

**GOA HUMAN RIGHTS COMMISSION
PANAJI – GOA**

**ANNUAL REPORT
2018 – 2019**

Introduction

This is the eighth Annual Report of the State Human Rights Commission for the year 2018-2019.

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;*

- (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. 302.81 lakhs (Rupees three hundred two lakhs and eighty one thousand only) was made. The Commission spent an amount of Rs. 249.84 lakhs (Rupees two hundred forty nine lakhs and eighty 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 2018-2019, 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 290 complaints. The Commission disposed off 204 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:

- **Proceeding No. 218/2014:**

- This case had been disposed off on 06/06/2018

The Complainant had approached this Commission alleging that there is environmental pollution due to Hotel "Royale" situated at Assagao. It was alleged that music is played early in the morning from 7.00 a.m. onwards till 7.30 p.m. non-stop at swimming pool bar with three speakers attached to the instrumental music player. She further alleged that most of the guests arrive in groups of about 100 to 500 persons per trip and they are offered full day entertainment package with DJ music and use of swimming pool. It was further alleged that exhaust fans are placed in Cafeteria/Kitchen which makes loud sound and level of noise is above 64.5%(A). It was also alleged that these problems are brought to the notice of all Government Departments such as Anjuna Police Station, Pollution Control Board, Dy. Collector and Village Panchayat without any positive results.

2. Taking cognizance of the complaint, this Commission had issued notices to (1) the Police Inspector, Anjuna Police Station, Bardez - Goa (Respondent No.1), (2) Superintendent of Police, (North), Porvorim – Goa (Respondent No.2), (3) Member Secretary, Goa State Pollution Control Board, Panaji – Goa (Respondent No.3), Health Officer, Primary Health Centre, Siolim, Bardez – Goa (Respondent No.4) and (5) Chief Secretary, Government of Goa, Secretariat, Porvorim – Goa (Respondent No.5).

3. In pursuance to the notices, Respondent No.1(Anjuna Police Station), Respondent No.3, (Member Secretary, Goa State Pollution Control Board and Respondent No.4 (Health Officer, Primary Health Centre, Siolim, Bardez – Goa) had filed their respective replies. The Respondent No.2 and 5 had adopted the reply filed by Respondent No.1.

4. The case of the Respondent No.1, 2 and 5 in brief was as follows:

These Respondents had generally denied the case of the Complainant. It was stated that the house of the Complainant is close to the above referred hotel. It was stated that whenever complaints of loud music were received at the Police Station from the present Complainant against the said hotel, the Staff were detailed to verify the information, but no loud music was noticed by the Police Staff.

5. These Respondents had further stated that the Complainant was working as Desk Attendant at Hotel Royale, Assagao from 1st April, 2012. She was not regular in her services and hence the Management of the Hotel terminated her services on 02/12/2013. It was stated that on account of the above issue, the Complainant was

having grudge on the above hotel and hence the Complainant and her husband were filing complaints against the above Management of the hotel to various Authorities.

6. The case of the Respondent No.3 was as follows:

According to this Respondent, the present complaint is not maintainable against this Respondent as no reliefs were prayed for by the Complainant against this Respondent. It was specifically the case of this Respondent that an application dated 05/02/2012 was received by the Board from M/s Royale, Assagao for granting consent to operate the unit under Water Act. The Board granted consent to operate the Unit on 07/09/2012 which was valid upto 05/02/2015. The inspection of the Unit was carried out by Board Officials on 28/07/2015 where final treated water sample was collected for analysis and Analysis Report showed that all the parameters were within permissible limits. Another inspection of the Unit was conducted by the Board Officials in the presence of the representative of the Unit and in presence of the husband of the Complainant. The report of Analysis was submitted to the Office as the noise level exceeded permissible limits for residential zone and the sample collected of well water also indicated the presence of e-coli and the same was found not fit for human consumption. The Board informed the Director of Health Services, Panaji to take necessary action under the Health Act against the Unit M/s Royale, Assagao, Bardez – Goa for polluting the well water. It was further stated that the Board Officials again inspected the Unit on 28/10/2015 and the report indicated that the noise level recorded during the operation of exhaust fans and operation of diesel generator exceeded the permissible noise level for residential zone and the well water sample also indicated the presence of e-coli. It was also stated that this Respondent through its Officials are monitoring the functioning of the Unit periodically.

7. The case of the Respondent No.4 as set out in its reply was as follows:

This Respondent received a letter on 23/12/2015 from Anjuna Police Station about the complaint received from ShriSantosh L. Naik alleging that due to illegal septic tank, the well got polluted and smells of stinks of the gutters and STP causing health hazards. This Respondent conducted site inspection on the same day. The samples of water were obtained from the well on 02/12/2015 and the same were tested by Government approved laboratory. The reports did not show any e/o coli. This Respondent has also stated that the test report of STP water was done by Goa Pollution Control Board on 03/11/2016 which also did not show e/o coli and the report mentioned that all the parameters were within normal limits. It is also stated

that on inspection of the suit premises, no foul smell/odour from the STP to the surrounding area was noticed. This Respondent received a letter from Director of Health Services on 12/01/2016 regarding noise and water pollution along with sound level lock statics and accordingly this Respondent issued notice to the Royale, AssagaoHotel regarding noise and water pollution on 04/02/2016 u/s 37 of the Goa Public Health Act.

8. We had heard Adv. S. Pinto for the Complainant, Adv. D. G. Shet for Respondent No.1, 2 and 5, and Spl. P. P. Shri S. B. Faria on behalf of Respondent No.3. We had also perused the entire records of this case. On the basis of the records, it was apparent that the concerned authorities had taken appropriate action in respect of the complaint filed by the Complainant against the Management of the said Royale hotel at Assagao. It was pertinent to note that during the pendency of this proceeding, when this case came up for hearing on 21/11/2016, this Commission directed the Respondent No.1, 2 and 3 to carry out surprise inspections from time to time and submit reports before this Commission. The Respondent No.1 and 3 had filed surprise inspection reports. It was stated by Respondent No.1 that as per the directions of this Commission surprise visit was carried out at the Royale, Assagao in order to carry out surprise inspection. It was stated that during the visit the Respondent No.1 conducted inspection of swimming pool, restaurant, STP plant and kitchen exhaust but no sound pollution/violation was found at the said place. It was stated by Respondent No.3 that the Officials conducted surprise inspection of the Unit on 20/02/2017 at 10.30 p.m. onward during the night hours and submitted reports. The Board Officials also conducted surprise inspection of the Unit on 21/02/2017 at 11.00 a.m. onwards and submitted reports. The said Inspection Reports were on record.

In the facts and the circumstances of this case, this Commission made the following recommendations:

- 1. The Goa Pollution Control Board shall carry out surprise inspections from time to time of the hotel M/s Royale, Assagao to ensure that there is no violation of noise (Regulation and Control of Pollution) Rules, 2000.*
- 2. The Goa Pollution Control Board shall direct the Unit to cover the STP aeration tank and provide a vent pipe so as to control the foul smell from emanating to nearby residences.*
- 3. The Goa Pollution Control Board may carry out performance evaluation of the hotel M/s Royale, Assagao.*

4. *The Health Officer, Primary Health Centre, Siolim shall carry out surprise inspections from time to time of the hotel M/s Royale, Assagao to ensure that there is no violation of Goa Public Health Act.*

Proceeding No. 80/2016:

This case has been disposed off on 07/06/2018.

The Complainants have their residential flats in a project called "Sunshine Park" situated at BamonVaddo, Candolim, Bardez-Goa. The residential complex in which the Complainants are having their flats were built by Mr. Aubrey D'Souza, resident of E-90 and 90-A ,TivaiWaddo, Calangute, Bardez-Goa. The Complainants have stated that the said Mr. Aubrey D'Souza has entered into a Leave and License Agreement with Mr.Vinay Pal Singh, Sunshine Park, 21/1, BambonVaddo, Candolim, Bardez-Goa to manage the rest of the dwelling units known as Rent Back Facility. The said Mr. Vijay Pal Singh is running business of hotel, restaurant, dance bar/disco causing noise pollution throughout day and night to all the residents of project Sunshine Park.

2. The Complainants had alleged that the General Manager, Mr.NarendraPatkar acting on the instructions of Mr. Vijay Pal Singh has cut off water supply by removing the pump and associated fittings of the buildings of the Complainants on 4th March 2016. The Complainants had further stated that they had filed complaints to the Health Department and Candolim Village Panchayat and the responses are awaited regarding the disconnection of ground water supply, but till date no steps have been taken by the authorities. It was further stated the Complainant No. 1, Ms. Cheryl Gale Gillett has filed a number of complaints complaining to the Police Authorities that the said Vijay Pal Sigh was misusing the project with noise pollution and is involved in unauthorised and inhuman activity in the project. The Complainants had also stated that the said Mr. Vijay Pal Singh has cut off the water supply of the Complainants and the Concerned Authorities have not taken any steps to stop the saidMr. Vijay Pal Singh of his activities of leaving the sewage of the project on open grounds.

3. Taking cognizance of the complaint filed by the Complainants, this Commission had issued notices to 1) The Police Inspector, Calangute Police Station, Calangute, Bardez-Goa/Respondent No. 1, 2) The Superintendent of Police (North), Porvorim, Bardez-Goa/ Respondent No. 2, 3) The Secretary, Village Panchayat of Candolim,

Candolim, Bardez-Goa/ Respondent No. 3 and 4) The Director, Directorate of Health Services, Campal, Panaji-Goa/Respondent No. 4. In pursuance to the notices, the Respondents had filed their respective replies separately, denying the allegations made against them.

4. The Respondent No. 1 and 2 in their respective replies had stated amongst other things, that the inquiry conducted so far revealed that there was a dispute between the residents of Sunshine Park and the operator of Royal Mirage Beach Resort over the issue of cutting the water supply to the residential flats of the residents of Sunshine Park and there was every possibility of breach of peace in the locality resulting in commission of serious cognizable offences in the locality if no preventive action was taken against both the parties. It was also stated that the proceedings under Section 107 of Cr.P.C. and under Section 145 of Cr.P.C. have been submitted against both the parties in the Court of Sub-Divisional Magistrate, Mapusa-Goa. According to these Respondents, the Calangute Police had taken timely action upon the complaints received from the Complainants.

5. The Respondent No. 3 had taken a plea that all the complaints filed by the Complainants did not fall within the jurisdiction of this Authority and this Authority had no jurisdiction to try, entertain and decide the present case. The Respondent No. 3 had stated that the Respondent No. 3 had taken cognizance of the complaints of the Complainants and had issued notice to the said Mr. Vijay Pal Singh for site inspection. This Respondent had also stated that the complaints of noise pollution and sewage are not within the jurisdiction of this Respondent.

5. The Respondent No. 4 in its reply had stated that by taking cognizance of the complaint of the Complainants this Respondent conducted site inspection of the premises on 26/02/2016 in the presence of Village Panchayat Member and upon inspection, it was noticed that the septic tank and the soak pit of the Royal Mirage Resort and co-owner of Sunshine Park Teles Village, BamonVaddo, Candolim was overflowing in open space and stagnating it. It was also found that the said place was breeding grounds for mosquitoes. This Respondent has stated that on the same day, notice was served u/s 40(1) of the Goa Public Health Act, 1985 and the rules framed there under on the said Resort directing the resort owner to take action to abate the nuisance within a period of 15 days from the date of receipt of the said notice failing which, action deemed fit shall be initiated against him as per the provisions of the said Act including disconnection of water and electricity to the said resort. It was

furtherstated that on 11/04/2016, the site was again inspected by this Respondent and it was noticed that there was no overflow of the septic tank and soak pit.

7. We had heard the parties. We had also perused the records of this case. The records clearly indicate that there was a dispute between the owners of the residential flats in the project known as Sunshine Park and the said Mr. Aubrey D'Souza, which is purely a dispute of civil in nature. The main grievance of the Complainants was against the said Mr. Aubrey D'Souza, for creating nuisance in the residential complex. This Commission had no jurisdiction to deal with the said dispute which had arisen between the Complainants and the said Mr. Aubrey D'Souza. In any event, all the Respondents who are public authorities had taken appropriate action in the matter of complaints filed before them in accordance with law.

In view of the above, we did not find any merit in the present complaint filed by the Complainants. Accordingly the proceeding was disposed off.

Proceeding No. 23/2018:

This case had been disposed off on 16/08/2018.

This complaint had been filed by the Complainant praying therein that the Respondents be directed to rehabilitate the Complainant and his family by constructing a residential house for the Complainant by following the process of law.

2. Taking cognizance of the complaint, this Commission had called for the report from the Executive Engineer, WD-VII (NH), PWD, Panaji – Goa(Respondent herein). Accordingly, the Respondent had filed its reply.

3. Heard both the Parties. We had also perused the records of this case.

4. It was the case of the Complainant that Land Acquisition Officer, PWD Cell, Altinho, Panaji acquired 950sq.mtrs. of land along with house structure in Survey No.118/7 which includes the property of the Complainant under New Survey No.118/7/A admeasuring area 682sq.mtrs. along with the house structure having plinth area of 162sq.mtrs. It was further the case of the Complainant that on 22/01/2018 the Complainant was served with letter dated 22/01/2018 with title “Possession Certificate” whereby the Complainant is intimated that possession has been taken over on

22/01/2018. The Complainant had stated that such "Possession Certificate" is illegal and contrary to law. It was further stated by the Complainant that, thereafter, the Complainant received registered A/D Card on 24/01/2018 stating that Plot No.6 admeasuring 304sq.mtrs. situated in the property under Survey No.94/2 has been allotted to the Complainant towards rehabilitation and the Complainant was called upon to vacate the premises within 8 days from the receipt of the letter and that otherwise the Respondents will take action against the Complainant.

6. The Learned Advocate Shri A. Naik for the Complainant invited our attention to Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as the said Act of 2013 for short) and submitted that the Award passed on 06/09/2004 under the old Land Acquisition Act is deemed to have been lapsed, as the Complainant is still in actual possession of the acquired land. It was his contention that the present Land Acquisition proceeding is governed under said Act of 2013. On the contrary, the Learned Advocate ShriFalDessai for the Respondent had submitted that the Complainant had been paid compensation for the acquired land and the existing structure as per the Land Acquisition Act, 1894. It was also the contention of the Respondent that a developed plot admeasuring 304sq.mtrs. at Village Ella had been allotted to the Complainant on humanitarian ground as per the Affidavit filed before the Hon'ble High Court of Bombay at Goa Bench in Writ Petition No.368/2007 and as such the provisions of the said Act of 2013 did not apply to the present case.

7. The short question for determination before us was whether this Commission can deal with the question as to whether the present proceeding is governed under the old Land Acquisition Act, 1894 or whether the land acquisition proceeding is governed under the said Act of 2013. In our considered opinion this Commission couldn't deal with this question. This being the position, the complaint filed by the Complainant was liable to be rejected. Accordingly, the complaint was hereby rejected. Consequently, the order dated 16/11/2015 passed by this Commission in proceeding No.248/2014 directing the Respondents not to demolish the suit house till such time the Complainant is rehabilitated, stood revoked.

Proceeding No. 144/2013:

Proceeding No. 152/2013:

This case had been disposed off on 24/08/2018.

By this common order we proposed to dispose off both the proceedings mentioned above as the subject matter as well as the Parties were the same in both the proceedings.

2. In proceeding No.144/2013, the grievance of the Complainant was that the minor female child Ms. Siddhi aged 13 years was released by Child Welfare Committee/Respondent to her incapacitated family without conducting home study about the conditions of the family. It was further the grievance of the Complainant that the Child Welfare Committee has not been working in conformity with the Standard Rules as they did not call for Home study Report or draw a Care Plan.

3. The Respondent had denied the allegations levelled against the Child Welfare Committee, South. It was stated that the child Ms. Siddhi was released to her brother and aunt after obtaining undertaking from the brother and aunt. It was further stated that the Child Welfare Committee scrutinised all the files concerning the children in need of care and protection within their jurisdiction, in view of the PIL Writ Petition No.2/2010 which was disposed off vide order dated 05/011/2012 in terms of the minutes submitted before the Hon'ble High Court. One-Man Inquiry Committee was appointed under Mr. U. D. Kamat, Director of NRI Affairs to inquire into the allegations of irregularities committed by previous Child Welfare Committee. It was the case of the Respondent that the Child Welfare Committee, South Goa functions as a Bench of Magistrates conferred with power under Code of Criminal Procedure, 1973 as Judicial Magistrate of First Class. It was denied by the Respondent that Child Welfare Committee, South is transferring/releasing children without proper study and without consulting organisations involved in the issues related to children. The Respondent had specifically stated that the Complainant was finding fault with the Child Welfare Committee, South in releasing the child Siddhi to her brother Mr.Pradeep and aunt Ms.Leena when in fact it was the Complainant herself who was instrumental in releasing the child to the same brother when she was a Member of Child Welfare Committee, South in May, 2012.

4. The Complainant had filed her Affidavit-in-Evidence. She was cross-examined by the Respondent. The Respondent did not examine any witness in support of its case.

5. In proceeding No.152/2013, the case of the Complainant was that the child Ms.ManjuHuberi was released by Child Welfare Committee, South and was sent to Bangalore Government Home in violation of Children's Rights. It was the grievance of the Complainant that Child Welfare Committee, South is transferring/releasing children without proper study and without consulting organisations involved in issues related to children and also without considering the suggestions/reports made by the Concerned Organisations/people involved in the rescue, care, protection and rights issues of children.

6. It was the case of the Respondent that the child Ms.ManjuHuberi was transferred vide order dated 12/04/2013 after completion of her academic year in Std.VI so that her school year would not be wasted. The child was repatriated on 20/05/2013 and was accepted by the Superintendent, Children's Home for Girls on 21/05/2013 at Bangalore. The Child Welfare Committee, South had received a telephonic message from the Counsellor of the Bangalore Institute in the first week of July, 2013 stating that they wish to send Ms.Manju back to Goa as she was facing language problem to which the Child Welfare Committee, South agreed to accept her back but there was no response from CWC, Bangalore. The Respondent had denied the allegation made by the Complainant that the child was refused admission to ApnaGhar on 24/07/2013. The Respondent had further stated that the child Ms.ManjuHuberi's transfer order was passed upon a proper inquiry and after following due procedures and on interacting with the Counsellor, Superintendent-cum-Probation Officer, ApnaGhar and others involved with the said child, keeping in mind best interest of the child.

7. The Complainant had filed her Affidavit-in-Evidence. She was cross-examined by the Respondent. The Respondent did not examine any witness in support of its case.

8. We had heard both the Parties. We had also perused the entire records of this case.

9. The Learned Advocate Ms.Albertina Almeida submitted that it was necessary to issue guidelines to the Child Welfare Committees to follow proper procedure while releasing the children from the Protective Home. It was the contention of the Complainant that the Child Welfare Committee, South did not follow the proper procedure while releasing the said children from the Protective Home. On perusal of

the records, we found that the Respondent had taken proper care and caution while releasing the said children from Protective Home taking into consideration the interest of the said children. The Learned Advocate Ms. Mandrekar appearing on behalf of the Respondent invited our attention to Section 30 (iii) of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Rule 19 (iii) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (the said Act of 2015 and the said Model Rules, 2016 for short) and submitted that the said Act of 2015 and said Model Rules, 2016 deals with the procedure in respect of the children who are produced before the Child Welfare Committee. She had further submitted that the said Act and the said Rules were very broad in nature and there was no scope for adding anything in relation to the procedure which had been laid down under the said Act and the Rules. We had also gone through the provisions of the said Act of 2015 and the Rules, 2016 which deal with elaborate procedure regarding the functions and responsibilities of the Child Welfare Committees.

10. We hoped and trusted that the Child Welfare Committee shall take into consideration the provisions of the said Act of 2015 and Rules, 2016 as and when the children are produced before it.

With the above observations, the proceeding was disposed off.

Proceeding No. 262/2017:

This case had been disposed off on 20/09/2018.

The Complainant/Smt. Sushma Karapurkar was the mother of Shri Raya Karapurkar who was working as Lower Divisional Clerk in the office of Chief Town Planner, Government of Goa. This complaint had been filed by the Complainant against Shri Siddhant U. Shirodkar, Police Inspector, Panaji Police Station and Smt. Chandan Choudhary (IPS), Superintendent of Police (North), Porvorim, Bardez – Goa/Respondent.

2. Taking cognizance of the complaint, this Commission had issued notice to Smt. Chandan Choudhary (IPS), Superintendent of Police (North), Porvorim, Bardez – Goa/Respondent.

3. The Respondent/Superintendent of Police (North) in its reply had stated that one Mr. P. S. Nadkarni, retired Goa Government servant was

appointed as Inquiry Officer to conduct an inquiry in respect of disciplinary proceeding against the said Shri Raya Karapurkar. It was stated that Shri P. S. Nadkarni had conducted an inquiry and had submitted the Inquiry Report to the Town & Country Planning Department as per his findings.

4. The main grievance of the Complainant was that the Police Inspector, Panaji Police Station had not registered the First Information Report on the basis of the complaint filed by the Complainant on 21/10/2017 about the commission of cognizable offence against the said Shri P. S. Nadkarni.

5. This matter had come up for hearing on 18/04/2018 on which date the Complainant was present and the Respondent was not present. The matter was adjourned to 13/07/2018. On that day, i.e. on 13/07/2018, the son of the Complainant was present and the Respondent was not present. Final opportunity was given to the Respondent and the matter was adjourned for hearing on 07/08/2018 on which day also the Respondent did not appear in spite of giving final opportunity. The matter was heard in absence of the Respondent. The son of the Complainant argued on behalf of the Complainant. I had also perused the entire records of this case.

9. The records indicated that the Complainant/Smt. Sushma Karapurkar had filed a complaint dated 21/10/2017 to the Police Inspector, Panaji Police Station, Panaji – Goa against Shri P. S. Nadkarni, the Inquiry Officer, for having committed offences u/s 166, 167, 469 of IPC. I had gone through the said complaint dated 21/10/2017. In my opinion, prima facie no cognizable offence was revealed on the basis of the said complaint. The Complainant had stated that Shri Nadkarni dishonestly and with malafide intention sans resuming the halted inquiry with intent to cause inquiry to Raya Karapurkar mentally, emotionally and to harm the reputation of Shri Raya Karapurkar through forgery, initially disobeyed the directions under the Rules as per which he was to act to make a report, and thereafter the accused committed forgery by framing incorrect report/document as an inquiry report at the stage of Sub-Rule 12 itself even before opening defense evidence as envisaged under Sub-Rule 17 and submitted such forged report/framed document/forged document to the Town & Country Planning Department just few weeks back, spelling Raya Karapurkar guilty of charge, sans conducting any inquiry thereby causing injuries to Raya Karapurkar and his family members, causing grave mental distress and harmed the reputation of

Raya Karapurkar through committing said forgery. These allegations were vague in nature and as such it was not possible to come to a prima facie conclusion that any cognizable offence is made out. In any event, the Inquiry conducted by Shri P. S. Nadkarni is purely in the nature of service matter and do not fall within the purview of this Commission. Therefore, looking into this complaint from any angle, no case was made out for violation of human rights of the Complainant. The complaint was therefore liable to be rejected.

In view of the above observations, the proceeding was disposed off.

Proceeding No. 30/2013:

This case has been disposed off on 20/02/2019.

This was a complaint filed by the Complainant/Mr. Thomas Fernandes against Shri Danu Bogati, Police Sub-Inspector, ShriGajanMadar, Police Constable and ShriDevendraSawant, Police Constable who were attached to Verna Police Station at the relevant time of the alleged incident alleging violation of his human rights.

2. The case of the Complainant in brief was as follows:

Shri Danu Bogati, Police Sub-Inspector abused the Complainant with bad words, wrongfully restrained him and gave threats to kill him on 10/02/2013. ShriGajanMadar and ShriDevendraSawant also assaulted the Complainant with dandas and kicks. ShriGajanMadar and ShriDevendraSawant also started abusing and assaulting staff of Viva Goa, Shack No.5 and broke lights, speakers worth Rs.60,000/- and also broke kitchen door, plates and cutlery. The Policemen also assaulted the brothers of the Complainant namely, ShriAgneloFernandes and ShriRemediousFernandes and also one ShriPrem, the waiter of the Shack. Shri Danu Bogati assaulted the Complainant with kicks on his stomach and continued kicking him with sharp safety shoes and thereafter seven Police Officers caught the Complainant and took him in Jeep to the Police Station. Shri Danu Bogati, DevendraSawant and GajanMadar snatched away the gold chain of 80grams of the Complainant. The Complainant was taken to Hospicio Hospital and thereafter he was shifted to Bambolim. He was kept in ICU for 2 days and was operated on 11/02/2013.

3. Taking cognizance of this matter, this Commission had issued notices to Shri Danu Bogati, Police Sub-Inspector/Respondent No.1, ShriGajanMadar, Police Constable/Respondent No.2, ShriDevendraSawant, Police Constable/Respondent No.3, Police Inspector, Verna Police Station/Respondent No.4, Superintendent of

Police, South Goa/Respondent No.5, the Secretary (Home), Home Department, Secretariat/Respondent No.6 and the State of Goa through the Chief Secretary, Secretariat/Respondent No.7. Respondents No. 1 to 5 had filed their respective replies denying the allegations made by the Complainant. Respondents No.6 and 7 had adopted the reply filed by Respondent No.1.

4. This Commission had conducted an inquiry in this matter. The Complainant had filed his Affidavit-in-Evidence dated 12/09/2013. The examination of the Complainant(CW1) was recorded. The Complainant (CW1) was cross-examined by Respondent No.1, 2 and 3 partly. The matter was adjourned for further cross-examination of the Complainant to 02/02/2018. On that day i.e. on 02/02/2018 the Complainant did not remain present and the matter was adjourned to 16/02/2018 by giving final opportunity to the Complainant. The Complainant did not remain present on 16/02/2018 also. It was noted that the Complainant did not remain present on earlier occasion i.e. on 02/02/2018. It was made clear to the Complainant that in case he does not remain present on the next date of hearing, his evidence shall be closed. As the Complainant did not remain present for cross-examination on 16/02/2018, the cross-examination of the Complainant (CW1) was closed and the matter was adjourned for filing Affidavit-in-Evidence of other witnesses, if any, of the Complainant to 14/03/2018. Again, on 14/03/2018, the Complainant did not remain present and the evidence of the Complainant was closed. The matter was adjourned to 19/04/2018 for filing Affidavit-in-Evidence by Respondent No.1. On 19/04/2018 also, the Complainant did not remain present. The Respondent No.1 filed his Affidavit-in-Evidence on that day i.e. on 19/04/2018. The matter was adjourned for cross-examination of Respondent No.1 (RW1) to 04/06/2018. On 04/06/2018, the Complainant filed an application for re-opening of the case of the Complainant. Both the Parties were heard on the said application dated 04/06/2018 filed by the Complainant and the matter was adjourned to 02/11/2018. By order dated 02/11/2018 (Rojnama), the application for re-opening of the case was dismissed by this Commission. The matter came up for hearing on 21/11/2018 on which date the statement of Respondent No.1 was recorded and his cross-examination was recorded and the matter was posted for filing Affidavit-in-Evidence of the witnesses of the Respondents on 17/12/2018. All the Respondents stated that they did not wish to examine any witnesses and they closed their case.

5. I had heard both the Parties. I had also perused the entire records of this

case. The Complainant (CW1) in his Affidavit-in-Evidence had narrated the facts. Examination of the Complainant (CW1) could not be completed by Respondents No.1, 2 and 3 for reasons mentioned in the evidence of the Complainant (CW1). The Respondents had thus lost opportunity to cross-examine the Complainant (CW1) effectively in support of their defence. The evidence of the Complainant (CW1) therefore could not be looked into and had to be kept out of consideration. The Complainant had also failed to examine other witnesses to substantiate his case. The Complainant had thus failed to prove the allegations made by him against the Respondents No.1, 2 and 3.

6. Respondent No.1 (RW1) had filed his Affidavit-in-Evidence. Respondent No.1 in his Affidavit-in-Evidence had stated in all details about the manner in which the present incident took place. It had come on record through the evidence of this witness (RW1) that the Complainant and his two brothers have assaulted and prevented the Police Constables while performing their duties. RW1 had also stated that in fact the lives of the Complainant and his two brothers were saved by this Respondent and other Police Officers. This witness (RW1) was cross-examined by the Complainant. It was suggested to this witness (RW1) that on the date of the incident, the Respondent No.1 along with three Police Constables namely; DevendraSawant, GajananMadar and VenkatKosni had brutally assaulted the Complainant and his two brothers and caused injuries which were life threatening due to which the Complainant and his two brothers were admitted in ICU, GMC at Bambolim which suggestion has been denied by this witness. Cross-examination of this witness (RW1) has not revealed any results in favour of the Complainant. There were no grounds to believe the evidence of Respondent No.1 (RW1).

In view of the above discussion, I was of the view that the Complainant had failed to prove that the Respondents No.1, 2 and 3 had violated his human rights by assaulting and abusing the Complainant.

In the result, the complaint was hereby rejected.

Proceeding No. 40/2012

This case had been disposed off on 22/02/2019.

Initially, the Complainant/Shri Taiwan D'Souza alias Sameer Dessai filed the complaint in respect of the present incident before the National Human Rights Commission, New Delhi. By letter dated 13/08/2012, the Hon'ble Member, National

Human Rights Commission, New Delhi (File No.44/5/0/2012) transferred the complaint to this Commission u/s 13 (6) of the Protection of Human Rights Act, 1993 for disposal in accordance with provisions of the Act.

2. On perusal of the said complaint, this Commission had issued notice to ShriRajuRautDessai, Police Inspector/Respondent herein. The complaint was forwarded to this Commission by National Human Rights Commission, New Delhi without furnishing copy of the complaint and other documents. This Commission therefore issued notice to the Complainant to appear before this Commission. The Complainant had filed separate complaint dated 21/02/2013 before this Commission on the same subject matter along with Xerox copies of the said complaint. The Respondent had filed his reply to the complaint filed by the Complainant denying the allegations made against him.

3. It was the case of the Complainant that on 02/07/2017, at about 4.00 p.m. he surrendered before Cuncolim Police in connection with Cr. No.56/12 in Cuncolim Police Station. He was arrested and was put up in Cuncolim Police Lock-Up after medical examination. The Complainant had alleged that on 03/07/2018 at about 20.30 a.m. the Respondent came to the Lock-Up and assaulted the Complainant. It was also alleged that the Respondent abused the Complainant by saying "Chedyecha", "Bastard" and again hit the Complainant. It was also alleged that the Respondent left the Lock-Up, after handcuffing the Complainant to the bars of the Lock-Up door and as such the Complainant had to be in a standing position throughout the night.

4. The case of the Respondent in brief was as follows:

The Complainant had filed the present complaint with malafide intention to demoralise the Respondent to cause adverse effects in the process of investigation of the cases which are pending for investigation against the Complainant. The Complainant was motivated by his Advocate Mr. Rajiv Gomes to file this complaint against the Respondent in as much as his Advocate has been bent upon to take vengeance on the Respondent for not obliging the proposal of his Advocate not to make investigation in the case of the Complainant seriously. It was stated that the Complainant has chosen to file the present case as the Respondent refused to accept bribe from the Complainant through his Advocate.

5. The Respondent had further stated that the Complainant was of notorious character and was a habitual offender and could be termed to be a "history sheeter".

The people of locality were afraid of him and generally did not desire to lodge a complaint against him for fear of retribution. He was known to terrorise and harass the people acting as property sharks with an intent to usurp the property for gain. The Respondent has generally denied the allegations made by the Complainant. The Respondent had stated that on 03/07/2012, the Complainant had attended his office in the morning at Cuncolim Police Station. The Complainant Mr. Taiwan was produced before JMFC, Margao for remand and bail application was filed by Adv. Mr. Gomes on behalf of the accused which was fixed for hearing on 04/07/2012. The Complainant had not made any grievance of ill treatment by the Police before the JMFC, Margao. Thereafter, Adv. for the Complainant filed a complaint against the Respondent before JMFC making some allegations regarding alleged assault on the Complainant by the Respondent. The JMFC, Margao in the order dated 03/07/2012 had mentioned that **"the accused did not complain of ill treatment by Police"**.

6. This Commission had conducted an inquiry in this matter. The Complainant had filed his Affidavit-in-Evidence and examined himself as CW1. The Complainant also examined 5 more witnesses in support of his case namely; ShriJitendraBabusonaik, Police Sub-Inspector, Cuncolim Police Station (CW2), Dr.PoonamKamat, ENT Surgeon, Hospicio Hospital, Margao (CW3), Dr.PoonamVerenkar, Medical Officer, Hospicio Hospital, Margao (CW4), Dr. Sameer Naik, Medical Officer, Hospicio Hospital, Margao (CW5 and Dr.Subhash Chandra, ENT Consultant with Apollo Hospital, Margao (CW6). All these witnesses were cross-examined by the Respondent. The Respondent had examined two witnesses in support of his case namely; Shri Rajesh PundalikPagi as RW1 and ShriJayprakash Raya Pagi as RW2. Both these witnesses were cross-examined by the Complainant.

7. We had heard Learned Advocate Shri Vijay Gaykar for the Respondent. The Complainant had not remained present for final hearing even though several opportunities were given to him. The Learned Adv. ShriGaykarhad submitted that the Complainant was injured before his arrest in the present case. He further contended that the Complainant was a habitual offender and there were about 10 criminal cases against him. It was his contention that there was no evidence on record to show that the Respondent had gone to the Police Station at the relevant time of the alleged incident. He further contended that the Complainant had not disclosed the alleged incident to anyone as no such incident as alleged by the Complainant had taken place. He also submitted that the Complainant had not

mentioned the names of the Sentries who were present at the relevant time. According to ShriGaykar present complaint has been filed at the instance of Adv. Shri Rajiv Gomes.

8. I had then proceeded to analyse the evidence which had been brought on record by the rival Parties. The case of the Complainant mainly rested on the evidence of the Complainant himself. Admittedly, the evidence of the Complainant had not been corroborated by any other witnesses. It was no doubt true that the Complainant had alleged that he was assaulted and abused in the Police Lock-Up. Hence, in the normal circumstances direct corroboration to his evidence couldn't be expected. The records showed that the present complaint had been filed by the Complainant at the behest and instigation of his Advocate Shri Rajiv Gomes. In this background, it was necessary to scrutinize the evidence of the Complainant (CW1) with care and caution. The Complainant (CW1) in his evidence before this Commission had stated that when he was produced in the Court at about 4.30 p. m. for remand, he was asked by the Hon'ble Judge whether he had any complaint against the Police, to which he had answered in the negative stating that as his Advocate was not present and he feared that in case he discloses about the assault to the Court, he may be further assaulted by the Police. The Complainant in his complaint before this Commission had not stated the above facts. Thus it is apparent, that the Complainant had made an improvement in his version before this Commission on the above aspect of the case. In his evidence he had also stated that during the remand application, his Advocate reached the Court and he inquired with him (Complainant) whether he was alright, to which he informed his Advocate Mr. Rajiv Gomes of the assault on him. The above fact also had not been mentioned by the Complainant in his complaint. In his complaint, the Complainant had stated that when the Complainant was produced in the Court at about 4.30 p.m. for remand, the Complainant informed his Advocate Mr. Rajiv Gomes of the same and the matter was informed to the Hon'ble Court of the Judicial Magistrate First Class, Margao by a complaint in writing dated 03/07/2012 who then immediately referred the Complainant for medical examination at Hospicio Hospital, Margao. Thus, I found that there was a variation in the complaint and the evidence of the Complainant before this Commission on the aspect mentioned above. Admittedly, as stated above, the Complainant did not complain to the JMFC, Margao about the assault on him by the Respondent. The explanation given by the Complainant for not informing the Court of JMFC, Margao about the assault in the Police Lock-Up did not appeal to my mind.

In his cross-examination, the Complainant (CW1) had stated that he did not remember the names of the Sentries and their Buckle Numbers who were on duty on 02/07/2012; he also did not remember the name and Buckle number of the Sentry who was on duty on 03/07/2012. Nothing prevented this witness (CW1) from collecting the information about the names of the Sentries. The Complainant ought to have furnished the names of the Sentries who were present at the relevant time of the incident. In his cross-examination this witness (CW1) had also admitted that the Police maintain Station Diary for recording all events which take place at the Police Station including the presence of the Officers on Duty. He had admitted that he that he did not tell the Sentry Police who was standing outside his Cell that P.I. ShriRajuRautDessai has slapped him. He had also admitted that he did not inform the Food Supplier about the assault by P. I. ShriRajuRautDessai. He had also stated did not apply for Station Diary Entry during the said period to ascertain the names of the Police Officers who had attended during that period before filing the present complaint. He had also admitted that apart from filing the present complaint, he had also filed complaints before SPCA, Panaji, Superintendent of Police (South), Dy. Superintendent of Police (South) and also JMFC, Margao in respect of the said compliant. He had admitted that he withdrew the complaint filed before SPCA on account of his health problem. The witness was shown his application for withdrawal of the complaint before SPCA and the witness admits that he has withdrawn the complaint not on health ground but he had withdrawn the case before SPCA as there are two parallel complaints before two parallel Authorities. This witness in his cross-examination had also admitted that he was arrested in about four criminal cases in various criminal complaints against him. This showed that the evidence of this witness was not trustworthy. I, therefore, found it difficult to place implicit reliance on his sole testimony which was not corroborated by any other witnesses and was not at all convincing and trustworthy.

9. The next witness ShriDitendra B. Naik (CW2) was working as Police Sub-Inspector at Cuncolim Police Station at the relevant time of the present alleged incident. He had not supported the case of the Complainant. It was in his evidence that on 02/07/2012 around 4.45 p.m. Mr. Taiwan D'Souza surrendered before the Police in Crime No.56/12 u/s 307 of IPC r/w 34 of IPC and Section 3 and 4 of Arms Act. The said Taiwan was placed under arrest after observing all arrest formalities. He had also deposed that he had observed a cut injury to the right hand palm of Taiwan D'Souza before sending him for medical examination. It was an old injury. He had also stated that he had not noticed any external injuries on the body of Taiwan

D'Souza at that time. He had also stated that ShriRajuRautDessai, Police Inspector was present in the premises of the Police Station on the day when Taiwan D'Souza surrendered before the Police; that ShriRajuRautDessai was not present at the Police Station when he left the Police Station at 7.30 p.m.; when he had reported for duty on the next day, Police Inspector ShriRajuRautDessai was also not present. In his cross-examination this witness (CW2) had stated that on 03/07/2012 at about 8.45 a.m. he had met the accused Mr. Taiwan D'Souza and had inquired with him whether he had dinner on the previous day and breakfast on the following day, to which he had replied in the affirmative. He had further stated that at that relevant time, the accused/the Complainant herein had not made any complaint to him about the assault by any Police Officer during the time he was in the Police custody. Similarly, the Complainant also did not complain of pains and also did not request him to take him to the Medical Officer. He had also stated that he did not notice any additional injury on the body of the Complainant on 03/07/2012 while he was in Lock-Up except the old injury which he had noticed on 02/07/2012. In his cross-examination he had also stated that he did not receive any complaint from the Complainant to the effect that he was assaulted by any Police Officer including the Respondent herein during the time he was in Lock-Up. In the event the Complainant was assaulted by the Respondent during the intervening night of 2nd and 3rd July of 2012, it was expected from the Complainant to bring to the notice about such assault, if any, to the said DitendraNaik (CW2). Thus it was clear that this witness (CW2) had not at all supported the case of the Complainant.

10. The other witnesses examined by the Complainant were Dr.PoonamKamat (CW3), Dr.PoonamVerenkar (CW4), Dr. Sameer Naik (CW5) and Dr.Subhash Chandra (CW6). All these witnesses are Medical Officers. The evidence of these witnesses could not be attributed to the Respondent for the simple reason that the evidence of the Complainant (CW1) was not at all satisfactory as discussed above.

11. Shri Rajesh P. Pagi and ShriJayprakashPagiwere examined on behalf of the Respondent as RW1 and RW2 respectively. Both these witnesses namely RW1 and RW2 were working at Police Constables at the Cuncolim Police Station at the relevant time of the incident. The witness (RW1) in his Affidavit-in-Evidence had stated that during the time he was on duty as Guard on 03/07/2012, no person came to meet Taiwan and he had not opened the door of the Lock-Up. He had also deposed that during his Lock-Up duties, Police Inspector ShriRajuRautDessai nor any other Officer had come near the Lock-Up nor he had opened the Lock-Up. This witness was

cross-examined by the Advocate for the Complainant but nothing had been elicited in favour of the Complainant. The evidence of ShriJayprakashPagi (RW2) was similar in nature to that of RW1. It was in the evidence of this witness (RW2) that during the time of his Lock-Up Guard duties on 02/07/2012 from 17.20hrs to 24 hrs. and on 03/07/2012 from 03.00 hrs. to 06.00 hrs. no person had come to meet Taiwan or to him and that he had not opened the door of the Lock-Up. He had also stated that during his Lock-Up duties, P. I. RajuRautDessai nor any other Officer came to the Lock-Up nor he had opened the Lock-Up. The cross-examination of this witness also did not reveal any results in favour of the Complainant. Both these witnesses namely; RW1 and RW2 had supported the case of the Respondent herein. I did not find any material infirmity in the evidence of RW1 and RW2. There were, therefore, no grounds to discard the evidence of RW1 and RW2 which appeared to my mind to be trustworthy.

12. In view of the above discussions, I was satisfied that the Complainant had failed to prove the allegations made by him against the Respondent. The Complainant had thus failed to establish that his human rights were violated by the Respondent. I, therefore, did not find any merit in the present complaint filed by the Complainant.

Accordingly, the complaint was hereby rejected.

This Annual Report for the year 2018-2019 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: 13/05/2019
Place: Panaji – Goa