

Editorial

Law and Justice

Two decades have passed since the promulgation of *The Code of Canons of the Eastern Churches (Codex Canonum Ecclesiarum Orientalium)*. Similarly, the Institute of Oriental Canon Law (IOCL) at Dharmaram Vidya Kshetram (DVK), Bangalore, has completed a decade of her service to the Catholic Church and, especially, to the Church in India. The commemoration of these two events has been marked by the Institute of Oriental Canon Law at DVK in the form of holding a national seminar and the launching of a new Journal of Canon Law.

Indeed, the integral connection between law and justice has prompted the institute to name the new journal *Iustitia: Dharmaram Journal of Canon Law*, as it would promote the ministry of law which inevitably involves the administration of justice and realization of virtues, culminating in establishment of *sanatana dharma*, following the noble ideal represented in the name *Dharmaram* ('garden of virtues').

There is no debate on the requirement of law in any society. No man is an island. Every one is part of a specific community or group and, broadly speaking, of a nation or of the world community at large. As social human beings, the harmonious coexistence and orderly functioning of the members of any society necessitate, in view of the common good, the existence of a certain body of rules, norms and regulations which prompts and binds its subjects either to do or to refrain from doing something.

We can say that the Christian faithful have dual membership. On the one hand, they are members of a spiritual reality, that is, the mystical body of Christ - the Church has earthly and heavenly, hierarchical/structural and spiritual, visible and invisible dimensions (Vat. II, LG 8) - and, on the other, they are members of a secular or civil society, that is, a nation or country. This entails relationships, including those with a juridical nature. Hence, there should be some mechanisms to maintain good relationships in the society and to facilitate its smooth functioning. The words of Pope Paul VI, "A community without law, far from being or ever being able to be, in this world, the community of charity, has never been

and will never be anything else than a community of the arbitrary,"¹ point to the need and relevance of laws, norms and regulations in any society, including the Church.

The purpose of law, as legally enacted and enforced body of norms, is to create order and ordered functioning in any society, to administer justice and to ensure harmonious living. In this regard Pope Paul VI said: "the law is not meant for the law's sake... but it is at the service of truth, justice, patience and charity."² Law is to ensure justice and to help the people enjoy life in its fullness.

In the modern world, however, justice is not often properly and fairly administered to people. A lot of injustice takes place both within the church community and outside, either due to ignorance or negligence of law or because of the indifferentism or disregard for the significance and relevance of law.

One of the main functions of these laws, therefore, is to determine and define the objective rights of individuals as well as institutions and to provide means for their protection. While speaking about the functions of law in any society, Corriden highlights four functions as almost fundamental to all societies. The third of these four functions says: "Law is to protect personal rights, provide avenue of recourse and redress of grievance, and means for the resolution of conflicts." He continues: "the Church takes its place in the community of nations, and strives to work with them for justice and peace in the world."³ The other three are: Law helps to achieve goals; to afford stability to the society and to educate the society. A brief analysis of the terms used to denote law, will help us better comprehend the correlation between law and justice.

While many other modern languages like French, German, Italian, and Spanish employ two words to render the different significances and nuances of the two Latin words, *ius* and *lex*, as used in the original Latin text of the codes, English language employs only one term, i.e., 'law' for the same purpose. *Lex* means a set form of words: 'contract, covenant or agreement; a law as proposed by a magistrate to the people; a law as passed, a statute.' Thus, *lex* signifies a body of

¹Paul VI, *Allocution* of 28 January 1972, AAS 64 (1972) 203.

²Paul VI, *Allocution* of 28 June, 1971, AAS 63 (1971) 140.

³James A. Corriden, *An Introduction to Canon Law* (New York: Paulist Press, 1991) 48.

rules and regulations which are enacted and enforced by a competent authority.

The term *ius* has still wider significance in comparison with *lex*. Besides these different nuances of *lex* and *ius*, the latter alone has two meanings, namely, 'right' and 'law'. "'Right' refers to a reality (*res iusta* = the right thing), whereas 'law' refers to a discipline or science that studies the reality. Right is the object of justice. Justice is the virtue which orders that each one be given that which is his (*unicuique suum tribuere*)... The science that studies and determines that which is just in concrete is also called law."⁴ St. Thomas underscores the connection between law and justice by making reference to *ius*: "The word *jus* (right) was first of all used to denote the just thing itself, but afterwards it was transferred to designate the art whereby it is known what is just, and further to denote the place where justice is administered, thus a man is said to appear *in iure*, and further we may say even that a man who has the office of exercising justice, administers the *jus* even if his sentence be unjust."⁵ The term *ius* comes from the word *iustitia* which means 'justice', 'fairness', 'equity' or 'the state of justness' or from the term *iussum* (*jubere*), meaning a 'command' or an 'order'.

We see, thus, that justice is closely linked to law, and the ministry of law, especially in the Church, involves justice which is a virtue. George Nedungatt points to this close connection: "Justice in the Church, even as outside it, is ever in danger of being violated without the protection of law. Canon law is rightly conceived as having the overall tutelage of justice in the Church."⁶ Linked with justice, law can function as an instrument in leading one to perfection and holiness: "Law is not an end in itself, but an instrument that serves for the realization of justice in social relations. Justice, in turn, is a virtue necessarily ordered to charity, and in that way it is integrated into a higher justice, which is sanctity."⁷ Justinian quotes Ulpian's definition of justice at the beginning of his *Institutes*: "Justice is the constant and perpetual intention to render everyone

⁴Joseph T. Martín De Agar, *A Hand Book on Canon Law* (Montreal: Wilson and Lafleur, 1999) 1.

⁵*Summa Theologica* II-II, q. 57, art. 1.

⁶George Nedungatt, *The Spirit of the Eastern Code* (Rome: CIIS, 1993) 7.

⁷Joseph T. Martín De Agar, *A Handbook to Canon Law*, p. xv.

his due.”⁸ Justice, as a virtue of the human will, inclines man to act justly, to follow the prescriptions of law, that is, to live honestly, to injure no one, and to give everyone his due. It is in view of widening the horizon of the ministry of law and justice that the IOCL has launched the new journal *Iustitia*.

The first issue of the *Iustitia* consists of seven scholarly articles and the Church documents, Apostolic Letter *Motu Proprio Omnium in mentem* on several amendments to the Code of Canon Law, Apostolic Constitution *Anglicanorum coetibus* of Pope Benedict XVI and a book review. Jobe Abbas, in his article, “The Eastern Code: A Resource for the Revision of the Latin Code,” proposes that “within the context of possible revisions of the 1983 Latin code, the argument can now be that, instead of having recourse to the same CCEO norms by way of CIC canons 17 and 19 in individual cases, the Eastern formulations should simply replace their Latin counterparts in order to clarify doubts and remedy legislative gaps in CIC” (p. 11). The author treats the matter in two parts: first part deals with three individual cases of the Latin code which could easily be replaced by the Eastern code to remove ambiguity. In the second part, the author analyses three CIC canons and suggests that in case of a revision or improvement of the Latin code one of the three canons could easily “be omitted” and the “two other could be replaced by the parallel Eastern Formulation.”

George Nedungatt, offers significant insights into “Religious Education in Canon Law” by analyzing aspects such as Religion, the concordat system and religious education, teaching of religion and catechesis, catechesis and commitment to Christ, and, finally, religious pluralism and the secular model of education. He holds that scientific progress and technical advancement alone cannot offer answer to all issues and, hence, along with them, there should essentially be a transcending religious dimension in order to make any education integral.

As the Vatican Council II has given prominence to the laity, which has been subsequently integrated into the Codes of Canon Law, Cherian Thunduparampil, in his article, “Rights and Obligations of the Laity in the Mission of the Church,” presents the important rights and their corresponding obligations.

⁸Inst., I, 1: “*Iustitia est constans et perpetua voluntas jus suum unicuique tribuendi.*”

Pablo Gefaell's article, "Major Contributions of CCEO during the Past 20 Years," provides the readers with a scholarly journey through the past 20 years since the promulgation of the Eastern Code. As a result, he provides facts and figures of the contributions – in terms of scholars of law, institutions, establishments, decisions, major events like symposia, conferences and seminars and significant works on Eastern Canon Law – that CCEO has facilitated in the growth, development and enhancement of the study and application of canon law in the Church, with a special focus on Eastern Churches.

Astrid Kaptijn's contribution, "Ordinariates for the Eastern Catholic Faithful Lacking Their Own Hierarchs," deals with the ever relevant and debated topic of Ordinariates which are "geographically based structures set up for Eastern Catholic Communities who do not have their own hierarchy in a given territory" (p. 116). She deals only with those ordinariates which are set up for orientals and led by a prelate of another Church *sui iuris*. After identifying the earlier Vicariates and locating them in their historical contexts, she masterfully presents the origin and evolution of this canonical institute.

"Reverential Fear and Marriage Nullity" by Jose Marattil presents "how a particular culturally rooted reverential fear could become a ground of marriage nullity especially in the Indian cultural context" (p. 144). He analyses the issue of CCEO c. 825 (CIC c. 1103), from the doctrinal and jurisprudential points of view. Besides presenting the proofs of reverential fear, the author also examines the factors that generate reverential fear in children, especially in the Indian context.

George Thomas, in his article, "The Juridical Figure of Catholicos in the Syro-Malankara Major Archiepiscopal Church," highlights the "juridical status of the figure of Catholicos according to the Antiochean-Malankara tradition" (p. 185). The evolution of the titles, *Patriarch*, *Major Archbishop* and *Maphrian* as well as *Catholicos* are analysed in their historical background. I appreciate and congratulate all the contributors to the first issue of *Iustitia*.

Iustitia: Dharmaram Journal of Canon Law, envisaged as a biannual, aims at contributing towards the enhancement and deepening of the knowledge of ecclesiastical laws contained in the Codes of Canon Law, especially the CCEO, and the Particular Laws of various Churches *sui iuris* and to make it accessible to scholars and experts,

as well as the wider public and the practitioners of canon law in various fields of theoretical research and practical administration. We also aim at highlighting the Church related civil laws of the place. Promotion of quality scientific research and comparative studies between CIC and CCEO as well as between Church laws and civil laws come within the scope of this journal. The journal will also make accessible to the public important current documents of the Church, both universal and individual Churches *sui iuris*. We also intend to familiarize the readers with the ongoing significant researches and publications within the target field through book reviews.