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## ECCLESIASTICAL LEGISLATIONS FOR THE PROTECTION OF MINORS AND VULNERABLE PERSONS AGAINST SEXUAL ABUSE AND THEIR IMPLEMENTATION IN INDIAN CHURCH: DEVELOPMENTS AND LIMITATIONS

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### **Abstract**

Sexual violence against minors is a heinous crime against humanity. The Indian Church along with Universal Church declares zero tolerance to this evil as *graviora delicta*. Measures to handle such cases sometimes become a failure because of ineffective implementation of the legislation. In this context, the article discusses the developments of ecclesiastical legislations for protection of minors and vulnerable persons and their limitations. The article is divided into five parts: The first part is a terminological explanations of Sexual Abuse of Minors in India; the second part explains the major Ecclesiastical Legislation by the Universal Church; the third part expounds the promulgations of the Indian Church in this regard; the fourth part discusses the limitations and failures of the Indian Church in implementing the guidelines and legislations of the universal and

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local ecclesiastical bodies; and the last part proposes a few recommendations for effective protection of minors and vulnerable persons in the Indian Church.

**Keywords:** Abuse of Minors and Vulnerable Persons; Ecclesiastical Legislation on Child Abuse; Grave Delicts; Sexual Abuse; Zero Tolerance

## Introduction

Jesus treats children with kindness and love: “let the children come to me” (Mt 19:14). Further, he takes the side of the most vulnerable people in the world and warns His people not to take advantage of the widow or the fatherless (Mk 12:38-40; Lk 20:45-47). Hence Pope Francis states that the Church loves all her children like a loving mother, but cares for all and protects with special affection those who are the smallest and the defenceless.<sup>1</sup> The Pope mandates the Christian faithful to create a safe environment for children and vulnerable persons by responding to issues and delicts involving sexual abuse through effective methods.

### 1. Sexual Abuse of Minors in India

Protection of minors against sexual abuse is a challenge and task for the Church. It is a societal vice spread through all spheres of the Indian society and the Church is not an exemption.

#### 1.1. Sexual Abuse

Sexual abuse is any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic women’s sexuality, using coercion, threats of harm or physical force, by any person regardless of relationship to the victim, in any setting, including but not limited to home and work.<sup>2</sup> A generally accepted definition of sexual abuse of minors is that when a person, who has not completed the age of eighteen, is coerced to engage in sexual activity for which he or she cannot give consent, is unprepared for and cannot comprehend; and, or an activity that violates the societal legal ethics or social taboos of society.<sup>3</sup> Congregation for the Doctrine of the Faith (CDF) explains further that it is the contact or interaction

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<sup>1</sup>Francis, *Motu Proprio, Come una madre amorevole (As a Loving Mother)*, 4 June 2016, Introduction, AAS 108 (2016) 715-717.

<sup>2</sup> World Health Organisation, “Sexual Violence: Prevalence, Dynamics and Consequences,” *Guidelines for Medico-Legal Care for Victims of Sexual Violence*, Cha. 7, Geneva: World Health Organisation, 2003, 75.

<sup>3</sup>Sibnath Deb and Aparna Mukherjee, *Impact of Sexual Abuse on Mental Health of Children*, New Delhi: Concept Publishing Company, 2009, 18.

between a minor and an adult when the minor is being used for sexual stimulation of the adult.<sup>4</sup>

## 1.2. Minor and Vulnerable Person

A person is adult if he or she has completed the age of eighteen; below this age one is a minor, and those who are under the age of seven or those who habitually lack the use of reason are *non sui compos* and are also called infants.<sup>5</sup> Vulnerable person is a general term which is to be clarified and interpreted. It shall be anyone who is in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence.<sup>6</sup> Further, those who are habitually or occasionally deprived of their freedom are deemed to be not responsible of their acts and they are likened to infants.

## 1.3. Social Scenario of India

40 percent of India's children are vulnerable to threats of sexual abuse;<sup>7</sup> the Church is not an exception. But the subject of child sexual abuse is still a taboo in India. There is a conspiracy of silence around the subject and a very large percentage of people feel that this is a largely western problem. Part of the reason, of course, lies in a traditional conservative family and community structure that fears to talk about sex and sexuality. As a result of this, all forms of sexual abuse that a child or vulnerable person faces do not get reported.<sup>8</sup> This silence encourages the abuser to continue the abuse further. Very often victims do not even realize that they are being abused.

## 2. Ecclesiastical Legislation of the Universal Church

Universally, there is a cry to prevent and respond to sexual abuse of minors and vulnerable persons.<sup>9</sup> The Church's responses can be seen in Papal legislations, policy statements, Papal

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<sup>4</sup>Congregation for the Doctrine of the Faith, Glossary of Terms, accessed 27 June 2020, [http://www.vatican.va/resources/resources\\_glossary-terms\\_en.html](http://www.vatican.va/resources/resources_glossary-terms_en.html).

<sup>5</sup>CCEO c. 909 and CIC cc. 97 & 99.

<sup>6</sup>Francis, *Motu Proprio, Vos estis Lux Mundi*, 7 May 2019, art. 1 §1 B, *L'Osservatore Romano*, no. 19 (10 May 2019) 1.

<sup>7</sup>The Planning Commission of Government of India, "Report of the Working Group on Child Rights for the 12<sup>th</sup> Five Year Plan, 2012-2017, New Delhi: Government of India, 2012, 15.

<sup>8</sup>Varghese Kunnath, "The Savage Sex Culture," *The New Leader* 126 (May 2013) 11.

<sup>9</sup>Augustine Mendonca, "The Effects of Child Abuse /Neglect on Marital Consent," *Canonical Studies* 26 (October 2012) 7.

audiences, Vatican press releases, and works of various commissions.

## 2.1. Ecclesiastical Documents

Though for two millennia, the Church has known the delict of sexual abuse of minors and vulnerable persons, but not recognizing the seriousness of the evil, seldom came-up with strong legislations until recently. The Apostolic Constitution, *Sacramentum poenitentiae* issued in 1741, or the instruction, *Crimen sollicitationis* (1922 and 1962) or even the Codes of Canon law could not provide precise norms to deal with the crime against minors. *Sacramentorum sanctitatis tutela* issued in 2003 stands as the first document which directly deals with sexual abuse of minors. Thereafter, we see a development in issuing proper and precise norms regarding this delict as well as directives for implementing them. These documents have initiated to establish, stable mechanisms for the protection of minors and vulnerable persons.

### 2.1.1. *Sacramentum Poenitentiae* (1741)

Apostolic Constitution *Sacramentum poenitentiae*, promulgated by Pope Benedict XIV in 1741, emphasized the inviolability of seal of Confession, the dignity of the penitent, and the respect for the accused priest who could be a victim of false or calumnious accusation. Further, this document establishes general notice of the problem of sexual abuse amongst the clergy, specifically, soliciting of sex, including children. Though this document can be considered the first ecclesiastical document on sexual abuse, unfortunately it lacks firm norms for the protection of minors and vulnerable persons. Moreover, the emphasis of the document was to protect the cleric than the victim.

### 2.1.2. *Codex Iuris Canonici* (1917)

Canons 2353<sup>10</sup> of the *Codex Iuris Canonici*, promulgated by Pope Benedict XV in 1917, had a reference to the offence of the sexual abuse involving a “woman of minor age.”<sup>11</sup> Further, the canon

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<sup>10</sup>CIC 1917 c.2353: One intending marriage or who, for sake of satisfying lust, carries off an unwilling women by force or fraud, or even a consenting women of minor age, but without consent of her parents or guardians, or without their knowledge, is considered by that fact excluded from legitimate ecclesiastical act and more can be punished by other penalises for the gravity of the fault.

<sup>11</sup>*Codex Iuris Canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papæ XV auctoritate promulgatus, AAS 9, pars 2 (1917) 5-521. English trans., The 1917 Pio-Benedictine Code of Canon Law: In English Translation with Extensive Scholarly Apparatus, Edward N. Peters, Curator, San Francisco: Ignatius Press, 2001.*

specifies two fraudulent circumstances of the crime: intention of marriage or satisfying lust. The context of the delict is a person indulging with a consenting minor girl without the consent of parents or guardians. Unfortunately, consensual sex with minor by an adult with the consent or knowledge of parent or guardian is not a crime under this canon. Further the canon is not gender neutral but gender specific to female minor and it does not recognize male minors. Though the canon accepts force as delict, it does not recognize threat or public sexual violence as canonical crime of misconduct against minors.<sup>12</sup>

### 2.1.3. *Crimen Sollicitationis* (1922)

In 1922, Pope Pius XI issued a set of guidelines, *Crimen sollicitationis*, formally called an Instruction but which was never published in *Acta Apostolicae Sedis*.<sup>13</sup> The document identified two serious delicts, i.e., solicitation and sexual relationship with a minor and codified procedures to be followed in case the clergy use the sacrament of penance to make sexual advances to penitents. Solicitation deemed to have occurred either in the confession proper or after, or on the occasion of a confession. The constituent factors of the delict pointed out in the Instruction range from improper words, gestures, nodding of the head, up to explicit signs of solicitation by the cleric to sin against the sixth precept of the Decalogue. The convicted cleric was to be suspended *a divinis*, deprived of all benefices, dignities, active and passive voice and even degraded. The penal procedure and the imposition of the penalty were confidential, observed under *latae sententiae* excommunication reserved to the Supreme Pontiff.<sup>14</sup> Unfortunately, the confidential nature and lack of publicising document upheaved obscurity and ambiguity in the execution of norms. Further, the document is specific to female minor and is not gender neutral.

### 2.1.4. *Crimen sollicitationis* (1962)

On 16 March 1962, the Sacred Congregation of the Holy Office issued a renewed version of *Crimen sollicitationis*.<sup>15</sup> It varied only

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<sup>12</sup>William H. Woestman, "Sexual Abuse of Minors as an Irregularity for Orders. A Magic Bullet?" *Studia Canonica* 40, 1 (2006) 37-38.

<sup>13</sup>It may be because the Church was afraid to deal with sexual delicts against clerics in public.

<sup>14</sup>*Crimen Sollicitationis*, 1922, 61 & 11.

<sup>15</sup>The Supreme and Holy Congregation of the Holy Office, Instruction, *de Modo Procedendi in Causis de Crimine Sollicitationis*, 16 March 1962, Rome: The Vatican Press, 1962, 1-61.

slightly from that of 1922 Instruction, in the sense that it was a bit more elaborate and extended to priests of religious orders. It also contained an appendix with the forms to be used in the penal procedure. This document set out guidelines for dealing with cases of solicitation, along with homosexuality, bestiality, and child sexual abuse. It also stated about the manner of interrogating, including young girls in religious houses and married women.<sup>16</sup> The document limits to clerical sexual abuse and abuse of religious and forgets vast majority of other church persons and laity.

### **2.1.5. *Codex Iuris Canonici* (1983)**

CIC 1983 canon 1395 § 2<sup>17</sup> deals with delict against sixth commandment committed by a cleric including against minors. It refers to the external sin against the sixth commandment which meets at least one of the following conditions: the deed has been made with the use of coercion or threats; it has been made public;<sup>18</sup> and it has been made with a minor under the age of sixteen.<sup>19</sup> Further, sexual offence can be public in which an offence is committed in front of other people or with the usage of the mass media, or in public which includes exhibitionism or propagating pornography. There is a persistent development in the awareness of the Church on sexual delicts against minor. The CIC 1917 was concerned only of sexual sin against female minor, but in CIC 1983 it becomes gender neutral. Moreover, the new code fixes the age of minor and defines public sexual offence as delict. But the code is silent about the issue of consensual sex with a minor, victim centred penal norms, vulnerable person and stable mechanism for the implementation.

### **2.1.6. *Codex Canonum Ecclesiarum Orientalium* (1990)**

The Oriental code does not have the term sexual abuse of minors or any precise canon which deals with the delict of sexual abuse of minors and vulnerable persons. CCEO canon 1451<sup>20</sup> is an open canon

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<sup>16</sup>*Crimen Sollicitationis*, 1962, 62 & 38.

<sup>17</sup>CIC c. 1395 §2: A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.

<sup>18</sup>Mark L. Bartchak, "Child Pornography and the Grave Delict of an Offense against the Sixth Commandment of the Decalogue Committed by a Cleric with Minor," *Periodica* 99, 100 (2011) 300.

<sup>19</sup>CIC c. 1395 §2.

<sup>20</sup>CCEO c. 1451: A person who has kidnapped or unjustly detains, seriously wounded or mutilated, or inflicted bodily or mental torture on a person, is to be punished with an appropriate penalty, not excluding a major excommunication.

which speaks about five heinous delicts inflicted against human dignity and freedom. The canon condemns and proposes appropriate penalty for kidnap, illegal detention, serious physical mutilation or inflicting injury and physical or psychological torture. The bodily and mental torture specified in the canon is absolutely novel to canon law<sup>21</sup> in light of sexual abuse in general and child sexual abuse in particular.

The traditional claim that since the civil law of the states clearly addresses the offence, the legislature does not provide another proviso is unjustifiable which further creates *lacuna legis*.

### 2.1.7. *Sacramentorum Sanctitatis Tutela* (2001)

In response to the rampant crisis of sexual delict, on 30 April 2001 Pope John Paul II issued the Apostolic Letter *motu proprio, Sacramentorum sanctitatis tutela* (SST), promulgating the substantive and procedural norms for *graviora delicta* reserved to the Congregation for the Doctrine of the Faith. Further, the CDF letter of May 2001 to bishops and religious superiors clarified the norms.<sup>22</sup> The *motu proprio* recognizes sexual abuse of minors in the context of the absolution of accomplice, solicitation and direct violation of the sixth commandment of the Decalogue with a minor.<sup>23</sup> These delicts which are reserved to CDF has a prescription period of ten years which begins at the completion of the eighteenth year of the minor.<sup>24</sup> The local tribunals no longer have the competence to deal with the *graviora delicta* beyond the preliminary investigation, unless CDF grants the competence.

### 2.1.8. *Sacramentorum Sanctitatis Tutela* (2010)

After nine years of SST 2001, the Holy See has modified the norms of managing the *Delicta Graviora* on 21st May 2010. SST 2010 enhanced the CDF with penal jurisdiction for *delicta graviora*, against Cardinals, Patriarchs, representatives of the Holy See, and Bishops, and those who were previously acted upon Pontifical mandate, and also other physical persons listed in CIC c.1405 §3 and CCEO c.1061.<sup>25</sup>

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<sup>21</sup>George Nedunagtt, ed., *A Guide to the Eastern Code, Kanonika 10*, Rome: Pontificio Instituto Orientale, 2002, 767.

<sup>22</sup>Congregation for the Doctrine of the Faith, *On More Grave Delicts Reserved to the Same Congregation for the Doctrine of the Faith*, 18 May 2001, AAS 93 (2001) 528- 531.

<sup>23</sup>SST, 2001, art. 3.

<sup>24</sup>*Historical Introduction to the Norms of the Motu Proprio "Sacramentorum Sanctitatis Tutela"* (2001) 1.

<sup>25</sup>Thomas J. Green, "Sacramentorum Sanctitatis Tutela: Reflection," *The Jurist* 71, 1 (2011) 140-144.

In addition, article 6, 2<sup>o</sup>, §1 created a canonical delict of acquisition, possession, or distribution of pornographic images of minors under the age of fourteen,<sup>26</sup> for purposes of sexual gratification, by whatever means or using whatever technology,<sup>27</sup> and the crime is placed into the offense *delictum cum minore*.<sup>28</sup> The Statute of Limitations has also been extended from ten to twenty years starting from the eighteenth birthday of the minor.<sup>29</sup> Furthermore, a person who habitually lacks the use of reason is for the purpose of canonical delict considered equivalent to a minor regardless of his or her actual age.<sup>30</sup> Though the document proposes strong child protective norms, it lacks a stable mechanism to implement the legislations in a swift manner.

### 2.1.9. *Come Una Madre Amorevole* (2016)

On 4 June 2016, Pope Francis promulgated an apostolic letter in the form of a *motu proprio*, *Come una Madre Amorevole*, instructing that a Bishop or an Eparch or the Major Superior of an Institute of Consecrated Life or Society of Apostolic Life can be removed from office if he lacks the diligence demanded by office as regards the *delicta graviora* previously outlined in the SST. Three points need underlining. As a penal norm, firstly, it typifies to the crime and attaches the penalty i.e., removal from office. Secondly, it does not limit to sexual abuse cases, but it extends to all abuses and exacerbations against minors and vulnerable persons. Thirdly, the scope of the aforementioned legislation does not seem to be limited to clerical sexual abuse, but extended to others. If the allegation is deemed credible, a preliminary investigation is conducted at the local level, and the case is sent to the appropriate Vatican dicastery and a suitable decision is taken with the approval of the Roman Pontiff.<sup>31</sup> Thus this document proposes strong penal process against those who are responsible in office, but negligent and who cover up the cases of sexual abuse of minors.

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<sup>26</sup>SST, 2010, art 6 §1 2<sup>o</sup> is replaced by *Rescriptum ex Audientia Ss.Mi*, art.1., Francis, *Rescriptum ex Audientia Ss.Mi*, 3 December 2019, art.1, *L'Osservatore Romano*, no. 51-52 (20-27 December 2019) 2.

<sup>27</sup>SST, 2010, art. 6 §1 no. 2; Bartchak, "Child Pornography and the Grave Delict..." 285, 307 and 322-343.

<sup>28</sup>Congregation for the Doctrine of the Faith, *Procedures and Practices at the Congregation for the Doctrine of the Faith for Grave Offenses*, 2004, art. 4(a), AAS 96 (2004) 671-687.

<sup>29</sup>Charles G. Wrenn, "Prescription and Derogation from Prescription in Sexual Abuse of Minors," *The Jurist* 67, 2 (2007) 504.

<sup>30</sup>*Normae de Gravioribus Delictis*, 2010, A (2), art. 6 §1 n. 1.

<sup>31</sup>Francis, *Motu Proprio, Come una madre amorevole*, 715-717.



### 2.1.10. *Vos Estis Lux Mundi* (2019)

*Vos estis lux mundi* is a *motu proprio* promulgated by Pope Francis as the outcome of Vatican Summit on Protection of Minors convened in February 2019. This document establishes new and efficacious procedures to combat sexual delicts against minors and vulnerable persons committed by clerics and religious, as well as the bishops and religious superiors are held accountable for their actions. It establishes universal norms, procedural in nature, without new penalties, for the whole church.<sup>32</sup>

The *motu proprio* enlists six delicts:<sup>33</sup> sexual abuse of minors under the age of 18; sexual abuse of vulnerable persons;<sup>34</sup> sexual abuse, both of minors and adults, committed by violence or threat or through abuse of authority; the production, exhibition, possession or distribution<sup>35</sup> of child pornography;<sup>36</sup> the recruitment of or inducement of a minor or vulnerable person to participate in pornographic exhibitions and the interference to avoid civil or canonical investigations, whether administrative or penal, against a cleric or religious accused of the above said delicts against the sixth commandment. To implement zero tolerance against sexual abuse of minors and vulnerable persons, the Episcopal Conferences, Synods of Bishops, Councils of Hierarchs, the Eparchies, individually or together, are to establish stable and easily accessible systems for the submission of reports, within a year from the entry of the norms into force.<sup>37</sup> Constitution of this stable mechanism and preliminary enquiry committee try to ensure to transparent and swift penal process. The Church fully cooperates with civil authorities in matters of sexual abuse to bring justice to survivors and to the civil order.<sup>38</sup>

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<sup>32</sup>Andrea Torielli, “New Norms for the Whole Church against Those who Abuse or Cover up,” *L’Osservatore Romano*, no. 9 (10 May 2019) 3.

<sup>33</sup>Francis, *Motu Proprio, Vos estis Lux Mundi*, 7 May 2019, art. 1 §1, *L’Osservatore Romano*, no. 19 (10 May 2019) 1.

<sup>34</sup>A vulnerable person is 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 resist the offence. *Vos estis Lux Mundi*, arts. 1 and 2, b<sup>o</sup>.

<sup>35</sup>Child pornography is any representation of a minor, regardless of the means used, involved in explicit sexual activities, whether real or simulated, and any representation of sexual organs of minors for primarily sexual purposes. *Vos estis Lux Mundi*, art. 1 §2, c<sup>o</sup>.

<sup>36</sup>*Rescriptum ex Audientia Ss.Mi*, (3 December 2019) art.1.

<sup>37</sup>Tornielli, “New Norms for the Whole Church against those who Abuse or Cover up,” 3.

<sup>38</sup>*Vos estis Lux Mundi*, arts. 2, 3, 19, 12 and 7; *Rescriptum ex Audientia Ss.Mi* (6 December 2019) no. 1.

### 2.3. Pontifical Circulars and Letters

Pope John Paul II underscored that in priesthood and religious life in the Church there is no place for those who would harm the young.<sup>39</sup> Further, Benedict XVI, in his Letter to the Irish Catholics 2010, denounced any kind of sexual abuse against minors by pastors of the Church.<sup>40</sup> Following this, in 2011 CDF sent a circular to all Episcopal Conferences to ensure the protection of children and of the young and to help diocesan bishops and superiors respond appropriately by developing guidelines, orientate vocation and reinvigorate seminary formation.<sup>41</sup> Further in 2018, Pope Francis has issued a forceful and challenging letter to the People of God, addressing the crimes of sexual abuse and the failure of Church leaders to protect minors and vulnerable persons.

### 2.4. Vatican Summit on Protection of Minors (2019)

The Vatican Summit on Protection of Minors 2019 was convened by Pope Francis from 21 to 24 February to formulate definite proviso, guidelines and policies for the protection of minors. Three themes were articulated in presentations: the person of the bishop and his responsibilities; the relationship of a bishop with other bishops; the relationship of the bishops with the People of God and society.<sup>42</sup> The summit called for more accountable and transparent legal procedures on reporting and investigation<sup>43</sup> and negligence of those who are in office.<sup>44</sup>

### 2.5. Pontifical Commission for the Protection of Minors

The Pontifical Commission for the Protection of Minors (PCPM) is a statutory body under the guidance of Congregation for the Doctrine of the Faith, constituted on 22 March 2014, to advise the Roman

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<sup>39</sup>John Paul II, Address to the Cardinals of the United States, 23 April 2002, no 3.

<sup>40</sup>Benedict XVI, *Pastoral Letter to the Catholics of Ireland*, 19 March 2010, no 11.

<sup>41</sup>Congregation for the Doctrine Faith, *Circular Letter to Assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics*, 3 May 2011, Introduction, AAS 103 (2011) 406-412.

<sup>42</sup>*Digital Press Kit for the Meeting on the Protection of Minors 21-24 February 2019*, Holy See Press Office (21 March 2019) 2.

<sup>43</sup>Charles Jude Scicluna, "Taking Responsibility for Processing Cases of Sexual Abuse Crisis and for Prevention of Abuse," Paper presented at the meeting on Protection of the Minors in the Church, Vatican (21 February 2019).

<sup>44</sup>Luis Antonio G. Cardinal Tagle, "The Smell of the Sheep: Knowing their Pain and Healing their Wounds is at the Core of the Shepherd's Task," Paper presented at the meeting on Protection of the Minors in the Church, Vatican (22 February 2019).

Pontiff on effective policies for the protection of minors and vulnerable persons and to offer support to local churches<sup>45</sup> in the development of their protection policies through advice, formation, education, research and project development in the area of safeguarding the young.<sup>46</sup> To accomplish this, the commission have focused on three main areas and share the same with all Episcopal Conferences and the laity: Healing and Care, Guidelines and Education.

### 3. Legislations by the Indian Church

Catholic Church in India has a wider role, since it is the second most populated nation of the world which has 472 million minors who are prone to exploitation.<sup>47</sup> The Church is also not exempted from it. Church personal<sup>48</sup> child in conflict with law<sup>49</sup> and lay faithful<sup>50</sup> becomes assailants of sexual abuse of minors and vulnerable persons in the church. Indian Church strives hard to eliminate this crime against humanity through its policies and legislations. Inadequate efforts of Indian Church to formulate policies and legislations to curb this delict aggravate further the unjust situation of the minors and vulnerable persons.

#### 3.1. Early Measures

Catholic Church in India was hesitant to speak or respond to the sexual abuse of minors and vulnerable persons until recently. Only in 1974 Catholic Bishops' Conference of India initiated protective policies of the Indian Church for women and minors against violence and discrimination;<sup>51</sup> on behalf of it further studies were initiated in 1979 and 1984.<sup>52</sup> To deal further, in 1992, a Women's Desk was constituted, which was in 1996 raised to the status of Commission to

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<sup>45</sup>Pope Francis, *Chirograph*, 22 March 2014, *L'Osservatore Romano*, no. 20 (5 May 2015) 4.

<sup>46</sup>Pontifical Commission for the Protection of Minors, *Statutes*, 8 May 2015, art. 1 §§1-2, *L'Osservatore Romano*, no. 20 (15 May 2015) 4.

<sup>47</sup>Children in India: 2018, *Central Statistics Office Ministry of Statistics and Programme Implementation*, New Delhi: Government of India Publication, 2018, 11.

<sup>48</sup>Catholic Bishops Conference of India, *Procedural Norms for Dealing with Cases Involving Abuses of Minors 2015*, Kochi: KCBC, 2018, sec. 3 (1) c.

<sup>49</sup>*JJ Act*, 2015, secs. 2 (13) and 2(33); *Ragbir vs. State of Haryana*, AIR 1981 SC 2037.

<sup>50</sup>CCEO c. 400; CIC c. 224-231.

<sup>51</sup>Catholic Bishops Conference of India, *Gender Policy of the Catholic Church of India*, 2010, New Delhi: CBCI Commission for Women, 2009, 6.

<sup>52</sup>Donald D'Souza, ed., *Final Statement of the General Body Meetings of CBCI, 1966-2002*, New Delhi: CBCI, 2002, 61 & 91.

compose protective policies.<sup>53</sup> Unfortunately, it does not yield the desired results.

### **3.2. Empowerment of Vulnerable Persons**

In 2008, after 12 years of the constitutions of the commission for women, on the milieu of the 20<sup>th</sup> anniversary of *Mulieris dignitatem*, CBCI convoked a plenary assembly on the theme “Empowerment of Women in the Church and Society,” to deal with domestic violence, sexual discrimination, sexual abuse of girls, marginalization of *dalit*, sexual molestation, trafficking of girls for sex, infanticide, child prostitution, rape, gender discrimination and inequality prevalent in all realms of society.<sup>54</sup> Further, on 2010, CBCI published the *Gender Policy of the Catholic Church of India* with the vision of creating a gender just Church and society where all human persons are free to grow in dignity as human beings<sup>55</sup> focussing on family, education, health, social involvement and others.

### **3.3. Norms for Dealing with Cases Involving Abuses of Minors (2015)**

Catholic Bishop Conference of India on 1 October 2015, in accordance with the instruction of CDF, to deal with sexual abuse of minors by priests and religious, promulgated Procedural Norms for Dealing with Cases Involving Abuses of Minors. The norm proposes three-tier local procedural mechanisms, namely, Preliminary Enquiry Committee for establishing the allegation, Sexual Offence Committee, to perform investigation, and a National Review Board for appeal or review. The diocesan Bishop or Religious Superior has to constitute Preliminary Enquiry Committee consisting of three members to receive complaints and to establish the resemblance of truth in the allegation. If the competent authority accepts that there seems to be truth in the allegation on the basis of preliminary enquiry, the matter is referred to the CDF. In accordance with the direction of the CDF, to investigate the case, a three-persons Sexual Offence Committee shall be constituted for a term of three years. Within ninety days, the Committee<sup>56</sup> shall submit the conclusion with the provision of review or appeal to National Review Board which comprises of three Bishops appointed by CBCI standing Committee. The proceedings of

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<sup>53</sup> Catholic Bishops Conference of India, “Report of the CBCI General Body Meeting, 13-21 February 1996,” New Delhi: CBCI, 1996, 73.

<sup>54</sup> Catholic Bishops Conference of India, “Statement on CBCI General Assembly,” 4.

<sup>55</sup> Catholic Bishops Conference of India, *Gender Policy of the Catholic Church of India*, 2010, 11.

<sup>56</sup> CIC 1917 c. 379 §1; 1983 c. 489, §2; CCEO c. 259.

the case, ecclesiastical or civil, are intimated properly to the CDF.<sup>57</sup> Unfortunately, this document remain as unpublished legislation of the CBCI till today.

### **3.4. CBCI Guidelines to Deal with Sexual Harassment at Work Place (2017)**

To create a safe and healthy environment for women, in 2017 CBCI Council for Women promulgated *Guidelines to Deal with Sexual Harassment at Work Place*. By this, each institution has to create a harmonious working environment; recruit trained, eligible, reputed and morally upright staff; communicate zero tolerance policy on sexual harassment by the staff, publicize the code of conduct on notice boards and document expressed consent of the same by the staff; and initiate close monitoring and background checking of the staff. Further, each institution should have Institutional Complaints Committee and Diocesan/Provincial Complaints Committee to accept complaints; to investigate; to suggest appropriate measures.<sup>58</sup> Further, CBCI Office for Labour prepared a report on 2018 to resolve the problems of labourers and to equip leaders to reach out to different sections of workers, specifically, domestic workers, construction workers, migrant workers, child labours, women workers, etc.<sup>59</sup>

## **4. Limitations of the Indian Church**

Deficient child protective legislations and policies, deficit societal awareness, the attitude of cover-up and lack of redressal mechanism to implement legislations enfeeble the Indian Church to act against the sexual abuse of minors and vulnerable persons.

### **4.1. The Response of the Church**

Church's stoic silence on sexual abuse of minors encourages perpetrators to repeat the offences.<sup>60</sup> Often, when an abuse is committed by a priest/religious, the immediate response of the Diocese or Religious congregation or parish bodies is to transfer the person or remove him/her from the office, so as to safeguard the

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<sup>57</sup>Catholic Bishops Conference of India, *Procedural Norms for Dealing with Cases Involving Abuses of Minors*, 2015, 2, 3, 4, 5, 6, and 7.

<sup>58</sup>CBCI *Guidelines to Deal with Sexual Harassment at Workplace 2017*, nos. 3 (h), 4, 5 and 7 (vi).

<sup>59</sup>Catholic Bishop Conference of India, *CBCI Office for Labour Report 2016-18*, New Delhi: CBCI Office for Labour, 2018, 1.

<sup>60</sup>Ragamalika Karthikeyan, Exclusive: Kerala Catholic Body's Bizarre Justification, Says Consumerism Led to Rape by Priest, *The New Minutes*, 3 March 2017.

perpetrator and to hide the shame.<sup>61</sup> Most often the child/vulnerable person is blamed for the delict<sup>62</sup> and threatened to remain silent. The local ecclesiastical bodies, basic Christian communities and parish communities, even the family of the victim would be hesitant to report the crime for proper investigation and care of the victim.<sup>63</sup> Huge media attention of cases of minor sexual abuse, especially by the clerics, makes the life of the victim miserable and thereby the family suffers in silence; hence, they are often hesitant to co-operate with the investigation. Cover-up<sup>64</sup> and non-reporting of clerical sexual abuse by ecclesiastical authorities to civil forum is also not unknown.<sup>65</sup> Under the pretext of pontifical secrecy non-cooperation of the diocesan or religious mechanisms with the civil mechanism fetches unjust sentences.<sup>66</sup>

#### 4.2. Deficient Ecclesiastical Legislations

The Indian Church has to evaluate whether it is determined to promulgate legislations in accord with the vision of the Pope Francis. Forgetting the vast majority of laity, the ecclesiastical legislations for the protection of minors and the vulnerable persons limit themselves to church personnel.<sup>67</sup> Further, the absence of proviso for stern ecclesiastical penalties in legislation in tune with civil legislations also weakens the ecclesiastical legislations of the Church. Moreover, lack of diocesan/provincial Codes of Conduct<sup>68</sup> and annual compliance audits in each year by independent auditors to assure that the legislations, guidelines and norms are being followed by the

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<sup>61</sup>Woestman, "Sexual Abuse of Minors as an Irregularity for Orders. A Magic Bullet?" 41.

<sup>62</sup>"Editorial, Rising Finger against Priest," *Sunday Shalom*, 02 March 2017; "Daughter, A Priest Has a Human Body and Temptations: Kerala's Church-Backed Magazine Victim-Shames Minor," *HuffPost News*, 06 March 2017, <https://www.huffingtonpost.in/2017/03/05/daughter-a-priest-has-a-human-body-and-temptations-keralas>.

<sup>63</sup>Francis Considine, "Justice and Equity in Cases of Sexual Misconduct Involving Priests," *Philipine Canonical Forum* 4 (January-December 2002) 144.

<sup>64</sup>Kerala government sacked Fr Thomas Joseph Therakam chairman of the Wyanad Child Welfare Committee (CWC), for allegedly helping to cover up the incident of Kottiyoor case, accessed 13 January 2020, <https://www.thenewsminute.com/article/kerala-priest-rape-case-mananthavady-archdiocese-spokesperson-sacked> 58.

<sup>65</sup>Thomas P. Doyle, "The Canonical Rights of Priests Accused of Sexual Abuse," *Studia Canonica* 24, 2 (1990) 336.

<sup>66</sup>Pontifical secrecy removed from cases of sexual abuse of minors: Rescriptum ex Audientia Ss.Mi (6 December 2019) art. 1.

<sup>67</sup>KCBC *Guidelines for Safe Environment Programme for Church Personal*, III (1) c.

<sup>68</sup>CBCI *Guidelines to Deal with Sexual Harassment at Workplace* 2017, nos. 3 (h), 4, 5 and 7 (vi).

eparchies and ecclesiastical institutions in Indian Church limits the implementation of child protective norms.

### 4.3. Inappropriate Redressal Mechanism

The gravest deficiency of Indian Church is that it lacks proper redressal mechanism to implement the legislations at various levels of the Church, especially in basic Christian unit, that is, parish level and institutional level. Absence of safe environment education for the children in parish/school level along with catechetical formation, adolescents and youth at organizational level, and adults in family unit level, weakens the Church vision of attaining zero tolerance against sexual abuse against minors. No mechanism is available in the Church for monitoring the behaviour of the clergy or identifying the offenders, to conduct background checks of Church personnel and candidates for ordination, and to provide legal and therapeutic assistance for victim and rehabilitation of victim/accused/convict.<sup>69</sup>

## 5. Proposals for Effective Protection

Justice before the felony is rather better than justice after the delict. The ecclesial legislation should be footed on justice before the crime, based on the method of prevention, protection and rehabilitation rather than retribution. As a conclusion, I would like to recommend following definitive measures for the effective implementation of the legislations for the protection of children/vulnerable persons, in collaboration with the civil forum to make the Church a safe place for children.

*Redressal Mechanism:* In view of *Vos estis lux mundi*, and CBCI procedural norms, four-tier redressal mechanisms (institutional level, diocesan/provincial level, Episcopal Conferences/Religious Institute level and CBCI/National level), should be constituted in the Indian Church.<sup>70</sup> If not, that has to be considered as neglect<sup>71</sup> and abatement of law<sup>72</sup> and the competent authority should be penalized.

*Reporting Mechanism:* Mandatory reporting to redressal mechanism is obligatory and binding. The reporting mechanism has to be unbiased, public and easily accessible.<sup>73</sup> For this the redressal

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<sup>69</sup>Doyle, "The Canonical Rights of Priests Accused of Sexual Abuse," 339.

<sup>70</sup>*Vos estis Lux Mundi*, art. 2 §1; *Procedural Norms for Dealing with Cases Involving Abuses of Minors*, 2, 3, 4, 5, 6, and 7.

<sup>71</sup>*Come una madre amorevole*, art.1 §3.

<sup>72</sup>POCSO Act, 2012, secs. 16 and 17.

<sup>73</sup>*Vos estis Lux Mundi*, arts. 2 and 3;

mechanism shall adopt third party reporting system<sup>74</sup> which provides better confidentiality and transparency consisting of verbal, written, web and toll free Childline reporting.<sup>75</sup> The redressal mechanism should have an emergency volunteer team to spot-save the victim.

*Preliminary Enquiry System:* The redressal mechanism should have scientific preliminary enquiry system to establish the resemblance of truth in the allegation of the complainant which should be swift and accurate. This consists of professionals in medical, psychological and criminological fields and legal experts in civil and ecclesiastical law, who use scientific methodology in a victim-friendly manner to remove façade, thereby either to reinstate to the society if the allegation is found erroneous or to inform the civil forum for further investigation.

*Accountability Check:* The Competent ecclesiastical authority should be accountable to the redressal mechanism in sexual abuse cases. And the mechanism should monitor the authority in office in accord with its competence and report to the higher authority regularly. It does psychological and societal background check of the authority/candidate before assuming a new office and report to the concerned higher bodies. Negligence/cover up is crime which deserves equal punishment as the perpetrator, removal and penalization under civil law.<sup>76</sup> The redressal mechanism shall report such cases after preliminary enquiry to the higher ecclesiastical authority without undermining civil reporting.<sup>77</sup>

*Lay Participation:* The efficiency of the redressal mechanism depends mostly on resources and methods of implementation. Lay experts effectively contribute for the effective implementation of the legislations for child protection as legal experts, scientific professionals and notaries.<sup>78</sup> The third party reporting system and preliminary enquiry system shall be managed by lay experts, which empowers the confidentiality and transparency for a child-friendly swift process. Women participation in the mechanism make the

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<sup>74</sup>A confidential mechanism constituted for reporting outside the ecclesiastical forum. Dennis Sadowski, "Bishops Hear that Third-party Reporting System may Start in February," *Catholic News Service*, 14 November 2019, accessed 30 January 2020, <https://cruxnow.com/church-in-the-usa/2019/11/bishops-hear-that-third-party-reporting-system-may-start-in-february/>.

<sup>75</sup> Ministry of Women and Child Development, *Childline and POCSO e-Box Information*, New Delhi: Press Information Bureau, 2018, 1.

<sup>76</sup>POCSO Act, 2012, secs. 16 and 17.

<sup>77</sup>POCSO Act, 2012, secs. 21 (1) and 5.

<sup>78</sup>*Vos estis Lux Mundi*, art. 13 §§1, 2 and 3.



system child-friendly, compassionate and victim oriented which should not be below half of the total members.<sup>79</sup>

*Internal Forum:*<sup>80</sup> Reporting of sexual abuse of minors is mandatory and liable to punishments otherwise. Any form of knowledge by any person regarding sexual abuse of minors makes the person accountable by civil and ecclesiastical law.<sup>81</sup> The spiritual conference, personal conferences and counselling have to be conducted on prior intimation of reporting that the acquired information on sexual abuse of minors or vulnerable person is not bound by confidentiality. Confession is bound by sacramental seal in which the absolver should be protected from the mandatory reporting from the acquired knowledge about abuse by anonymity of the penitent.

*Powerful Local Legislation:* India needs a powerful CBCI as the highest Episcopal body to legislate, review, monitor and implement the child protective legislations.<sup>82</sup> CBCI and Episcopal Conferences should be bound to promulgate inclusive legislations for the local Church.<sup>83</sup> Along with church person, the lay person, vulnerable person and child in conflict with law should be part of local legislation and protective policies. It must promulgate indigenous legislations, avoiding adaptation/adoption/imitation of legislations formulated under European background which is not suited to the Indian conditions.

*Cooperation with Civil Forum:* Church should love the civil legislations for the better implementation of legislations. The Codes of canon law and ecclesiastical legislations for child protection encourage the cooperation and sharing of civil forum for the effective implementation of legislations for the protection of minors and vulnerable persons.<sup>84</sup> The removal of pontifical secrecy in sexual abuse cases envisions the mind of the legislature on it.<sup>85</sup> Swift transfer of report of the complainant, sharing of preliminary enquiry report, information of background checks, ecclesiastical documents, reporting of cover up<sup>86</sup> and sharing of investigation report with civil forum lead to better serving of justice. Mandatory

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<sup>79</sup> John Paul II, Post-Synodal Apostolic Exhortation, *Christifideles Laici* (30 December 1988), n. 51, AAS 81 (1989) 393-521.

<sup>80</sup>CCEO c. 1229 §2 and CIC c. 1548 §2; CCEO c. 244 §2, 2° and CIC c. 471, 2°.

<sup>81</sup>*Vos estis Lux Mundi*, art. 3; *POCSO Act 2012*, secs. 21 (1) and 5.

<sup>82</sup>*Vos estis Lux Mundi*, Introduction; *Apostolic Letter to the Indian Bishops* (28 May 1987) a.

<sup>83</sup>*Vos estis Lux Mundi*, art. 2 §1.

<sup>84</sup>*Vos estis Lux Mundi*, art. 19.

<sup>85</sup>*Rescriptum ex Audientia Ss.Mi* (6 December 2019), art. 1.

<sup>86</sup>*Vos estis Lux Mundi*, art. 1 §1 (b).

registration and information to the civil forum makes this cooperation effective.<sup>87</sup>

*Educative Measures:* Prevention, Protection and rehabilitation are basic purposes of the legislations promulgated for protection of minors and vulnerable person. Societal and family taboos on perspectives of sexuality should be removed through sex education in the syllabus of schools and catechism. Gender equality in ecclesiastical forum and comparative study of civil and canon law empower effective implementation of preventive measures. The curriculum of the catechetical formation, and syllabus of formation houses and seminaries should give due importance for civil laws and ecclesiastical legislations on the protection of minors and vulnerable persons.

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<sup>87</sup>*POCSO Rules, 2012, Rule, 3 (1).*