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## MOTU PROPRIO VOS ESTIS LUX MUNDI, CBCI GUIDELINES AND THE STATE LAW ON SEXUAL HARASSMENT: DEALING WITH SEXUAL ABUSE BY CLERICS

Albertina Almeida♦  
*Goa, India*

### Abstract

Recent Catholic Church documents on sexual abuse, that is, the CBCI Guidelines on dealing with Sexual Harassment at the Workplace, and the Pope's *Motu Proprio Vos Estis Lux Mundi* are a measure of Christian theological praxis bearing witness in a patriarchal society ridden with various axis of discrimination. There is now a specific tripartite framework for dealing with sexual harassment of women by clerics, under a polycentric governance comprising of The Holy See, the Indian Catholic Church, and the Indian/State Government. When each of the component frameworks is compared and contrasted, one can see the infusion of Christian theological perspectives. It is argued that feminist Christian theology has the potential to birth a praxis that can hold a liberating potential for women to experience sexual harassment-free lives.

**Keywords:** CBCI Guidelines, Feminist Christian Theology, Plural Frameworks of Governance, Sexual Abuse by Clerics, *Vos estis lux mundi*, Women in the Bible

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♦ **Albertina Almeida** is a lawyer, human rights activist, independent researcher and gender trainer. She has been practising law for the last thirty years. As a student, she was the Vice-President of the All India Catholic University Federation (AICUF) and was responsible for organising the first Workshop on the Women's Question in 1986. She holds a PhD in law. She is a visiting lecturer teaching gender, human rights and law at the Department of Women's Studies, Goa University. She is also Co-Convenor of Citizens' Initiatives for Communal Harmony, Goa, and the Managing Trustee of Saad Aangan, a gender resource group. She is a member of the Asia Pacific Forum on Women, Law and Development. She has written extensively in the local press. Email: [advalbertinaalmeida@gmail.com](mailto:advalbertinaalmeida@gmail.com)

***Vos Estis Lux Mundi***

On 9<sup>th</sup> May 2019, Pope Francis issued a Motu Proprio, a change to Church law under the Pope's initiative and authority, titled *Vos estis lux mundi*, which is the Latin for "You are the Light of the World" (the Motu Proprio). The Catholic Encyclopaedia suggests that a favour granted Motu Proprio<sup>1</sup> is valid even when counter to ecclesiastical law, or the decisions of the pope himself. *Vos Estis Lux Mundi* calls for witnessing and actively reporting child sexual abuse particularly by clerics, and (but also sexual abuse of vulnerable persons) fixing episcopal responsibility and accountability. This is a victory of lay people who have consistently sought to witness the issue within the Church. "Speak up for those who cannot speak for themselves; ensure justice for those being crushed. Yes, speak up for the poor and helpless, and see that they get justice" (Prov 31:8-9). That explains the Christian sense of social justice, witnessing and resisting under repression. It is this resistance that has eventually brought to bear on the Pope as he also exercised his own agency. The stinging truths about sexual abuse in the Church with all these years of suppression, and persevering resistance, could just not be reined in and forgotten. Yet *much more* needs to be done.

*Vos estis lux mundi* recognizes that sexual abuse crimes cause physical, psychological and spiritual harm to the victims and harm the community of the faithful. It also recognizes that the successors of the Apostles (meaning the priests at all levels) must lead by counsel, persuasion and example. It notes that it is good that universal procedures are adopted to prevent and counter these crimes that betray the trust of the faithful. It applies to complaints against clerics and to members of institutes of consecrated life or societies of apostolic life, concerning forcing someone with violence or threat or abuse of authority to perform or suffer sexual acts. But where the complaint relates to Cardinals, Patriarchs, Bishops, and Legates of the Pope, clerics who have been in the pastoral leadership of a particular Church or of an entity assimilated to it, Latin or Oriental or of a personal prelature, there is a different reporting system, given substantially wider powers in these positions (Article 6).

**The Tripartite Framework under a Polycentric Governance**

*Vos estis lux mundi*, together with the CBCI Guidelines on Dealing With Sexual Harassment at the Workplace, 2017 (the CBCI

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<sup>1</sup>A. MacErlean, "Motu Proprio," in *The Catholic Encyclopedia*, New York: Robert Appleton Company, 1911. Retrieved May 30, 2019 from New Advent: <http://www.newadvent.org/cathen/10602a.htm>

Guidelines), and the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 (the SHW Act) and the Indian Penal Code, Criminal Procedure Code and Indian Evidence Act (all together called the secular laws), as amended to date, together constitute the specific tripartite framework for dealing with sexual harassment of clerics at the workplace, under a polycentric governance comprising of the Holy See, the Indian Catholic Church, and the Indian/State Government. The territorial application of the Motu Proprio, the CBCI Guidelines and the secular laws is different. The Motu Proprio has global application, the CBCI Guidelines to the Catholic Churches in India, and the secular laws to the whole of India. The jurisdictions in which the cases will be handled are defined by the particular forms of governance and their respective legal frameworks.

India is a secular socialist republic. It has subscribed to that particular form of secularism, which recognizes religion-based jurisdictional autonomy. Therefore, on the one hand, it has secular laws that are universally applicable to all in India, irrespective of religion, or even if applicable to people practicing a particular religion, are enacted by Parliament. And on the other hand, operating within the Indian Republic, are simultaneous jurisdictions which are based on religion, and this includes the operation of *Vos estis lux mundi* applicable to clerics of the Church in the matter of deciding the consequences for having committed sexual abuse as a cleric.

There are also areas, where the application of law is governed also by the Concordats, that is, treaties between the Vatican and the secular Government. For instance, by a Concordat between Spain and the Vatican, many privileges of the clergy, abrogated by the 1931 Republic, were restored; a Bishop could only be tried in a local court with the consent of the Vatican; criminal proceedings could be initiated against clerics only with consent of the Bishop; if in a local court proceeding, deprivation of liberty was the relief awarded to the complainant, then that deprivation of liberty could only be in a religious house; proceedings were not to be publicized; clerics and religious could testify in the Court only with the consent of the Bishop, and could not be questioned about crimes that came to their knowledge while performing ministry. Similarly, by the Concordat with Columbia in 1973, Bishops cannot be tried by State courts but only by the Church courts; while priests can be tried by State courts, the proceedings are not to be publicized. This treaty was declared unconstitutional by the Columbian Constitutional Court in 1993, but in 2007, the Vatican was still insisting that Columbian Bishops were

entitled to impunity, were above the law, and the matter remains unresolved.<sup>2</sup> This is pertinent to note considering that there is also a 1940 treaty between Portugal and the Holy See which is still applicable in Goa, and possibly in some of the other territories now integrated in India, where the Portuguese ruled. There are some exceptions regarding recognition of canonical marriages, and the tie-up between the Church and the State for registration of marriages, but mercifully no exemptions or privileges for clerics in the matter of clerical sexual abuse.

Does sexual harassment by Church clerics deserve to be treated as a separate territory of sexual harassment? Does polycentric governance make sense, where the physical jurisdictions of different forms of governance are defined separately and different ideological worldviews and theologies inform? Some argue that it does deserve to be treated with more seriousness – and therefore a separate zone – because of the aggravated harm that sexual abuse by clerics causes, coming from a source of power and trust. But others argue that separate treatment is not warranted and it would only reinforce a system where victims fall between the cracks of the different forms and sites of sexual abuse/harassment legislated against and between the cracks of the various forms of governance that come to bear.

To examine this matter, it is necessary to review the tripartite framework and understand its normative basis.

### **The Secular Law and Framework**

The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013, (hereafter referred to as the SHW Act) is an Indian legislation meant to provide protection against sexual harassment of women at the workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental to the same. In its preamble, it recognizes that sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India, and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation trade or business, which includes a right to a safe environment free from sexual harassment. This secular law, therefore, covers any workplace. Workplace includes, among other things, any private sector organization,

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<sup>2</sup>K. Tapsell, "Chronology of Church Response to Clergy Sexual Abuse of Children, in *Potiphar's Wife: The Vatican Secret and Child Sexual Abuse*," Adelaide: ATF Press, 2014.

undertaking, establishment, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service, hospitals or nursing homes, any sports institute, stadium, sports complex or competition or games venue. Therefore, it covers all workplaces as listed above that are run by the Church.

The Indian Penal Code, 1860, as amended to date, besides criminalizing sexual intercourse with a woman without consent, provides for harsher penalties for aggravated rape, and this includes, instances where the person who has committed the act of rape is a person in a position of authority or in a fiduciary relationship or a superintendent or manager of a place of custody, established by or under any law for the time being in force, or of a women's or children's institution, or is on the management of a hospital or is on the staff of a hospital (section 376C). It also prescribes penalties for acts of sexual abuse and sexual harassment, where not just the obvious acts of molestation are covered, but even such acts as stalking (section 354D), forced disrobing (section 354B), voyeurism (section 354C), a demand or request for sexual favours (section 354A [1] [ii]) and making sexually coloured remarks (section 354A [1] [iv]).

The Criminal Procedure Code, 1973, by its amendment in 2013, even provides for rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, which may also be complemented with a fine, in cases where the police fail to record a complaint of rape, sexual abuse or sexual harassment. Apart from this, presumption of innocence in favour of the accused (unless otherwise prescribed) and their requirement to prove a case beyond reasonable doubt are fundamental postulates of the criminal justice system in India, as per established practice. As against this, inquiries under the SHW Act are civil in nature and preponderance of probabilities is the standard of proof required to prove the case, that is, it is sufficient if it is possible to establish from the inquiry that the incident alleged was highly likely to have happened even if it is not 100% clear whether it happened or not.

### **The CBCI Guidelines on Dealing with Sexual Harassment at the Workplace**

The CBCI Guidelines were approved by the CBCI Standing Committee held from 21<sup>st</sup> to 23<sup>rd</sup> September 2016, in Bangalore, and

promulgated by the Catholic Bishops' Conference of India on 14<sup>th</sup> September, 2017. It is specified in the Scope of the Guidelines itself (section 2 [a]), that they have been formulated to create a safe, healthy and loving environment that enables its employees to work without the fear of prejudice, bias and sexual harassment and to create a mechanism for prevention, redressing of complaints, and also provides for safeguards against false or malicious charges. These Guidelines in their preamble recognise that sexual abuse which includes sexual misconduct and sexual harassment violates the sacredness of the human person, destroys the trust reposed in persons of authority or influence, and acts as counter-witness to all that the Church stands for, namely, love of God, and love of neighbour. The Preamble also recognizes the violation of the rights as set out in the preamble of the secular law. It differs in scope from the secular law in that it also includes within its scope redressal of instances of sexual harassment of persons belonging to the third gender, and the stray instances of such harassment on men, particularly youngsters, also reported in the media (Para 2 a). These Guidelines are intended to be complementary to the secular law in that the instances not covered by the secular law are required to be dealt with as per the procedure under the Guidelines. The Guidelines also follow the CBCI's *Gender Policy of the Catholic Church of India* which admitted that "women feel discriminated even in the Church" and that "violence that is physical, sexual and psychological and practiced against women is a result of inhuman and unchristian attitudes." The Gender Policy in turn was the outcome of intense deliberations which involved feminist theologians, at the 28<sup>th</sup> Plenary Assembly of Catholic Bishops Conference of India (CBCI) in Jamshedpur, which had as its theme "Empowerment of Women in the Church and Society."

### **Comparison of the Secular Law, the CBCI Guidelines and *Vos estis lux mundi***

There is, thus, a clear recognition of a different zone of sexual harassment at the hands of the above-referred, because of the authority these particular persons wield over any human beings, and more so, when they perform sexual acts with or without the use of violence or threat, in case of children or vulnerable persons. Vulnerable person is defined as any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which in fact even occasionally limits his/her ability to understand or to want or otherwise resist the offence.

From the scope of application as defined in *Vos estis lux mundi*, it seems that religious nuns can also be seen as someone who are forced with violence or threat or through abuse of authority, to perform or suffer sexual acts. Article 1 §1 a. i of *Vos estis lux mundi* stipulates that “these rules apply in the case of reports concerning clerics or members of institutes of consecrated life or societies of apostolic life concerning: a) crimes against the sixth commandment of the Decalogue consisting of: i. in forcing someone, with violence or threat or through abuse of authority, to perform or suffer sexual acts. The CBCI Guidelines also recognize that sexual abuse can also take place in the context of spiritual or psychological guidance or services, and require that appropriate professional boundaries be maintained between members of all sections of ministry or service at all time and in all places. In a case between a nun complainant, and a Bishop, who is visiting the Home where she is residing, for instance, may be the workplace of the nun, and there may be no strict work relationship between the accused Bishop and the nun. It is generally perceived that nuns are expected to host/serve priests and Bishops, even if this is not strictly written in their work profiles in any form. Bishops and priests are at the helm of the power structure of the Catholic Church in any region.<sup>3</sup> Therefore, it would seem that a case of sexual harassment of a nun by a Bishop, could even come within the ambit of the SHW Act.

The Supreme Head of the Catholic Church is the Pope; the Apostolic Nuncio represents him in legal matters. The Catholic Bishops’ Conference of India is to facilitate discussion of questions affecting the Church, and adoption of a common policy and effective action in all matters concerning the interests of the Church in India. To that extent, the violations of the CBCI Guidelines are legally enforceable within the Church’s legal framework,<sup>4</sup> to such extent as they are not in conflict with the law of the land in which they are operating, and may be apart from or besides the secular law. Now with *Vos estis lux mundi*, the CBCI has to move to ensure that the reporting systems are in place, that reporting in effect occurs and the specific obligations cast on the hierarchy of clerics by *Vos estis lux mundi* are complied with. Again, *Vos estis lux mundi* is operative apart from and besides the secular law. There is a mention at the end of the

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<sup>3</sup>A. Almeida, “#MeToo at Religious Workplaces: A Tale of Two Places,” *O Heraldo*, 01-11-2018, also accessible at <https://alzulajgoa.com/2018/11/02/metoo-at-religious-workplaces-a-tale-of-two-places/>

<sup>4</sup>However, it has to be noted that the CBCI policies and decisions become binding when they are adopted by the Synod of the Particular/Individual Church.

*Vos estis lux mundi*, that clerics are required to comply with the rights and obligations established in each place by state laws, particularly those concerning any reporting obligations to the competent authorities in the state, and that there shall be no reading of the rules in a way that negates these rights and obligations. In other words, it appears that *Vos estis lux mundi* accepts the need of respecting the secular law – as long as the law of the land do not conflict with the Church law.

### **The Options for an Aggrieved Woman**

*Vos estis lux mundi* primarily addresses the sexual abuse of minors. However, it also refers to the abuse of women. Therefore, it can be of assistance, to a woman who has no faith in the legal system. It can also be of assistance, to a woman who is caught in the bind of having to ‘protect’ the honour of her religion from the suppression due to religious (of the dominant religion) nationalism, and could be faulted for further putting her religion in danger. The Shah Bano case judgement in India and the tremendous pressures that Shah Bano came under, for resorting to the secular law, is a case in point. More recently another judgement, popularly called the Triple Talaq judgement,<sup>5</sup> has been under a similar scanner. Some feminists have proposed that in communal situations, it is apt that options be available so that no nationalism or religious nationalism can quash certain core rights and ethics and the woman has options between the religious diktats and the secular law, to choose what is more accessible to her.

Within this tripartite legal framework and polycentric governance of the Indian secular law, the CBCI and Vatican, where does a woman who is aggrieved by sexual harassment caused to her by clerics of the Catholic Church turn to? How is society prepared to prevent sexual harassment and at which fora and on the strength of which standards? Is the multiplicity of options for a sexually abused woman or simultaneous proceedings at various fora just what an aggrieved woman needs or does it result in justice falling between the cracks (a question that bears repetition), or does it ensure that justice will meet her somewhere at least?

The secular law provides that the woman can complain to the Internal Complaints Committee, or to the Local Complaints

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<sup>5</sup>On 22 August 2017, the Supreme Court of India declared unconstitutional the Islamic practice of Triple Talaq. See ‘Historic’ Day as India Outlaws ‘Triple Talaq’ Islamic Instant Divorce. 2019, <https://www.theguardian.com/world/2019/jul/31/triple-talaq-india-hails-historic-day-as-parliament-outlaws-islamic-instant-divorce>



Committee, when no committee has been constituted either because of negligence or because it is considered an unorganized sector for work purposes, where it employs less than 10 persons. So to the extent that the Church is a workplace, redressal for sexual harassment of women will be governed by the secular law, as also acknowledged by the CBCI Guidelines. This means that, under the CBCI Guidelines, the Internal Complaints Committee as envisaged under the secular law, is to be set up by every institution under a Diocese or Province which employs 10 or more employees. In all other cases, that is, in the case of institutions with less than 10 employees as well as complaint against institution's head like Manager, HM Director, Principal, etc. and also in the case of every Diocese and Province of a religious congregation of the Catholic Church in India, a Diocesan/Provincial Complaints Committee is to be set up.

*Vos estis lux mundi* mandates that whenever a cleric or a member of an institute of consecrated life or of a society of apostolic life has news or justified reasons to believe that sexual abuse has been committed, the Dioceses and Eparchies have the obligation to promptly report the fact to the Ordinary of the place where the facts would have happened or to another Ordinary from those prescribed (Article 2 §1). This implies that a woman can complain herself or through another reliable person to the above who have the obligation to report. For that matter, there may not even be a formal complaint for the cleric to report. Under the SHW Act, only the aggrieved woman can complain, except in certain attenuating circumstances, where she is unable to do so, for example, due to physical or mental incapacity or death or otherwise.

However, although the particular cleric has to face the consequences under the SHW Act, which can even include termination of services, the same priest cannot be defrocked or 'reduced' to the level of a lay person (what in Church terms is called 'laicisation'). The latter is what decisions taken subsequent to inquiries in terms of the CBCI Guidelines or *Vos estis lux mundi* can achieve. *Vos estis lux mundi* requires that within one year of its coming into force, which is within one year from 1<sup>st</sup> June, 2019, the easily accessible systems for the public to submit reports have to be in place in each archdiocese or diocese or eparchy. This timeline has been met with cynicism in a scenario where the date for commencement of operation of SHW Act was notified in December 2013, although it was enacted in April 2013, and to date, not every establishment and institution has implemented the law or even

constituted the Internal Complaints Committees. Similarly, the CBCI Guidelines were promulgated in 2017, and at the time of this paper going to the press, most archdioceses and dioceses have still not set up the Committees, even in their institutions, leave alone at the Diocesan or Provincial levels.

### **The Expanded Definition of Sexual Harassment**

Under the SHW Act, sexual harassment has been defined as including any one or more of the following unwelcome acts or behaviour (whether directly or by implication), namely: (i) physical contact and advances; or (ii) a demand or request for sexual favours, or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature. It also stipulates that if there is implied or explicit promise of preferential treatment in a woman's employment, implied or explicit threat of detrimental treatment in her employment, or implied or explicit threat about her present or future employment status, or interference with her work or creating an intimidating or offensive or hostile work environment for her, or humiliating treatment likely to affect her health or safety, in relation to or connected with any act or behaviour of sexual harassment, it would amount to sexual harassment. The CBCI Guidelines have incorporated this and have included more details. Under the CBCI Guidelines, apart from what is stipulated under the SHW Act, unwelcome, severe and persistent allusions to sexual preferences, jokes, blackmailing, threats, comments on appearances or body, intimate references, obscene language, sexual innuendos, indiscrete glances, pinching, unsolicited advances, are included within the meaning of sexual harassment.

### **The Obligation of Personal Care of the Victim and the Hurting Community: Document and Reality**

Article 5 of *Vos estis lux mundi* deals with "Care for Persons." There is a commitment expected of the ecclesiastical authorities to the aggrieved persons, together with their families, to treat them with dignity and respect, and specially to offer them reception, listening, and support, also through specific services, spiritual assistance, medical, therapeutic and psychological assistance, after assessing the need for the same on a case by case basis. Confidentiality is also assured. This is certainly a major departure from the earlier position where confidentiality was being assured to the accused to the point of not handing over any information to the State and whoever would hand over any such information would do so under risk of penalty

for the same. However, the CBCI Guidelines also have provisions for pastoral care of the victim as well as the community in which the victim is located, which encompasses justice, compassion, protection and restitution for the victim (section 9). The Diocese/Province is expected to ensure that medical, financial, spiritual and any other necessary help is provided to the victim to gain back control of their lives.

In fact, the CBCI Guidelines even provide for communicating with empathy to the victim and the hurting family and affirming zero tolerance towards sexual misconduct (section 9 B [b]). This however seems superfluous in the face of events that have occurred in India, where the victim has been ostracized or isolated, or put under pressure to be silent, or there have simply been poor communications and the victim has almost virtually had to fend for herself or himself, with one or two community members who have also got ostracized in the process.<sup>6</sup> Therefore when *Vos estis lux mundi* has come forth, there is some level of cynicism in the air, because if what *Vos estis lux mundi* provides and more, is already provided for in the CBCI Guidelines, the victims have yet to experience that 'care.'

### **If the Accused is the Ultimate Head?**

Under *Vos estis lux mundi*, as with the secular law, or with the CBCI Guidelines, there is no procedure prescribed when the person against whom the accusation is levelled is the ultimate head, in this case, the Pope. However, on account of *Vos estis lux mundi*, reports against a Bishop, as mentioned earlier, can now be addressed directly to the Holy See or through the Pontifical representative. All heads of the Church and of religious orders at various levels are required compulsorily to put systems in place to redress complaints of sexual abuse and to report cases of sexual abuse by clerics to Church authorities.

### **Inclusiveness in Governance**

While the SHW Act has provisions for lay people being involved in governance, through the setting up of Internal Complaints Committees which are required to have at least one external person (external to the specific organization or unit of governance) and also employees on the committee, *Vos estis lux mundi* has not envisaged the same in their mechanisms of investigation. In that sense, *Vos estis lux mundi* has been criticized for reinforcing

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<sup>6</sup>From my notes documenting narrations of victims (complainants) in India

clericalism,<sup>7</sup> i.e. clerics deciding about other clerics and the laity uninvolved. As Virginia Saldanha, the former executive secretary of the Federation of Asian Bishops' Conferences Office of Laity, has well expressed, Pope Francis diagnosed clericalism as the root cause of abuse. The only way to address this would be to involve laypersons, especially advocates and survivors, at every level of the process to ensure total transparency to an extent of at least 50 percent participation. These persons should be chosen in consultation with lay faithful of proven credibility because bishops are likely to choose people who will do their bidding, as is the norm.<sup>8</sup> The CBCI Guidelines however do provide for lay persons, including employees and external person, to be involved in the committees envisaged under the Guidelines. This is also in keeping with Vatican II's vision of the Church being the 'People of God.'

### **Lack of Transparency**

There is however a lack of transparency in the inquiries under the CBCI Guidelines. Whether it is the proceedings under the Criminal Procedure Code for trial of offences committed under the Indian Penal Code, or whether it is the proceedings under the SHW Act for inquiries into complaints of sexual harassment by the Complaints Committees, the proceedings have to be completely transparent to the parties involved, as against the proceedings under the CBCI Guidelines or the *Vos estis lux mundi*, where there is no responsibility of transparency cast.

So also, on the matter of false complaints, both the SHW Act and the CBCI Guidelines speak and recommend consequences, but while proving that a complaint is false is not equivalent to complaint not proved under the SHW Act, it is not known what are the standards required to establish that a complaint is false under the CBCI Guidelines.

### **Privileging of Informal Process**

Under the CBCI Guidelines, mediation, that is, the informal process is privileged over the formal investigation process, as against

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<sup>7</sup>Dorothy C. McLean, "Pope's New Motu Proprio on Reporting Sexual Abuse has the 'Fatal Flaw' of Clericalism: Theologian," *Life Site*, 24-05-2019 <https://www.lifesitenews.com/news/popes-new-motu-proprio-on-reporting-sex-abuse-has-the-fatal-flaw-of-clericalism-theologian> accessed on 27-05-2019.

<sup>8</sup>V. Saldanha, "Pope's New Laws on Sex Abuse Cannot Heal Gaping Wound," *UcanIndia*, 29-05-2019, in <http://m.ucanindia.in/news/popes-new-laws-on-sex-abuse-cannot-heal-gaping-wound-40337.html> accessed on 30-05-2019

the SHW Act where conciliation is something that the Internal Complaints Committee or Local Complaints Committee can initiate at the request of the aggrieved woman, before launching an inquiry. *Vos estis lux mundi* does not have any provision on this count in that it perhaps leaves it to the diocese to decide the priority or otherwise that they will give to conciliation. The provisions in the SHW Act sound more plausible, in that they provide space for those aggrieved women who do not want to take the inquiry route but are looking for an acknowledgement of the sexual harassment inflicted by the Respondent (accused person) on them. On the other hand, given the privileging of the informal process in the CBCI Guidelines, the mediation route can result in pressures on the aggrieved woman to adjust. As Sri Lankan jurist and human rights activist Basil Fernando, has aptly stated, although in the context of the excommunication of Fr. Tissa Balasuriya, the Sri Lankan Catholic theologian, the revelation of truth is necessary for the victims if they are to genuinely believe in the process of reconciliation. The psychosis created by the unwillingness to reveal the truth, or by the falsification of the reconciliation process leads to serious social consequences.<sup>9</sup>

### **Duty Cast on the Employer for Prevention**

Apart from establishing a redressal mechanism for complaints, a duty of prevention and deterrence is cast on the employer under the SHW Act and on the institutions under the CBCI Guidelines. To start with, the employer is required under the SHW Act to organize workshops and awareness programmes at regular intervals for sensitizing the employees (19 [c]) with the provisions of the Act Guidelines and similarly the institution is required under the CBCI Guidelines to do the same besides sensitizing about the present civil law in force.

However, while a duty is also cast on the employer to provide a safe working environment under the SHW Act, there is an additional responsibility under the CBCI Guidelines that all those who are in charge of the institution must act as role models by upholding the highest standards of conduct. Furthermore, under the CBCI Guidelines, the employer is required to ensure that eligible, well-reputed and morally upright persons are recruited and appointed as

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<sup>9</sup>B. Fernando, "Epilogue: Themes for Healing," in *Power v/s. Conscience: The Excommunication of Fr. Tissa Balasuriya*, An Asian Human Rights Commission Publication, 1997.

the staff of the institutions, and they should be trained, supervised and supported at their workplace, which should promote genuine and mature human behaviour.

### **Different Frameworks in Secular and Catholic Laws/Guidelines**

One finds that the secular legislation frames redressal of sexual harassment within a rights framework, whereas the CBCI Guidelines and *Vos estis lux mundi* frame it within an ethical framework, informed by Catholic theology which recognises the sacredness of the human person. The very preamble of the secular law grounds sexual harassment in rights to equality, life and livelihood and right to practice an occupation or profession of one's choice. Minority rights and the mantra of Sabka Saath Sabka Vikas – meaning equality for all with all (with the just added dimension of Sabka Vishwas – meaning trust of all - in 2019) cannot brush aside the diversity of perpetrators and victims and therefore the need for special treatment. We cannot have a bland equality when it comes to inquiries into complaints against persons in power as the #MeToo movement has now clearly brought to the fore.

### **When Frameworks are Embedded in Patriarchal Prejudices**

There is a concern that society is conditioned by traditional/religious precepts or rather the dominant conservative interpretations of them, which result in a reinforcement of feudal patriarchal prejudices in which those religions have been ensconced. This means that no matter how just and equitable the law, or how seemingly accessible the mechanisms, it still operates within a structure whose culture is conditioned by these conservative outlooks, and will not be properly implemented or will be implemented in a manner that was not envisaged by the framers of the law or the progressives who demanded the law. We have examples of how Courts pushily suggest that women give up on their matrimonial property rights or not make claims as per the law (which in Goa is 50% of the property of both the spouses pooled together) if they want to 'settle the matter amicably.' With prolonged delays in Court cases with no end of the case in sight, women are left with no option but to give up on their rights, simply in order to get justice, in whatever minimal proportions. Or Courts figuratively presiding over, through their intervention, the marriage of female survivors of rape to their rapist, much against their choice. "Despite the Supreme Court judgments on the illegality of compromise," a Madras High Court order directed "rape cases

into the system of alternate dispute resolution (ADR) with the explicit aim of arranging marriage.”<sup>10</sup>

### **Limitations of the Secular Framework?**

There is also a concern that no matter how welcome the content, social norms of use and throw (a kind of consumerism in relationships), power over, which inform the acts of sexual harassment do not or cannot get addressed merely in the secular framework where rights matter, but ethical frameworks that call for shifting the norms must find corresponding value. Therefore, the ethical framework is much larger than the rights framework, in that the latter is a subset of the former. However, the problem lies in how the ethical framework is constructed. If it is embedded in conservative readings of Biblical texts, then the rights framework per se is much better. However, if the ethical framework is developed through the lens of the liberative potential of the texts, then the ethical framework, if earnestly pursued can be far more effective than a limited rights framework. But it is also argued that rights are read from the Constitution and are subject to interpretation by the lens of the interpreter or of the hierarchy of the times. Consequently, in both domains, a trade-off between interpretation and amendment is apparent, whereby the harder it is to alter the text, the greater the likelihood of interpretive wars over the text’s true meaning, and support for originalist, purposive, and living-tree interpretive schools is evident in both spheres.<sup>11</sup>

What are the ethics to be followed with colleagues in a workplace, notwithstanding whether do’s and don’ts are legislated in the law or not? Legislating on do’s and don’ts beyond a measure can acquire a policing tone. Also, much of the discussion about sexual harassment at the workplace today is about transgressing boundaries – boundaries which are not static but are constantly being redefined. To have this within the realm of rights is different from having it within the realm of ethical relationships where ethics are cultivated from childhood through various instruments such as the family, the

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<sup>10</sup> Pratiksha Baxi, “It is Not the Job of Courts to Arrange ‘Compromise Marriages’ of Rape Survivors,” 26<sup>th</sup> June, 2015, <https://thewire.in/gender/it-is-not-the-job-of-the-courts-to-arrange-compromise-marriages-of-rape-survivors>, Accessed on 1<sup>st</sup> May, 2019.

<sup>11</sup>R. Hirschl and A. Shachar, “Competing Orders? The Challenge of Religion to Modern Constitutionalism,” *The University of Chicago Law Review* 85, 2 (March 2018) 425-456.

education system, the media, the religious education (catechism and the liturgy and sermons at mass).

### **'Who Will Bell the Cat?'**

Those with privilege and power are beholden with a halo/aura around them and are even treated with kid gloves and this norm again is fuelled by society and by the institutional church also being closed at some levels to progressive interpretations of religious texts. For instance, Pope Francis, in his apostolic exhortation *Evangelii Gaudium*, asserts, "The reservation of the priesthood to males, as a sign of Christ the spouse who gives himself in the Eucharist, is not a question open to discussion..."<sup>12</sup> These therefore deserve to be countered with norms that do not attach such an out-of-the-world value to persons in privilege and power. Tragically, those we trust to lead and guide us sometimes turn out to be the "ferocious wolves" Jesus warns us about in Matthew 7:15.<sup>13</sup> As an article in the mainstream Indian press, questioning who will bell the cat in case of priest predators, rightly suggests, "Christians must know that the invincibility of the church hierarchy is an illusion sustained by the 'willing suspension of disbelief' on their part"; and "Christians would do their daughters and sisters minimum justice by debunking this deceptive aura, and cracking the mask behind which the predator lurks..."<sup>14</sup>

Will the *Vos estis lux mundi* and the CBCI Guidelines square out the gains of the secular law or will the two complement and strengthen the secular law and vice-versa? It seems that neither may be the case but it can be empowering for a woman to have options, both of which may not necessarily be at the same political junctures at a given point of time. But Time alone will tell.

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<sup>12</sup>Pope Francis, Apostolic Exhortation *Evangelii Gaudium*, [http://www.vatican.va/content/francesco/en/apost\\_exhortations/documents/papa-francesco\\_esortazione-ap\\_20131124\\_evangelii-gaudium.html](http://www.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html), accessed on 30th May, 2019.

<sup>13</sup>Beth Backes, "#churchtoo: Three Changes we must Make now," June 5, 2018 <https://influencemagazine.com/practice/churchtoo> (I have put the website from which it is ultimately instead of the website where it is referred) Accessed on 1st May, 2019.

<sup>14</sup>V. Thampu, "Priest Predators: Who'll Bell the Cat?" in *The New Indian Express* 03-03-2019 <http://www.newindianexpress.com/opinions/2019/mar/03/priest-predators-wholl-bell-the-cat-1946000.html> Accessed on 1st May, 2019