Respondents have stated that at Goa Medical College there are clear cut instructions to all that the patients who are not critical/serious or are recovering and not likely to require special medical attention may be shifted to the cold wards. It is also stated that in the on the floor on a mattress. It is also stated that arrangements are also made to procure camp cots for wards facing shortage of beds. It is thus apparent that the Dean at Goa Medical College & Hospital is taking appropriate steps to give proper treatment to the patients within the limited resources available to him. It appears that there are shortage of beds at Goa Medical College for which appropriate steps are required to be taken by the State government to procure sufficient number of beds to fulfil the requirement of the patients. We hope that the State Government shall take appropriate steps in this regard and increase the number of beds and other infrastructural facilities for better treatment to the patients, keeping in mind the observations made by the Hon'ble Supreme Court in case of **PaschimBangalKhetMazdoorSamity of ORS v/s State of Bengal and ANR** (Supra).

With the above observations, the proceeding is disposed off.

Proceeding No. 45/2015

This case had been disposed off on 10/04/2017

Ms. Suzana De Souza, Center Coordinator, Child Line, Caritas-Goa, Instituto Nasa Senhora de Piedade, D.B. Marg, Nr. Hotel Mandovi, Panaji-Goa, has approached this Commission alleging that Master Christopher Lakra (Lakda), a tribal child was stripped naked and was physically assaulted. It is stated that the Childline reported all the facts to Mapusa Police on 20/01/2015 but the Police have not taken action against the persons who assaulted the minor boy and stripped him naked and tied his hands.

2. Brief facts as narrated by the Complainant in her complaint are reproduced as below:-

- Master Christopher Lakra (Lakda) had gone to the house of the owner Ms. Maria (Trinidad) resident of Cuncheli, behind the playground, near Karaswaddo on 12/01/2015 around 9 p.m. as he usually used to watch TV.

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- On opening the house he called out "Aunty" but since there was no reply he sat in front of the TV and started listening to songs from his mobile.
- The lights of the sitting room were ON. The child also mentioned that persons namely Sonu, Raju and another man whom he could not identify, entered the house and started hitting him brutally and tied his hands with a yellow nylon rope and dragged him out of the living room and beat him again and stripped him naked and brutally beat him and kicked him.
- Later the owner's brother came who asked to untie him and gave him two slaps. Later on the owner Maria came and slapped him and asked to put on his clothes back on as her daughter was there. The child Christopher Lakra was asked to wear his own underwear and the child did so.
- Later the Mapusa police helpline 100 PCR was called and without any inquiry the police personnel slapped him and asked him "where is the money?" The child was unaware of any money that was missing. He reported that he had only Rs.50 in his pocket which his father had given him, which was also taken away by Raju.
- He was then taken to the police station and Ms. Maria filed a complaint against the child which was not explained to the child or the parents. Later he was taken to the District hospital Mapusa for medical examination and lodged at ApnaGhar as a case of child in conflict with law was registered against him and he was produced before JJB.
- Ms. Maria demanded Rs.5000/- to get the child back from ApnaGhar and the said amount was paid to her, yet the child was not released. Then she demanded 10,000/- more to release the child from ApnaGhar.
- Childline reported all the facts to Mapusa Police on 20th January and still no action have been taken against the persons who assaulted the minor boy, stripped naked and lodged a false complaint against the boy.

3. Taking cognizance of the complaint, this Commission issued notices to 1) The Police Inspector, Women Police Station, Panaji-Goa, 2) The Police Inspector, Mapusa Police Station, Mapusa-Goa and 3) The Superintendent of Police (North), Porvorim-Goa. In pursuance to the notices, the Respondents filed separate replies denying the allegations made by the Complainant. It is the case of the Respondents that on 13/01/2015 at 00.05 hrs. a phone call was received from PCR Panaji informing that theft had taken place in the house near ground at CuchelimMapusa. Immediately on receipt of information PSI H. Raut Desai and staff left to verify the fact. At 00.45 hrs. PSI H. Raut Desai and staff returned to the Police Station and reported that the place in question i.e. house of Maria Trindade at Cuchelim was visited by Police where one boy was caught by people gathered at the place and it was alleged that

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said boy was involved in house breaking and theft at the residence of Maria Trindade. It is further the case of the Respondents that the said boy was brought at the Police Station and disclosed his name as Christopher Lakad. The Respondents have also stated that Mrs. Maria Trindade r/o KhalapwadoCuchelim also came to the Mapusa Police Station and lodged her complaint to the effect that on 12/01/2015 at around 21.00 hrs. boy by name Christopher Lakad s/o Albert Lakad r/o KhalapwadoCuchelimMapusa entered into her house by forcibly pushing open the entrance door and decamped with cash of Rs.10,000/- (Rupees ten thousand only) from the cupboard inside the house. It is stated that an offence vide Mapusa P.S. Cr. No. 17/2015 U/s 457 380 of IPC was registered.

4. It is further the case of the Respondents that the said Christopher Lakad is juvenile. An intimation was given to his father for taking him in custody by the Police and after completing the formalities, the said Christopher Lakad was referred for medical examination and thereafter was produced before the Juvenile Justice Board Merces Goa for admission in ApnaGhar. The Respondents stated that neither the juvenile nor his family members have complained about assault on him before the Medical Officer, or when produced before the Principal Magistrate, Juvenile Justice Board Merces. Similarly, neither the juvenile nor his family members had complained about assault on the juvenile before the Investigation Officer during the investigation or before Juvenile Justice Board Merces. The Respondents have denied that the juvenile was assaulted by the Police or by any person in presence of the Police staff. The Respondents have stated that the action taken by the Police in respect of the complaint filed by Mrs. Maria Trindade against Christopher Lakad (Juvenile) is in accordance with the law. In short, according to the Respondents, the Police have not violated the human rights of the juvenile who was taken in custody in a criminal case and who was later referred to ApnaGharMerces after observing all legal formalities.

5. We have heard the Complainant and also heard learned Advocate K.L. Bhagat for the Respondents. We have also perused the entire records of this case.

6. The main grievance of the Complainant is that the juvenile Master Christopher Lakra (Lakda) was stripped naked and his hands were tied when he had gone to the house of Ms. Maria (Trinidad) on 12/01/2015 around 9 p.m. It is her grievance that although the matter was reported to the Police Inspector, Mapusa Police Station and Police Inspector, Women Police Station, Panaji, no action was taken against the persons who were involved in assaulting and torturing the juvenile Master Christopher Lakra (Lakda). The records indicate that the Police Inspector, Mapusa Police Station, had marked application dated 20/01/2015 received from Mrs.Suzana De Souza, Coordinator, Childline, for inquiry and report to PSI Harish Raut Desai. Accordingly, the said PSI Harish Raut Desai conducted an inquiry and found that there was no evidence to substantiate the allegations made by the Complainant.

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The records further indicate that the Complainant had also filed a complaint before the Police Inspector, Women Police Station dated 25/02/2015 regarding the same incident. In respect of this complaint, Police Inspector, Women Police Station, Smt. Sudiksha Naik had conducted an inquiry and submitted an inquiry report wherein she had mentioned that there is no evidence to substantiate the allegations in the complaint of Suzana De Souza. She has further stated that there is no sufficient cause to proceed with the complaint as the same is devoid of any merit. Admittedly, the victim in this case is a juvenile. The Women Police Station, Panaji-Goa, is designated as the Special Juvenile Police Unit.

7. A bare reading of the complaint dated 20/01/2015 filed by the Complainant before the Mapusa Police Station and the complaint dated 25/02/2015 filed by the Complainant before the Police Inspector, Women Police Station, prima facie discloses commission of offences of "wrongful confinement" and "voluntarily causing hurt" punishable u/s 342 and 323 of the Indian Penal Code, respectively. The offence u/s 342 of I.P.C. is a cognizable offence. It is apparent that the Mapusa Police as well as the Women Police Station, Panaji-Goa, did not carry out investigation in a fair and proper manner. The investigation of this case by the Police, in our considered opinion smacks malafide. Neither Mapusa Police nor the Women Police Station, Panaji, registered First Information Report against the persons who were involved in wrongfully confining and assaulting the juvenile Master Christopher Lakra (Lakad). Admittedly, the offences have taken place within the jurisdiction of Mapusa Police Station.

8. In the facts and circumstances of this case, we are of the view that the Mapusa Police ought to have registered First Information Report against the persons who were involved in committing the offences against the juvenile Master Christopher Lakra (Lakad). The conclusions drawn by the Police are totally unwarranted and unjustified. The Police have no powers to close the matter on the ground that there is no sufficient evidence against the accused involved in the matter, once it is found that the complaint reveals cognizable offence/offences. In this case as pointed out above, there is prima facie evidence on record that the cognizable offence/offences have taken place. Non-registration of FIR is a clear infringement of the fundamental right of the victim boy as guaranteed under Article 21 of the Constitution of India and also violates the basic human rights of the victim.

9. In the case reported in **(2014) 2 Supreme Court Cases 1 (Lalita Kumari, Petitioner v/s Government of Uttar Pradesh & Others)** the Hon'ble Supreme Court has held *that registration of FIR is mandatory u/s 154 of Cr.PC if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. This is general rule and must be strictly complied with.*

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10. We are satisfied that the Police have committed gross illegalities by not registering FIR against the persons who were involved in the offences against the juvenile Mater Christopher Lakra (Lakda) and have failed to comply with directives issued by the Hon'ble Supreme Court of India. We express our displeasure about the manner in which this case has been handled by the Police in utter violation of basic human rights of the victim. We therefore make the following recommendations:-

- 1) *The Police Inspector, Mapusa Police Station, shall register First Information Report on the basis of the complaint filed by the Complainant Ms.Suzana De Souza dated 20/01/2015 and thereafter shall proceed to take further steps in the matter in accordance with law.*
- 2) *The Director General of Police, Panaji – Goa shall initiate appropriate disciplinary action against the defaulting Police Officials.*
- 3) *The State of Goa, through its Chief Secretary, Secretariat, Porvorim-Goa, shall pay compensation of Rs.5,000/- (Rupees five thousand only) to the victim boy/Master Christopher Lakra (Lakad), within a period of thirty days.*

Proceeding No. 41/2015

This case had been disposed off on 09/02/2017.

By Order No. DA/Admn/45-2/2013-2014/TR-2694/68 dated 30/12/2013 issued by the Director of Accounts, Panaji – Goa, the Complainant/Smt. Aruna M. Phadte was posted as Dy. Director of Accounts on deputation with Entertainment Society of Goa, Panaji – Goa. The Complainant resumed her duties on 01/01/2014 as Dy. Director of Accounts/Manager Accounts of Entertainment Society of Goa. The Complainant applied for Child Care Leave w.e.f. 04/03/2014 to 22/08/2014 which was sanctioned by the Chief Executive Officer, Entertainment Society of Goa.

2. The grievance of the Complainant is that the Chief Executive Officer and the General Manager, Entertainment Society of Goa withheld her salary for the period of her Child Care Leave from April, 2014 till August, 2014 without her fault.

3. Taking cognizance of the complaint, this Commission issued notices to (1) General Manager, Entertainment Society of Goa and (2) the Director of Accounts, Panaji – Goa. In pursuance of the notice, the Respondent No.1/General Manager, Entertainment Society of Goa filed reply dated 06/01/2016. It is stated by Respondent No.1 that the Complainant applied for Child Care Leave from 04/03/2014 to 22/08/2014. Her leave was

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sanctioned by Entertainment Society of Goa. The Entertainment Society of Goa requested the Director of Accounts to post a substitute during the leave period of the Complainant. However, no substitute was sent to the Entertainment Society of Goa. Thereafter, the Chief Executive Officer issued Relieving Order to the Complainant by letter dated 28/03/2014 and by Order dated 08/04/2014, the Complainant was relieved from Entertainment Society of Goa.

4. It is further the case of the Respondent No.1 that the Director of Accounts sought for clarification from Entertainment Society of Goa as to how the Complainant was relieved without Government approval and how Child Care Leave was sanctioned to the Complainant when it was strictly prohibited due to ensuing Lok Sabha Elections. The Respondent No.1 has also stated that the matter was placed before Executive Council as the matter was involving administrative difficulties in releasing salary of the Complainant. It is also stated that there was no sitting of the Executive Council for about nine months and as such the matter was kept on hold. After the decision of the Chairman, Executive Council salary which was kept on hold was released.

5. This matter came up for final hearing on 11/01/2017 on which date the Respondents did not remain present. It was noted that the Respondents did not remain present on several occasions and opportunities were given to the Respondents including final opportunities by making it clear that the matter shall proceed in their absence in case the Respondents do not remain present on the next date of hearing i.e. on 09/02/2017. It is regretted to note that inspite of giving several opportunities the Respondents did not remain present on 09/02/2017.

6. We have heard the Learned Advocate Shri G. Sambhari for the Complainant. We have also perused the records of this case.

7. There is no dispute that the salary of the Complainant for the period from 04/03/2014 to 22/08/2014 was kept on hold by the Respondent No.1 and the same was released on 29/10/2015. Thus it is apparent that there was a delay of about 20 months in making payment of the salary of the Complainant. Therefore, the only question for our determination is whether this inordinate delay has been satisfactorily explained by Respondent No.1. A feeble attempt has been made by Respondent No.1 to justify the delay on a spacious plea that there was administrative difficulty in releasing the salary. It is also pleaded that there was no Executive Council Meeting for almost 9 months and

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hence due to non-sitting of Executive Council the matter was kept on hold. We are unable to persuade ourselves about the explanation sought to be given by Respondent No.1 which has no legs to stand. The justification given by Respondent No.1 to justify the inordinate delay cannot be accepted. The Respondent No.1 has acted in a very irresponsible manner. There was nothing to prevent Respondent No.1 from holding emergency or extraordinary meeting of the Executive Council to discuss the important issue of releasing the salary of the Complainant which has not been done for reasons best known to Respondent No.1. This inordinate delay in releasing the salary of the Complainant undoubtedly amounts to infringement of fundamental rights of the Complainant as guaranteed under Article 21 of the Constitution of India and also amounts to violation of basic human rights of the Complainant.

8. In the case of KapilaHingorani V/s State of Bihar reported in AIR 2005 S.C 980 Supreme Court held "***Where employees of Public Sector undertaking were not paid salaries for years and were starving and State bound to protect human rights and fundamental rights directed to deposit sum of Rupees 125.50 crores for payment of arrears of salaries***".

9. In the case of **Prof. Devendra Mishra v/s University of Delhi &Ors.the Delhi High Court in W.P. (C.) No.5075/2207** delivered on **16/02/2010** has observed as follows:

"A salaried person by and large depends upon income from salary for his sustenance and sustenance of his family and if he is not paid salary despite working for a long period, it will affect his life and liberty? This, in the opinion of this Court amounts to denial of basic human rights of a citizen and would also amount to deprivation of his life and liberty guaranteed to every citizen under Article 21 of the Constitution of India."

10. The justification given by the Respondent No.1 for delay in payment of salary to the Complainant does not appeal to our mind at all. It appears that the delay in payment of salary was intentional and smacks malafide. The Complainant has to undergo mental agony and also has suffered heavy financial losses on account of delay in payment of her salary. We therefore feel that this is an appropriate case to recommend reasonable compensation to the Complainant on account of hardships she has to suffer due to inordinate delay in payment of her salaries. We therefore make the following recommendation:

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The General Manager, Entertainment Society of Goa, Panaji - Goa shall pay compensation of Rs.10,000/- (Rupees ten thousand only) to the Complainant, Smt. Aruna Phadte within a period of 30 days. The Respondent No.1 shall be at liberty to recover the said amount from the erring Officials after fixing the responsibilities

Proceeding No. 173/2017

This case had been disposed off on 29/01/2018

Taking suo-motu cognizance of the newspaper report which appeared in the local daily 'Herald' dated 03/07/2017, under the caption, "Has Goa Medical College and hospital gone to the dogs?", this Commission directed 1) the Secretary (Health), Secretariat, Porvorim-Goa and 2) the Dean, Goa Medical College, Bambolim-Goa, to submit a detailed report to this Commission within four weeks.

2. In pursuance to the notices of this Commission, the Dean, Goa Medical College, Bambolim-Goa/Respondent No. 2, filed a report dated 18/07/2017 along with several annexures. The Dean, Goa Medical College, Bambolim-Goa, in its report has stated that the canteen contractors have been directed to maintain hygiene in the kitchen. It is also stated that he has instructed the I/c of Security staff to prevent the stray dogs and cattle from entering the corridors. The Medical Superintendent has been directed to monitor the same.

3. We have perused the records of this case.

4. In the case of 'People for Elimination of Stray... vs State of Goa And Ors., the Bombay High Court by judgment dated 07/01/2003 has held as follows:-

"8. The menace of dogs and particularly of stray dogs is going beyond control. Stray dogs are seen in large numbers in every village, every city or town and in every locality of cities or towns, at railway stations, at markets or market places, at S.T. bus stands, at railway stations and every place where there is human habitation. They are also found in large number at, in or around temples, churches, or other places of worship, at playgrounds, gardens and beaches. These dogs run after pedestrians, run after vehicles or bicycles, after children, after the aged and infirm. They come from nowhere. They come suddenly, and vanish with speed of lightening."

"11. The agony and suffering of a victim of dog biting are only to be experienced or seen. The risk of a dog bite is fatal. In fact a simple natural death is preferable to the one that is consequence of being bitten by a

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Rabies suffering dog. The victim becomes and behaves like a dog himself with a strong impulse to bite any one coming in his way or opposing him. Even the dearest and the nearest are dreadfully afraid of going to or approaching such a victim. There is no cure in such a situation and such a patient has to be confined till he dies."

"12. The agony of the victims who are luckily not bitten by a Rabies affected dog are not any way less. He has to undergo a treatment of taking 14 injections all of which are to be given in the stomach without any break. May be that the number of injections has now been reduced to seven or nine but the agony is the same. If there is any break in the treatment then the same course has to be repeated again adding to the suffering."

"30. So far as the provisions of Goa Municipalities Act are concerned, our attention was drawn to section 278, the heading of which is "provision as to dogs" and sub-section (4) provides that any dog which is not claimed within the period specified in sub-section (3) or any dog the owner of which has failed to comply with the provision of sub-section (2) within the specified period, may be sold or destroyed by the Chief Officer. It also provides that any dog which is found to be rabid may be destroyed at any time. Therefore, Counsel for the petitioners contended that looking to the provisions of the Prevention of Cruelty to Animals Act and particularly, to the provisions of section 278 of the Goa Municipalities Act, destruction of stray dogs was permissible. Similar provisions is also to be found in the Bombay Municipal Corporation Act, 1888, section 191-A which was substituted for the original in 1995 by an amendment and sections 191-B, 191-BA to 191-C cover this subject, namely about licensing and taxing the dogs. Sub-section (3) of section 191-B provides that any dog which was no number ticket so attached or suspended or is kept in contravention of any of the conditions specified in the licence shall be presumed to be a dog in respect of which no licence has been granted. Section 191-BA provides that if any dogs are found or reported to be a source of nuisance to the residents of any building or locality, the Commissioner or any person duly authorised by him may enter any premises for the purposes of seizing such dogs. Sub-section (2) provides that any dog so seized shall be kept in municipal kennel and if nobody claims the dog within three days and satisfies that he is the owner of the dog, then the Commissioner is given powers to destroy the dog. Sub-section (4) of

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section 191-BA also gives power to Commissioner to destroy a stray dog and the most important provision is under section 191-C which specifically gives protection to all persons acting in good faith in pursuance of the provisions of section 191-B or section 191-BA from institution of any suit or prosecution against them for whatever is done by them under those Acts.”

“31. The Maharashtra Municipalities Act, 1965 also makes a similar provision giving powers to the Chief Officer to sell or destroy the dog if nobody comes to claim it within three days. Sub-section (2) of section 293 empowers the Chief Officer to take possession of any dog found wandering unmuzzled in any public street and subject to the provisions of sub-section (3) or (4) cause it to be sold or destroyed. Sub-section (5) also empowers the Chief Officer to destroy or cause to be destroyed or confine or cause to be confined any dog or animal suffering from rabies or reasonably suspected to be suffering from rabies or bitten by any dog or other animal suffering or suspected as aforesaid. It will, therefore, be clear that the Goa Municipalities Act, the Bombay Municipal Corporation Act and the Maharashtra Municipalities Act do empower the local bodies to eliminate dogs particularly stray dogs and dogs suffering from rabies. When these provisions are taken and read together with the provisions of the Prevention of Cruelty to Animals Act, 1960, it will be clear that the legislature, i.e. Central as well as the State Legislature, in its wisdom thought it necessary to order elimination of stray dogs.”

5. The records indicate that the Dean, Goa Medical College, Bambolim-Goa, has taken appropriate steps to reduce the menace of stray dogs causing nuisance in the Goa Medical College premises. The Medical Superintendent, Goa Medical College, Bambolim, by its note dated 03/07/2017 sent to P.S. to Minister of Health, Government of Goa, Secretariat, Porvorim-Goa, has stated that security has been strictly warned to disallow stray dogs and stray cattle entering the hospital premises. It is also stated that the office of the Medical Superintendent has sent letters to Animal Rescue Squad (NGO) and the Corporation of the City of Panaji has been instructed not to keep garbage in corridors in open bags but in closed bins.

In the facts and the circumstances of this case, we make the following recommendations:-

- 1. The Commissioner, Corporation of the City of Panaji, Panaji, shall take appropriate steps in relation to stray dogs in accordance with the provisions of Goa Municipalities Act, keeping in mind the observations made by the Bombay High Court mentioned above.*
- 2. The Medical Superintendent, Goa Medical College, Bambolim-Goa, shall ensure that the garbage is lifted by the Corporation of the City of Panaji from time to time.*

This Annual Report for the year 2017-2018 is presented to the State Government as per Section 28 (1) of The Protection of Human Rights Act, 1993.

*Sd/-
(A. D. Salkar)
Member*

Dated: 25/03/2019

Place: Panaji – Goa