

## THE IMPACT OF CCEO ON THE LEGISLATIVE, EXECUTIVE AND JUDICIAL GROWTH OF THE SYRO-MALABAR CHURCH

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The elevation of the Syro-Malabar Church to major archiepiscopal rank with a common hierarchical head necessitated by the provisions of *Code of Canons of the Eastern Churches (CCEO)* has armed this apostolic Church to govern itself with the rightful autonomy it deserves. The establishment and effective functioning of the canonical structures corresponding to the new hierarchical and canonical status has helped this Church *sui iuris* to achieve significant growth in the exercise of legislative, executive and judicial power of governance. These remarkable achievements within a short span of quarter a century is a clear proof that it has the potential and vibrancy to be promoted to patriarchal status which is the traditional form of governance in the Eastern Catholic Churches.

### **Introduction**

The 18 October 1990 promulgation and 1 October 1991 entry into force of the *Code of Canons of the Eastern Churches (CCEO)*, while an important event for all 23 Eastern Catholic Churches *sui iuris*, was especially so for the Syro-Malabar Church, the second largest Eastern Catholic Church, which received the Christian faith from St. Thomas, the apostle in the first century. Since then, it has withstood all challenges - even those to its very identity - without breaking from the Catholic Communion.

The 1990 Eastern code classifies the Oriental Churches into four types: patriarchal, major archiepiscopal, metropolitan and other Churches *sui*

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*iuris*.”<sup>1</sup> When the code was promulgated, the Syro-Malabar Church consisted of two metropolitan eparchies with no common head. It therefore did not conform to any category of Church *sui iuris* envisaged by the code.<sup>2</sup> To remedy this discrepancy, Pope John Paul II elevated the Syro-Malabar Church to major archiepiscopal status on 16 December 1992.

The elevation marked the fulfillment of a long-cherished dream and the beginning of a new era in the history of the Syro-Malabar Church.<sup>3</sup> As Paul Pallath writes: “After the erection of the Syro-Malabar Hierarchy in 1923 and the constitution of the ecclesiastical province of Changanacherry in 1956, the most important act with regard to the hierarchical structure and autonomy of this Church was its elevation to the status of a Major Archiepiscopal Church.”<sup>4</sup> With its new hierarchical structure, the Syro-Malabar Church was empowered to govern itself with more legislative, administrative and judicial power.

As its title indicates, this paper attempts to study how the Eastern code has impacted the life of the Syro-Malabar Church, and to examine how this Church’s elevation to major archiepiscopal status has resulted in its legislative, executive and judicial growth.

## **1. Impact of CCEO on the Syro-Malabar Church**

The life of the Syro-Malabar Church has changed exponentially as a result of CCEO. Now, it is endowed with a common head and administrative structures that enable it to exercise its rightful autonomy in the Catholic communion.

### **1.1. Elevation to Major Archiepiscopal Status**

The first major impact of CCEO, promulgated by Pope John Paul II with the apostolic constitution *Sacri canones*,<sup>5</sup> on the Syro-Malabar Church was its elevation to major archiepiscopal status on 16

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<sup>1</sup> Cfr. Ivan Žužek, “The Ecclesiae sui iuris in the Revision of Canon Law,” in René Latourelle (ed.), *Vatican II. Assessment and Perspectives*, vol. II, New York: Paulist Press, 1989, 288-304, at p. 296.

<sup>2</sup> Cfr. George Nedungatt, “The Syro-Malabar Church under the New Oriental Code,” in Jose Chiramel and Kuriakose Bharanikulangara (eds.), *The Code of Canons of the Eastern Churches, A Study and Interpretation*, Alwaye: St. Thomas Academy for Research, 1992, 276-300, at pp. 286-287.

<sup>3</sup> Cfr. *Synodal News*, no. 1 (August 1993) 1.

<sup>4</sup> Paul Pallath, “Pope John Paul II and the Syro-Malabar Church,” *Journal of St. Thomas Christians* 13 (3/2002), 3-25, at p.18.

<sup>5</sup> AAS 82 (1990) pars II, 1033-1363.

December 1992. This elevation was a canonical necessity, as the Syro-Malabar Church did not conform to the types of *Ecclesiae sui iuris*<sup>6</sup> anticipated by CCEO. With its two metropolitans and no common head, the Syro-Malabar Church did not possess the necessary attributes of a Patriarchal Church (CCEO cc. 55-150), Major Archiepiscopal Church (cc. 151-154), Metropolitan Church (cc. 155-173), or Other Churches *sui iuris* (cc. 174-176).

A Catholic Church *sui iuris* must have a single head. Since the Syro-Malabar Church had two, Ivan Žužek, the secretary of the Eastern code revision commission, was unsure where to place the Syro-Malabar Church.<sup>7</sup> It did not fit the definition in canon 27 of the *Code of Canons of the Oriental Churches*, which defines a Church *sui iuris* as "a community of Christian faithful, which is joined together by a hierarchy according to the norm of law which is expressly or tacitly recognized as *sui iuris* by the supreme authority of the Church". Without an ecclesiastical head, the Syro-Malabar Church found itself in a juridical limbo.<sup>8</sup>

To rectify this canonical irregularity, it was necessary for the supreme authority of the Church to restructure the Syro-Malabar Church into one of the forms anticipated by the code.<sup>9</sup> Pope John Paul II accomplished this restructuring through the 16 December 1992 Apostolic Constitution *Quae maiori*,<sup>10</sup> which elevated the Syro-Malabar Church to major archiepiscopal status. On the same day, by the apostolic letter *Venerabili Fratri*,<sup>11</sup> the pope appointed Cardinal Antony Padiyara, then Archbishop of Ernakulam, as the first Syro-Malabar Major Archbishop.<sup>12</sup> These two papal actions gave the Syro-Malabar Church a juridical identity under a unifying father and head.<sup>13</sup>

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6 Ivan Žužek, "The *Ecclesiae sui iuris* in the Revision of Canon Law," 288-304 at p. 296.

7 George Nedungatt "The Syro-Malabar Church under the New Oriental Code," 286-287.

8 *Synodal News*, no. 1 (August 1993) 1-2.

9 *Nuntia* 29 (1989) 52-53; Paul Pallath, "The Syro-Malabar Church: Juridical Status and Synodal Functioning," 44.

10 AAS 85 (1993) 398-399.

11 John Paul II, "Venerabili Fratri," *Synodal News*, no. 1 (1993) 11.

12 Cfr. *Synodal News*, no. 1 (August 1993), 10; Msgr. Kurian Arakkal, *Conferences and Synods in the Indian Church*, Germany: Kannonistische Reihe, 2018, 45.

13 Cfr. Paul Pallath, "Pope John Paul II & the Syro-Malabar Church," *Journal of St. Thomas Christians* 13 (3/2002), 3-25, at p. 18.

## 1.2. Functional Equality with Patriarchal Churches *sui iuris*

Although a major archiepiscopal Church occupies the second position in the hierarchy of Eastern Churches *sui iuris*, CCEO c. 152 functionally equates it with a patriarchal Church.<sup>14</sup> Therefore, what common law states about patriarchal Churches or patriarchs applies also to major archiepiscopal Churches or major archbishops unless the common law expressly provides otherwise or it is evident from the nature of the matter.

This equivalency, a significant change from *Cleri sanctitati*, resulted from codifying the conciliar prescription of *Orientalium Ecclesiarum* 10: "What has been said of patriarchs is valid also, in harmony with the canon law, in respect to major archbishops, who rule the whole of some individual church or rite". Thus, major archiepiscopal churches must enjoy the authority that the same decree attributes to patriarchal Churches: "The patriarchs with their synods are the highest authority for all business of the patriarchate, including the right of establishing new eparchies and of nominating bishops of their rite within the territorial bounds of the patriarchate, without prejudice to the inalienable right of the Roman Pontiff to intervene in individual cases" (OE 9).

Although the Syro-Malabar Church is hierarchically inferior to patriarchal Churches, its major archiepiscopal status puts it functionally on par with a patriarchal Church. Major archiepiscopal Churches possess all the rights and obligation of a patriarchal Church that common law or the supreme authority of the Church does not expressly deny them.

The common law establishes two primary differences between patriarchal and major archiepiscopal Churches. Both differences concern the father and head of these Churches. The first difference, and the only functional one, relates to the election of this chief hierarch. The election of a patriarch does not require papal confirmation, but merely notification. In contrast, major archbishops-elect must be confirmed by the Roman Pontiff.<sup>15</sup> The second difference between patriarchal and major archiepiscopal Churches is merely

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<sup>14</sup> Cfr. Paul Pallath, *The Catholic Church in India*, Rome: Mar Thoma Yogam, 2005, 141.

<sup>15</sup> George Thanchan, *The Juridical Institution of Major Archbishop in Oriental Canon Law: with a Special Reference to Syro-Malabar Major Archiepiscopal Church*, Bengaluru: Dharmaram Canonical Studies, 200-201.

ceremonial, according to which a patriarch enjoys precedence of honor over a major archbishop.<sup>16</sup> Consequently, even though the differences between a major archiepiscopal and a patriarchal Church are few and relatively minor, patriarchal Churches remain hierarchically superior to major archiepiscopal Churches.

### 1.3. Synodal Structuring and Governance

Eastern Churches have traditionally administered their affairs synodally. As a result, CCEO recognizes synodal governance as the ordinary form of governance of patriarchal and major archiepiscopal Churches. As Dimitrios Salachas writes: "The true and genuine origin of super-Episcopal and super-metropolitan powers of Patriarchs demand that such powers be limited *ad normam iuris* in the context of the synodal structure of the oriental *sui iuris* Churches, according to the spirit of canon 34 of the Apostles."<sup>17</sup> By the very elevation of the Syro-Malabar Church to major archiepiscopal status, its own synod of bishops juridically came into being.<sup>18</sup> This synod, endowed with its proper statutes, replaced the Syro-Malabar Bishops' Conference existing hitherto.

For the Syro-Malabar Church, the synodal structure envisaged by CCEO differed from its former functioning as Bishops' Conferences. The Syro-Malabar Bishops' Conference lacked the power to legislate for the entire Syro-Malabar Church, to elect the Church's head and other bishops, and to function as superior tribunal within the territorial boundaries of the Church. Regarding the legislative aspect, the conference could only ask individual eparchial bishops to use their own legislative power to enact for their eparchies laws the conference desired to see enacted for the entire Syro-Malabar Church.

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16 CCEO cc. 153-154; Cfr. Pio Vito Pinto (ed.), *Commento al Codice dei Canoni delle Chiese Orientali*, Città del Vaticano: Libreria Editrice Vaticana, 2001, 146-148; George Thanchan, *The Juridical Institution of Major Archbishop in Oriental Canon Law...*, 201.

17 Dimitrios Salachas, *Istituzioni di Diritto Canonico delle Chiese Cattoliche Orientali: Strutture Ecclesiali nel CCEO*, Roma: Edizioni Dehoniane, 1993, 142.

18 Paul Pallath, "The Syro-Malabar Church: Juridical Status and Synodal Functioning," in Francis Eluvathingal, ed., *Syro-Malabar Church Since the Eastern Code*, Trichur: Marymatha Publications, 2003, 51.

The first synod of Syro-Malabar Church was held from 20 to 25 May 1993<sup>19</sup> with all juridical powers except for some reserved to the Holy See.<sup>20</sup> Because of some initial reservations on the part of the pope, the synod was presided over by the pontifical delegate instead of the major archbishop.<sup>21</sup> The faculty to decide on the liturgical matters and the appointment of bishops were initially reserved to the Holy See. The former faculty was subsequently granted in 1998 and the latter in January 2004.<sup>22</sup> In the synod, the fathers decided to start a publication that would report on synodal acts.<sup>23</sup> Drafting the statutes of the synod was discussed, and various officials were elected: the general secretary of the synod, the members of the permanent synod, and the members of various commissions.<sup>24</sup> Over time, as Syro-Malabar particular law developed, the synodal structure of this Church began to function effectively.

#### 1.4. Code of Particular Law Envisaged by CCEO

The promulgation of CCEO has also resulted in the Code of Particular Law for the entire major archiepiscopal Church. As George Thanchan writes, "accepting the principle of subsidiarity, CCEO has codified only the discipline common to all the Eastern Catholic Churches, leaving to the competent authorities of the Churches *sui iuris* the power to regulate other matters through particular law."<sup>25</sup> Thus, to regulate its administration and to exercise its autonomy, it was necessary for the Syro-Malabar Church to establish particular laws. CCEO c. 1493 §2 defines the scope of particular laws for each Church

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<sup>19</sup> Synod of Bishops, "Decree of the Congregation for the Oriental Churches," *Synodal News* n. 1 (August 1993) 5.

<sup>20</sup> Mathew Vattakuzhy, "The Synodal Functioning in the Syro-Malabar Church," in Jose Porunedom, ed., *The Acts of the Synod of Bishops of the Syro-Malabar Church*, Kochi: The Syro-Malabar Major Archiepiscopal Curia, 1996, 41.

<sup>21</sup> Mathew Vattakuzhy, "The Synodal Functioning in the Syro-Malabar Church," 45.

<sup>22</sup> *Synodal News*, vol. 12 (December, 2004) 7.

<sup>23</sup> Synod of Bishops, "Beginning of a New Era," *Synodal News* 1 (August 1993) 3.

<sup>24</sup> Synod of Bishops, "Decree of the Congregation for the Oriental Churches," *Synodal News* 1 (August 1993) 6.

<sup>25</sup> George Thanchan, *The Juridical Institution of Major Archbishop in Oriental Canon Law...*, 210.

*sui iuris*.<sup>26</sup> By particular laws, which can be considered norms complementary to CCEO, these Churches can decide for themselves matters regarding liturgy, theology, spirituality and discipline, tradition, customs etc. Even before the elevation of Syro-Malabar Church to major archiepiscopal status, Syro-Malabar Bishops' Conference had initiated the process of codifying the particular laws. After the elevation, the first synod constituted a "Commission for Particular Law"<sup>27</sup> and approved guidelines for the preparation of particular law.<sup>28</sup> The latter were promulgated incrementally from 1995 to 2002.

The Pontifical Delegate Archbishop Abraham Kattumana promulgated some of the statutes *ad experimentum* on 1 January 1995. Later, promulgation of different statutes took place at different times and in different volumes. The full text of the particular law promulgated on these occasions is seen in the May 2003 issue of *Synodal News*. In its 3-15 November 2003 meeting, the synod of bishops decided to publish the Code of Particular Law of the Syro-Malabar Church as a single volume structured according to CCEO and with a letter of introduction from the Major Archbishop.<sup>29</sup> In January 2006, the synod decided to publish the book form of the particular laws already published in the *Synodal News*. Subsequent synods approved certain amendments to the existing laws (August 2009) and decided to include the guidelines in the Code of Particular Law (20 August - 1 September, 2009).<sup>30</sup> Finally, the completed Code of Particular Law of the Syro-Malabar Church was published as a single volume on 3 December 2013 by decree of Major Archbishop Cardinal George Alencherry. The Syro-Malabar Church is indebted to CCEO for its guidance in expressing the Church's nature and mission through particular law.<sup>31</sup>

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<sup>26</sup> CCEO c. 1493 §2 states: The term *particular law* designates all laws, lawful customs, statutes and other norms of law which are not common to the entire Church nor to all the Eastern Churches.

<sup>27</sup> Synod of Bishops, "Statutes of Major Archiepiscopal Assembly," *Synodal News* 4 (1995) 121-122.

<sup>28</sup> *Code of Particular Law of the Syro-Malabar Church*, Kochi: Syro-Malabar Major Archiepiscopal Curia, 2013, xii.

<sup>29</sup> *Code of the Particular Law of the Syro-Malabar Church*, xiii.

<sup>30</sup> *Code of the Particular Law of the Syro-Malabar Church*, xiii.

<sup>31</sup> Sunny Kokkaravalayil, "The Syro-Malabar Church after the Promulgation of the Code of Canons of the Eastern Churches," *Eastern Legal Thought* 12 (2016) 175.

### 1.5. Some Initial Reservations

The pontifical act elevating the Syro-Malabar Church to major archiepiscopal status withheld some powers proper to major archiepiscopal Churches and to major archbishops. Except in strictly liturgical matters, the pope reserved the governance functions of the major archbishop to himself and entrusted them to a special delegate.<sup>32</sup> Since it was not practical for the Roman Pontiff to personally exercise these powers, the appointment of an apostolic delegate<sup>33</sup> was necessary.<sup>34</sup> The pope also withheld the synodal power to elect the major archbishop and the other bishops,<sup>35</sup> who were instead to be appointed by the pope. Matters regarding liturgy were also reserved to the Holy See.<sup>36</sup>

These reservations may be considered attempts to safeguard and guarantee the unity of the Syro-Malabar Church.<sup>37</sup> Even after the death of Mar Abraham Kattumana, the major archbishop was not given the faculty to exercise the pastoral functions proper to a major archbishop. These powers were exercised by the assistant<sup>38</sup> to the major archbishop. After the resignation of Mar Padiyara as Major Archbishop, Mar Varkey Vithayathil was made apostolic administrator of the Syro-Malabar Church and given the faculties of a major archbishop; however, as an administrator, he could not be called the father and head of the Church. Finally, when Mar Varkey Vithayathil was made the major archbishop on 18 December 1999, the Syro-Malabar Church received a unifying head with all rights and

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<sup>32</sup> Congregatio pro Ecclesiis Orientalibus, "Decretum," Prot no. 11/93, *Synodal News*, no. 1 (1993) 8-9.

<sup>33</sup> Mar Abraham Kattumana was appointed the Pontifical Delegate of the Syro-Malabar Church along with the appointment of Mar Antony Padiyara as Major Archbishop.

<sup>34</sup> Cfr. *Synodal News*, no. 6 (May 1995) 36.

<sup>35</sup> Cfr. *Synodal News*, no.1 (1993) 8-9.

<sup>36</sup> Synod of Bishops, "Apostolic Constitution," *Synodal News* 1(August 1993), 9.

<sup>37</sup> George Thanchan, *The Juridical Institution of Major Archbishop in Oriental Canon Law...*, 338.

<sup>38</sup> Mar James Pazhayattil, bishop of Irinjalakkuda was appointed assistant to the Major Archbishop. His office ceased with the acceptance of the resignation of Mar Antony Padiyara as Major Archbishop.



powers envisaged for him by the *Code of Canons of the Oriental Churches*.<sup>39</sup>

On 19 January 1998, the Roman Pontiff ceased reserving liturgical matters to himself<sup>40</sup> and granted to the Syro-Malabar synod the full exercise of the faculties that CCEO foresaw for it in liturgical matters.<sup>41</sup> In an audience granted to Cardinal Ignace Moussa, Cardinal Daod, the then prefect of the Congregation for the Eastern Churches with the Pope, on 23<sup>rd</sup> December 2003, the Pope lifted the reservation of the faculty to elect bishops.<sup>42</sup> Thus, as Jose Porunnedom writes, "with the restoration of the rights and powers of the Synod of Bishops the Syro-Malabar Church became a full-fledged *sui iuris* Major Archiepiscopal Church as envisaged in CCEO."<sup>43</sup> Within ten years from its elevation to the major archiepiscopal status, the Syro-Malabar Church had acquired all the powers proper to a major archiepiscopal Church. At present, its synod enjoys full legislative, judicial and liturgical powers and other prerogatives as determined in CCEO.<sup>44</sup>

## **2. Exercise of Legislative, Executive and Judicial Powers in the Syro-Malabar Church**

Power of governance is distinguished as legislative, executive and judicial (CCEO c. 985 §1). At the patriarchal or major archiepiscopal level, exercise of this power differs drastically from its exercise by an eparchial bishop in his eparchy.

The eparchial bishop governs the eparchy entrusted to him with legislative, executive and judicial power.<sup>45</sup> Since he exercises legislative power personally<sup>46</sup> he cannot delegate it.<sup>47</sup> The law prohibits the bishop from issuing legislation contrary to that issued by

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<sup>39</sup> Cfr. Paul Pallath, *The Catholic Church in India*, 141-152.

<sup>40</sup> Cfr. Paul Pallath, *The Catholic Church in India*, 150.

<sup>41</sup> Synod of Bishops, "Letter from Congregation for the Oriental Churches" and "Decree of the Congregation," *Synodal News* 12 (December 1998), 10-11.

<sup>42</sup> Synod of Bishops, "Decree Revoking the Reservation to Elect Bishops," *Synodal News* vol. 11, 2 (December 2003), 50.

<sup>43</sup> Jose Porunnedam, "Authority of the Syro-Malabar Bishop's Synod Fully Restored," *Journal of St. Thomas Christians* 15 (1/2004), 49.

<sup>44</sup> Paul Pallath, "The Syro-Malabar Church: Juridical Status and Synodal Functioning," 56.

<sup>45</sup> CCEO c. 191 §1.

<sup>46</sup> CCEO c. 191 §2.

<sup>47</sup> Marco Brogi, "Eparchies and Bishops," in George Nedungatt, (ed.), *A Guide to the Eastern Code*, 227-248 at p. 232.

a higher authority, including the Roman Pontiff and the Synod of Bishops.<sup>48</sup> The bishop's executive power, unlike his legislative power, can be exercised personally or through a proto-syncellus or syncellus.<sup>49</sup> The eparchial curia, which the bishop is bound to have at his see (c. 243 §1), assists him in exercising executive power.<sup>50</sup> Finally, the eparchial bishop exercises judicial power personally or through a judicial vicar and judges.<sup>51</sup> The bishop is therefore the primary administrator of justice in his eparchy: if disputes arise amongst the faithful (clerics, religious, lay people) or offences are committed, he is responsible for applying laws to resolve them.<sup>52</sup> Both the bishop and those through whom he exercises judicial power are obliged to adhere to the provisions of CCEO cc. 1055-1400.<sup>53</sup>

Power of governance is exercised differently at the patriarchal or major archiepiscopal level. The major archbishop presides over the Syro-Malabar Major Archiepiscopal Church as *pater et caput*. He possesses a true power exercised according to law approved by the supreme authority of the Church; however, the major archbishop cannot exercise legislative, executive and judicial power over his entire Church *sui iuris* as an eparchial bishop does. This restriction reflects the Eastern tradition of synodality and the shared responsibility of all bishops for the governance of their patriarchal Church. The true and genuine origin of super-Episcopal and super-metropolitan rights and privileges of patriarchs/major archbishops require that the law limits and contextualizes them within the synodal structure of the Eastern Churches *sui iuris*. This is to be done according to the spirit of canon 34 of the Apostles, the ancient traditions of each Church, the decrees of the ecumenical councils (cf. OE 9)<sup>54</sup> and the canons of CCEO. The patriarch/major archbishop presiding over his Church *sui iuris* as *primus inter pares* (first among the equals) among its bishops, exercises only executive power of governance. Legislative and judicial powers of governance are exercised by the synod of bishops (CCEO c. 110).<sup>55</sup> In

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<sup>48</sup> CCEO c. 985 §2 (CIC c. 135 §2) clearly states that an inferior legislator cannot validly issue a law contrary to a higher law.

<sup>49</sup> CCEO c. 191 §2.

<sup>50</sup> Marco Brogi, "Eparchies and Bishops," 232.

<sup>51</sup> CCEO c. 191 §2.

<sup>52</sup> Marco Brogi, "Eparchies and Bishops," 232.

<sup>53</sup> Marco Brogi, "Eparchies and Bishops," 232.

<sup>54</sup> Dimitrios Salachas, *Istituzioni di Diritto Canonico ...*, 142.

<sup>55</sup> Cfr. Pio Vito Pinto (ed.), *Commento al Codice dei Canonici delle Chiese Orientali*, 71.

this manner, a balance of power is established between the individual authority of the patriarch and the collegial authority of the Synod of Bishops.<sup>56</sup> Now let us see how each of these powers is exercised in the Syro-Malabar Church.

## 2.1. Legislative Power of Governance

Legislative power concerns the development, promulgation and interpretation of law.<sup>57</sup> According to common law, the synod of bishops of a patriarchal/major archiepiscopal Church is the supreme legislative authority within that Church. It alone can legislate for the entire patriarchal Church/major archiepiscopal Church (CCEO c. 110).<sup>58</sup> With due regard for the common law (c. 1493 §1), the synod can issue a particular law (c. 1493 §2) within the territory of the particular Church.<sup>59</sup> As the synod of a major archiepiscopal Church *sui iuris*, the Synod of Bishops of the Syro-Malabar Church is competent to regulate by particular law matters not common to all Oriental Churches and that are not reserved to the Holy See.<sup>60</sup> Art. 8.1 of the Statutes of the Synods of the Syro-Malabar Church (hereafter SSB) clearly defines the legislative role of the synod of bishops of the Syro-Malabar Church in the following way: "With due regard for the provisions of common law, the Synod of Bishops of the Syro-Malabar Major Archiepiscopal Church is exclusively competent to make laws for the entire Syro-Malabar Major Archiepiscopal Church which obtain force according to the norms of c. 150 §§2 & 3 (c. 110 §1)."<sup>61</sup>

However, the major archbishop is the authority that convokes and presides over the synod. For a meeting of the synod to be canonical and for its actions to be valid, it must be legitimately convoked and presided over by him.<sup>62</sup> Furthermore, the promulgation of laws and

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<sup>56</sup> John D. Faris, "Patriarchal Churches," in George Nedungatt, ed., *A Guide to the Eastern Code ...*, 175.

<sup>57</sup> Gerard Sheehy and others, (eds.), *The Canon Law Letter and Spirit: A Practical Guide to the Code of Canon Law*, Dublin 1: The Canon Law Society of Great Britain and Ireland, Veritas Publications, 1995, p. 81

<sup>58</sup> John D. Faris, "Patriarchal Churches," 175; Cfr. Pio Vito Pinto (ed.), *Commento al Codice dei Canonici delle Chiese Orientali*, 115.

<sup>59</sup> Mons Kurian Arakkal, *Conferences and Synods in the Indian Church*, 129.

<sup>60</sup> Mons Kurian Arakkal, *Conferences and Synods in the Indian Church*, 129-130

<sup>61</sup> *Code of Particular Law of the Syro-Malabar Church*, 58.

<sup>62</sup> Cfr. Pio Vito Pinto (ed.), *Commento al Codice dei Canonici delle Chiese Orientali*, 109.

the publication of the synod's decisions is also the competence of the major archbishop (CCEO c. 112 §1; SSB art 8.4) and the laws made by the synod obtain the force of law only when they are promulgated by him (CCEO c. 111 §1). In addition to that until the forthcoming synod he also has the competence after having consulted the permanent synod to give the authentic interpretation of laws of the synod of bishops of the major archiepiscopal Church (CCEO c. 112 §1; SSB art 22). However, it is the prerogative of the synod of bishops to designate the manner and time of promulgation of laws and the publication of decisions (CCEO c. 111; SSB art 8.2 §1). Regarding the publication of law and the law acquiring the force SSB art 8.2 §1 stipulates that, "unless otherwise provided for in the decree of the promulgation, the laws are published in the official organ of the Syro-Malabar Major Archiepiscopal Church *Synodal News* and will have force of law two months after the date of promulgation." From this it stands to reason that although the major archbishop does not possess the power to legislate laws for the entire Syro-Malabar Church, he plays a key role in the law making process by convoking and presiding over the Synod of Bishops and by promulgating and giving authentic interpretation to the laws made by it. In the convocation of the Synod and in promulgation of laws enacted by the Synod, what the major archbishop actually exercises is not legislative power of governance but executive power of governance which is required for the ordinary administration or the application of law.<sup>63</sup>

The laws enacted by the synod of bishops and promulgated by the major archbishop have the force of law everywhere in the world if they are liturgical laws. However, if they are disciplinary laws or other decisions of the synod, they have the force of law only within the territorial boundaries of the Syro-Malabar Church (CCEO c. 150 §2). This is of course a territorial limitation of the legislative power of governance of the synod of bishops. But if these decisions are approved by the Apostolic See, they have the force of law everywhere in the world (CCEO c. 150 §3). Obviously, the laws enacted by the synod and promulgated by the major archbishop should not be contrary to the common laws, i.e. the laws and legitimate customs of

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<sup>63</sup> Gerard Sheehy and others, (eds.), *The Canon Law Letter and Spirit...*, 81.

the entire Church and those common to all the Eastern Churches (CCEO c. 1493 §1).<sup>64</sup>

The law also obliges the Synod and the Major Archbishop to send all the synodal acts regarding laws and decisions to the Roman Pontiff as soon as possible. As a sign of communion and in order to facilitate cooperation among Eastern Catholic and non-Catholic Churches certain acts or even all of them should be communicated to the patriarchs of the other Eastern Churches according to the judgment of the synod.<sup>65</sup>

## 2. 2. Executive Power of Governance

Executive power is that which is required for the ordinary administration or the application of law.<sup>66</sup> As in the case of other Major Archiepiscopal Churches, the executive authority of the Syro-Malabar Major Archiepiscopal Church is vested in the major archbishop. The synod of bishops, even when unanimous, cannot act without or against the major archbishop, since executive power belongs to him (CCEO c. 110 §4). However, in certain special occasions, the synod has an administrative role to play. The extent of this role is described in CCEO c. 110 §4 and SSB art.10.1 according to which the synod of bishops is not competent for administrative actions unless the major archbishop determines otherwise for certain actions or common law reserves some actions to the synod, with due regard for the canons that require the consent of the synod.

The executive power which the major archbishop possesses is to be exercised in tune with the concerned laws of the Church and through various channels and the personalities in the Church.<sup>67</sup> This power is however, not exercised exactly in the same way an eparchial bishop exercises it in his eparchy. The law gives the bishop the freedom to exercise this power either personally or through proto-syncellus or syncellus.<sup>68</sup> The major archbishop, however can exercise it only personally and cannot appoint a vicar for the entire patriarchal Church or delegate his power to someone for all cases. This is because

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<sup>64</sup> Cfr. Pio Vito Pinto (ed.), *Commento al Codice dei Canonici delle Chiese Orientali*, 115.

<sup>65</sup> CCEO c. 111 §3; SSB art 8. 3; John D. Faris, "Patriarchal Churches," 176.

<sup>66</sup> Gerard Sheehy and others, (eds.), *The Canon Law Letter and Spirit ...*, 81.

<sup>67</sup> Francis Elavuthingal, *Patriarchal and Major Archiepiscopal Curia*, Kottayam: OIRSI, 2009, 124-125.

<sup>68</sup> CCEO c. 191 §2.

although the power that he possesses as the *pater et caput* of the Church over which he presides is ordinary and proper, it is personal, where as the power of the eparchial bishop is ordinary, proper and immediate.<sup>69</sup> Nevertheless, just as the eparchial bishop is aided by the eparchial curia,<sup>70</sup> the major archbishop is assisted by major archiepiscopal curia. This is in addition to the assistance he gets from the synod of bishops in the administration of the entire Church *sui iuris*. The law makes it mandatory that in every major archiepiscopal Church, there must be a major archiepiscopal curia, distinct from the curia of the eparchy of the major archbishop (CCEO c. 114). The curia comprises the permanent synod, bishops of the major archiepiscopal curia, ordinary tribunal of the major archiepiscopal Church, the major archiepiscopal finance officer, the major archiepiscopal chancellor, liturgical commission and other commissions which by law are attached to the major archiepiscopal curia (CCEO c. 114 §1). Thus, the Major Archbishop along with the synod of bishops, permanent synod, Major Archiepiscopal assembly, various officials and various commissions perform the executive power in the Church.

### 2. 2.1. Executive Powers Exercised through the Synod of Bishops

Though the Synod of Bishops is not competent for administrative acts, certain administrative acts can be entrusted to the Synod.<sup>71</sup> This happens when either the major archbishop authorizes the synod to perform certain administrative acts or the common law reserves an act to it.<sup>72</sup> The following are a few such instances given in CCEO: cc. 85 §2, 2<sup>o</sup>, 108 §2, 122 §4, 144 §1, 146 §2, 211 §2, 605, 652 §2, 664 §1, 1063 §2 and 1067 §2. Apart from this as per CCEO, the major archbishop can do certain administrative acts only with the consent of the synod of bishops. Following are some of them: transferring the major archiepiscopal see to another place for a most serious reason and after having obtained the assent of the Roman Pontiff (c. 57 §3); establishing provinces and eparchies, modifying their boundaries, uniting, dividing, suppressing, and modifying their hierarchical status and transferring the eparchial see after having consulted the Apostolic See (c. 85 §1); giving to an eparchial bishop, a coadjutor bishop or an auxiliary bishop observing the norms regarding the election of bishops

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<sup>69</sup> CCEO c. 178.

<sup>70</sup> Marco Brogi, "Eparchies and Bishops," 232

<sup>71</sup> Cfr. CCEO c. 110 §4 SSB art.10.1; Msgr. Kurian Arakkal, *Conferences and Synods in the Indian Church*, 136.

<sup>72</sup> John D. Faris, "Patriarchal Churches," 176.

(c. 85 §2, 1<sup>o</sup>); for a grave reason, transferring a metropolitan, eparchial bishop or titular bishop to another metropolitan, eparchial or titular see (c. 85 §2, 2<sup>o</sup>); transferring, postponing, suspending and dissolving the synod (c. 108); entering into agreement with the civil authorities with the prior consent of the Roman Pontiff (c. 98); removing the patriarchal finance officer during his term of office (c. 122 §2); making provisions for an eparchial bishop who has resigned; removing an exarch appointed by the major archbishop (c. 314 §2); erecting a seminary common for several eparchies inside the proper territory (c. 334 §1); approval of liturgical texts, after prior review of the Apostolic See (c. 657 §1); regulation of divine public worship (c. 668 §2); appropriately restricting and reserving the faculty of absolving from sins to a determined authority (c. 727);<sup>73</sup> receiving bishop of an eastern non-Catholic Church into the catholic Church (c. 898 §1); suppressing any juridic person except those that have been set up or approved by the Apostolic See (c. 928, 1<sup>o</sup>); alienation of temporal goods whose value is more than double the amount set by the synod of bishops and that of precious goods or of goods donated to the Church from a vow (c. 1036 §3).

## 2. 2.2. Executive Powers Exercised through the Permanent Synod

The Statutes of the Permanent Synod of the Syro- Malabar Church<sup>74</sup> (here after SPS) prepared in conformity with CCEO gives a clear picture about the constitution, convocation and the competence of the permanent synod. This synod which is comprised of the major archbishop and four bishops designated for a five-year term (c. 115 §1: SPS art 1) is a representative body of the synod of bishops of the major archiepiscopal Church. The law obliges the major archbishop to consult with or obtain the consent of some bishops before performing some administrative acts.<sup>75</sup> Taking into account the practical difficulty to convene all the bishops every time a matter of importance arises, a permanent synod is constituted to cooperate with the major

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<sup>73</sup> As per canon 727, such a reservation is done with the intention to provide for the welfare of souls.

<sup>74</sup> The synod of bishops in its third session held from 7 to 23 November 1994 approved the statutes of the permanent synod along with that of the superior tribunal. On 1 January 1995 the pontifical delegate of the Syro-Malabar Church promulgated them *ad experimentum* for a period of three years. These two statutes along with the statutes of the ordinary tribunal were definitively promulgated on 1 August 2000.

<sup>75</sup> John D. Faris, "Patriarchal Churches," 177.

archbishop as an executive committee in these matters.<sup>76</sup> Thus the bishops who belong to the permanent synod are most direct collaborators and advisors of the major archbishop.<sup>77</sup> The permanent synod however, does not replace the synod of bishops as it cannot legislate or adjudicate and can't handle matters which are reserved to the synod of bishops.<sup>78</sup> For instance, while the major archbishop can appoint the president, judges, promoter of justice, defender of bond of the major archiepiscopal ordinary tribunal with the consent of the permanent synod, only the synod of bishops is competent to remove them against their will (c. 1063 §2). The permanent synod, however, has its distinctive competence established by law.<sup>79</sup> Therefore, if a certain matter belonging to the competence of the permanent synod is to be decided even while the synod of bishops of the major archiepiscopal Church is being held, the decision on this matter is reserved to the permanent synod itself (c. 119). The permanent synod must be convoked at determined times, at least twice a year, and whenever the major archbishop considers it opportune, as well as whenever matters are to be decided for which common law requires the consent or counsel of the same synod (see c. 934). The members of the permanent synod cannot however impose upon the major archbishop the obligation to convoke it (CCEO c. 120).<sup>80</sup>

If it is established by law that to place a juridic act the major archbishop needs the consent or counsel of the permanent synod, for that juridic act to be valid, the permanent synod is to be convoked as per the norms of law and the consent of an absolute majority of those present be obtained or that the counsel of all must be sought (c. 934 §1). To place the following acts the major archbishop requires the consent of the permanent synod: visiting for serious reasons a church, city, or eparchy either personally or through another bishop with the right of doing all things the eparchial bishop can do during a canonical visitation (c. 83 §2); appointing an exarch who need not be an ordained bishop to an eparchy inside the proper territory (cc. 85; 314 §1); erecting, modifying and suppressing exarchies (c. 85 §3); reserving to himself matters which concern several eparchies and affect the civil authorities after consulting the eparchial bishops to whom it is of

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<sup>76</sup> John D. Faris, "Patriarchal Churches," 177.

<sup>77</sup> Pio Vito Pinto (ed.), *Commento al Codice dei Canonici delle Chiese Orientali*, 119.

<sup>78</sup> John D. Faris, "Patriarchal Churches," 177.

<sup>79</sup> Pio Vito Pinto (ed.), *Commento al Codice dei Canonici delle Chiese Orientali*, 120.

<sup>80</sup> Pio Vito Pinto (ed.), *Commento al Codice dei Canonici delle Chiese Orientali*, 122.



concern (c. 100); conceding the status of stauropegial monasteries to a monastery *sui iuris* (c. 101) and inviting to the synod of bishop others especially hierarchs who are not bishops and experts to give their opinions to the bishops gathered in the synod. Furthermore, the synod of bishops can be convoked when major archbishop, with the consent of the permanent synod, judges it necessary (c. 106, 2<sup>o</sup>).

Some acts for validity do not need the consent of the permanent synod but it has to be consulted. For example the major archbishop can grant exemption to certain institutions (e.g. seminaries, schools, hospitals, orphanages, shrine) or organizations which enjoy the status of a juridic person (e.g. pious associations of clerics or laity, programs of charitable assistance) which often have apostolates and concerns that extend beyond the boundaries of the eparchies in which they are situated (c. 90). In the same way after having consulted with the permanent synod, he can with paternal spirit warn those bishops who gravely transgress in a certain matter.

### **2. 2.3. Administrative Acts Performed on his own Right**

Some administrative acts can however be performed by the major archbishop on his own right without the consent or counsel of either the synod of bishops or the permanent synod. For example he i) can issue decrees (not a law, but a complementary to the law)<sup>81</sup> that determine the methods to be observed in applying the law or that urges the observance of law; ii) can give instruction to the Christian faithful of the Church *sui iuris* over which he presides in order to explain sound doctrine, foster piety, correct abuses, and approve and recommend practices that foster the spiritual welfare of the faithful; iii) can issue encyclical letters to the entire Church over which he presides concerning questions regarding his own Church and rite, i.e. the liturgical, theological, spiritual and disciplinary patrimony of his patriarchal Church; iv) in order that all the Christian faithful of the major archiepiscopal Church may come to know about the decrees, instructions and encyclical letters issued by him, the patriarch can order bishops and other clerics as well as members of the institutes of consecrated life of the entire Church over which he presides to read

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<sup>81</sup> John D. Faris, "Patriarchal Churches," 164.

and display them publicly in their churches or houses (CCEO c. 82 §§1-2).<sup>82</sup>

#### **2. 2.4. Assistance by Bishops of the Patriarchal Curia**

The major archiepiscopal curia comprises of various organs among them also include the bishops of the major archiepiscopal curia (see c. 114). The major archbishop can propose at the Synod of Bishop that there be elected for the major archiepiscopal curia certain bishops, not more than three by the synod according to the norms of canon 181 §1 and 182-187. The major archbishop confers to them an office with a residence in the major archiepiscopal curia and they assist him in the governance of the major archiepiscopal Church. During a vacancy of the major archiepiscopal see, the senior bishop according to Episcopal ordination among them becomes the administrator of the major archiepiscopal Church. Only if there are no curial bishops, the senior bishop according to Episcopal ordination from the permanent synod becomes the administrator (CCEO c. 127; c. 87).<sup>83</sup>

#### **2. 2.5. Role of Major Archiepiscopal Finance Officer**

To cooperate with him in the administration of the property of the central offices, the major archbishop with the consent of the permanent synod is to appoint a major archiepiscopal finance officer distinct from the finance officer of the eparchy of the major archbishop. The law clearly states that the major archiepiscopal finance officer must be a Christian faithful who is an expert in economic matters and outstanding in honesty. Anyone who is related to the patriarch up to the fourth degree of consanguinity or affinity is excluded from being validly appointed (c. 122 §1). To ensure stability of office, the law stipulates that he is to be appointed for a term determined by particular law. According to article 6 of PL of SMC, the term of office of the major archiepiscopal finance officer shall be five years and the same person shall not be appointed for more than two terms consecutively (c. 122 §2). During the tenure of office, he cannot be removed by the major archbishop without the consent of the synod of bishops or, if there is danger in delay, of the permanent synod (c. 122 §2). He is subject to the authority of the major archbishop and is accountable to the permanent synod and the Synod of Bishops. So he

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<sup>82</sup> Pio Vito Pinto (ed.), *Commento al Codice dei Canonici delle Chiese Orientali*, 93-94.

<sup>83</sup> John D. Faris, "Patriarchal Churches," 167; Pio Vito Pinto (ed.), *Commento al Codice dei Canonici delle Chiese Orientali*, 98.

must submit a written report annually to the permanent synod on administration during the past year as well as a budget of income and expenditures for the coming year; a report on administration is also to be submitted whenever it is requested by the permanent synod (c. 122 §3). To ensure transparency and correct administration of temporal goods, the synod of bishops can ask from him a report on administration as well as the budget of income and expenditures and subject them to its own examination (c. 122 §4).

#### **2. 2.6. Major Archiepiscopal Chancellor and Notary**

To preside over the major archiepiscopal chancery and the archives of the major archiepiscopal curia, the major archbishop is to appoint in the major archiepiscopal curia a priest or deacon above all reproach as major archiepiscopal chancellor. If the case warrants it he may be assisted by an assistant chancellor appointed by the major archbishop (c. 123 §1). The major archbishop can freely remove the chancellor from office (cf. c. 255). Apart from the chancellor and the assistant chancellor, who are notaries *ex officio*, the major archbishop can appoint other notaries for the entire major archiepiscopal Church whom he can freely remove from office (c. 123 §2).

#### **2. 2.7. Major Archiepiscopal Commissions (CCEO c. 124)**

The competent authority to regulate the public divine cult in the Syro-Malabar major archiepiscopal Church is the major archbishop with the consent of the Synod of Bishops (cf. cc. 668 §2 & 657 §1).<sup>84</sup> In the exercise of this role, the major archbishop makes use of the collaboration of the liturgical commission. Therefore, in the life of the Syro-Malabar Church, as in the case of all patriarchal/major archiepiscopal Churches, particular importance is attributed to the liturgical commission in the major archiepiscopal curia, which is comprised of persons who are experts in this matter. Apart from liturgical commission, which every patriarchal/major archiepiscopal Church must have, there are other commissions prescribed by common law which are to be erected by the major archbishop made up of persons appointed by him to assist him in the administration of the Church *sui iuris* over which he presides. These other commissions prescribed for patriarchal/major archiepiscopal Churches by the common law are the following: commission for the preparation of the

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<sup>84</sup> Pio Vito Pinto (ed.), *Commento al Codice dei Canonici delle Chiese Orientali*, 125.

Synod of Bishops of the major archiepiscopal Church (c. 113); commission for the preparation of major archiepiscopal assembly (c. 144 §2); commission for missionary activity (c. 595 §2); commission for catechesis (c. 622 §1); commission for the censure of books (c. 664 §1); commission for ecumenism (c. 904 §2).<sup>85</sup> Unless the law provides otherwise, all these commissions are also governed by norms established by the major archbishop.

### 2.3. Judicial Power of Governance

Unlike an eparchial bishop who possesses judicial power in his eparchy, the major archbishop does not have judicial power over the entire Syro-Malabar Church. Of course like any other eparchial bishop in his eparchy, the major archbishop possesses legislative, executive, and judicial power. The judicial power over the entire Syro-Malabar Church is the competence of the Synod of Bishops. The judicial power is exercised by way of two unique tribunals which exist only in Eastern Catholic patriarchal/major archiepiscopal Churches. These two tribunals are i) the Superior Tribunal, which is the synod of bishops itself and ii) the Ordinary Tribunal.

Though the Syro-Malabar Church did not attain all the powers proper to a major archiepiscopal Church at the time of its elevation to major archiepiscopal status, as far as the judicial power of governance was concerned there was no reservation. Rather, the major archbishop as stipulated by CCEO c. 1063 §1, was duty bound to erect the ordinary tribunal of the patriarchal Church which can handle cases even up to the final instance without having to resort to the Apostolic See. The only difference in the case of Syro-Malabar Church was that in the beginning instead of the Major Archbishop, it was the prerogative of the Pontifical Delegate to erect these tribunals and promulgate their statutes which however had little effect on the judicial autonomy of the Church. In accordance with the provisions of canons 1062 and 1063 of CCEO, the Superior Tribunal and Major Archiepiscopal Ordinary Tribunal were constituted for the exercise of judicial power of governance. The superior tribunal in a way started on the day the first meeting of the Synod of bishops of the Syro-Malabar Church which was held from 20 to 25 May 1993. The Ordinary Tribunal erected on September 1, 1994 by the Pontifical Delegate, late Archbishop Mar Abraham Kattumana as per CCEO c. 1063 §1 started functioning on

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<sup>85</sup> Pio Vito Pinto (ed.), *Commento al Codice dei Canonici delle Chiese Orientali*, 125.

November 24, 1994.<sup>86</sup> Its statutes were promulgated on 1 January 1995 for a period of three years.<sup>87</sup> After three years, along with the statutes of the permanent synod, the statutes of the superior tribunal and the ordinary tribunal were definitively promulgated on 1 August.<sup>88</sup> Now let us see how these tribunals function in the Syro-Malabar Church.

### 2.3.1. Synod of Bishops as Superior Tribunal

The synod of bishops of the Syro-Malabar major archiepiscopal Church, with due regard for the competence of the Apostolic See, constitutes the highest tribunal within its territorial boundaries (CCEO c. 110 §2 & 1062 §1; SSB art 9.1 §1).<sup>89</sup> Every five years, the synod of bishops of the Syro-Malabar Church elects from among its members a general moderator for the administration of justice and two bishops. Together, these three persons constitute the synodal tribunal. This tribunal judges contentious cases of eparchies and bishops, even titular ones (c. 1062 §3; SSB art 9.1 §3). Whenever, i) one of the three bishops is a party in the case, ii) is unable to be present, or iii) has an objection raised against him, the major archbishop substitutes another bishop with the consent of the permanent synod (c. 1062 §2; SSB art 9.1 §2). Appeals of the tribunal's decisions are made to the synod of bishops of the Syro-Malabar Church without any further appeal; however, as per c. 1059, recourse can be made to the Roman Pontiff (c. 1062 §4; SSB art 9.1 §4).<sup>90</sup>

### 2.3. 2. Syro-Malabar Major-Episcopal Ordinary Tribunal

The erection of the Syro-Malabar Major Archiepiscopal Ordinary Tribunal as a tribunal competent to handle cases in second, third and further instances is a consequence of two new provisions in CCEO.

The first provision categorized all the Eastern Catholic Churches *sui iuris*<sup>91</sup> into four types, namely Patriarchal (CCEO cc. 55-150), Major Archiepiscopal (cc. 151-154), Metropolitan (cc. 155-173) and other Churches *sui iuris* (cc. 174-176). Since the Syro-Malabar Church at the

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<sup>86</sup> Cfr. Paul Pallath, *The Catholic Church in India*, 148-149.

<sup>87</sup> *Synodal News*, no. 4 (February, 1995) 108-116.

<sup>88</sup> Cfr. *Synodal News*, vol. 8, no. 1 (September 2000) 65-68.

<sup>89</sup> CCEO c. 110 §2; SSB art. 9.1 §1.

<sup>90</sup> John D. Faris, "Patriarchal Churches," 175; Cfr. Pio Vito Pinto (ed.), *Commento al Codice dei Canonici delle Chiese Orientali*, 116.

<sup>91</sup> Cfr. Ivan Žužek, "The Ecclesiae sui iuris in the Revision of Canon Law," in René Latourelle (ed.), *Vatican II. Assessment and Perspectives*, vol. II, New York: Paulist Press, 1989, 288-304, at p. 296.

time of the promulgation of *CCEO* was a Church *sui iuris* with two metropolitan Churches, the only possible administrative measure to rectify this apparent anomaly was to make it either a patriarchal or a major archiepiscopal Church. Given that the prevailing opinion in the Church was not in favour of establishing new patriarchates, the Syro-Malabar Church was raised to major archiepiscopal status. Pope John Paul II effected this elevation on 16 October 1992 with the apostolic constitution *Quae maiori*.<sup>92</sup> The second provision was the competence granted to patriarchal and major archiepiscopal Churches to erect ordinary tribunals empowered to adjudicate matters not reserved to the Holy See and in all three instances up to the final sentence (*CCEO* c. 1063 §§1, 3).

These two provisions necessitated the revision and advancement of the Syro-Malabar judicial system, which ultimately led to the establishment of the Syro-Malabar Major Archiepiscopal Ordinary Tribunal on September 1, 1994. Erected by the Pontifical Delegate Mar Abraham Kattumana, the tribunal began functioning on November 24, 1994.<sup>93</sup> The Statutes of the Ordinary Tribunal promulgated on January 1, 1995 by Archbishop Abraham Kattumana were definitively promulgated on August 1, 2000 by Major Archbishop Mar Varkey Cardinal Vithayathil C.Ss.R.<sup>94</sup> Regulated by these statutes and governed by the common law, especially that in *CCEO*, this ordinary tribunal administers justice within the territorial boundaries of the Syro-Malabar Church.<sup>95</sup> Regarding the name "Ordinary Tribunal" Mathew Madappallikunnel writes that it "may also signify that it is not an extraordinary tribunal or an exception but ordinary according to the general norms of the Code."<sup>96</sup>

The preamble of the statutes of the major archiepiscopal tribunal defines it as a collegiate tribunal, erected in accordance with *CCEO* c 1063 on September 1, 1994, to exercise the ministry of justice within the

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<sup>92</sup> Cfr. John Paul II, Apostolic Exhortation, *Quae Maiori*, 16 December 1992, in *AAS* 85 (1993), 398-399.

<sup>93</sup> Cfr. Mathew Madappallikunnel, *The Tribunals of a Major Archiepiscopal Church*, Romae: Pontificia Universitas Sanctae Crucis, 1999, 19.

<sup>94</sup> Cfr. *Synodal News*, vol. 8 (September 2000) 67.

<sup>95</sup> Art. 2 of the Statutes states: "The Major Archiepiscopal Tribunal is competent to exercise the ministry of justice in the entire territory of the Syro-Malabar Church."

<sup>96</sup> Mathew Madappallikunnel, *The Tribunals of a Major Archiepiscopal Church*, 26.

territory of the Syro-Malabar Church. Though this tribunal is also competent to judge in second instance<sup>97</sup> and certain cases in first instance,<sup>98</sup> this tribunal's special importance derives from its competence to adjudicate in third and subsequent instances. According to article 3 of the statutes, this tribunal is competent to judge in second and third instance cases judged by metropolitan tribunals in first instance (§ 1).

It is also competent to judge in third instance cases judged in second instance by the metropolitan tribunals, which are competent to receive cases judged in first instance by the eparchial tribunals of their respective provinces (§2). That which George Nedungatt wrote about the judicial self-sufficiency of the patriarchal Churches after CCEO came into force is thus applicable to the Syro-Malabar Ordinary Tribunal as well. In this connection, Nedungatt wrote, "In matrimonial cases, too, the third trial is done at home, not in Rome before the Rota"<sup>99</sup>.

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<sup>97</sup> According to the Statutes of the Syro-Malabar Church, the Ordinary Tribunal normally adjudicate in the second instance, the cases judged in the first instance by the metropolitan tribunals (art. 3 §1) and inter-eparchial tribunals erected within the territorial boundaries of the Syro-Malabar Church (art. 3 §4).

<sup>98</sup> According to article 4 of the statutes, the Major Archiepiscopal Tribunal is competent to judge in the first and in the succeeding instances the cases: of exarches and delegates of the Major Archbishop who are not bishops; of physical persons below Episcopal rank who are immediately subject to the Major Archbishop; of juridical persons immediately subject to the Major Archbishop; of institutes of consecrated life of pontifical law, not excluding the exempt institutes, with due regard for canon 1069 of CCEO; of superiors of institutes of consecrated life of pontifical law, who do not have a superior of the same institute with judicial power; of the supreme moderators and other major superiors of institutes of consecrated life of major archiepiscopal law; of persons whether physical or juridical of the same institute of consecrated life, except secular institutes, in which though the superiors possess the power of governance, no judge or tribunal has been determined in the typicon or the statutes of the institute (CCEO c. 1069 §1); of persons whether physical or juridical, which in special cases, the Major Archbishop may lawfully commit to the tribunal, especially as a help to eparchial bishops.

<sup>99</sup> George Nedungatt, *The Spirit of the Eastern Code*, 93.

### 2.3. 2. 1. Some Notable Differences between Eparchial Tribunals and Ordinary Tribunal

A patriarchal/major archiepiscopal ordinary tribunal is distinct from an eparchial or metropolitan tribunal in many respects. As far as an eparchial/metropolitan tribunal is concerned, the eparchial bishop/metropolitan is the authority competent to constitute the tribunal, to appoint the judges and the officials and to remove them. Whereas in the case of patriarchal/Major Archiepiscopal ordinary tribunal, though it is the patriarch/major archbishop who constitutes the tribunal, he cannot appoint the president,<sup>100</sup> judges, promoter of justice, defender of bond and the other officials of that tribunal on his own. He can appoint them only with the consent of the permanent synod. Coming to the removal of the president, judges, promoter of justice and the defender of bond it has to be noted that they can be removed neither by the patriarch/ major archbishop nor by the permanent synod. Only the synod of bishops is competent to remove them against their will. This system is aimed at ensuring stability of office and freedom to judges so that they can pronounce just and impartial judgments without fear or favor (CCEO c. 1063).

Secondly, while the eparchial and metropolitan tribunal can handle a given case only in one instance,<sup>101</sup> the patriarchal/Major Archiepiscopal Ordinary Tribunal like the Roman Rota<sup>102</sup> can handle a given case in one, two or more instances with the assistance of judges who serve in rotation through a system of benches (*turnus*). Appeal against the decision of one bench of the ordinary tribunal is lodged at the bench of the same tribunal that immediately follows it. To ensure impartial judgments the law stipulates that a person who has taken part in a case as judge, promoter of justice, defender of bond, procurator, advocate, witness or expert in one instance, cannot

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<sup>100</sup> The president of the ordinary tribunal has the same power which a judicial vicar possesses over an eparchial or metropolitan tribunal.

<sup>101</sup> An Eparchial tribunal handles in the first instance cases from its eparchy and a metropolitan tribunal handles in the first instance cases from its eparchy and in the second instance, the cases from its suffragan eparchies. However the metropolitan tribunal can handle a given case only in one instance.

<sup>102</sup> Cfr. Hanna Alwan, "Rapporto fra il Codice dei Canonici per le Chiese Orientali e il Codice di Diritto Canonico per la Chiesa Latina," *Iura Orientalia* I (2005), 103-121.



afterwards in another instance of the trial validly resolve the same case as a judge or act as an assessor (CCEO c. 1105 & SOT<sup>103</sup> art. 31 § 1).

### **2.3. 2. 2. System of Appeal**

For cases handled in the first instance by an eparchial tribunal, the metropolitan tribunal which is not distinct from the tribunal of the metropolitan is the appeal tribunal of second instance (CCEO c. 1066 §1). For instance, in the case of the Syro-Malabar Church, a case handled in the first instance by the eparchial tribunal of Irinjalakuda is handled in the second instance by the Metropolitan tribunal of Trichur. However, when it comes to cases handled in the first instance by a metropolitan tribunal, the appeal has to be made to the tribunal which the metropolitan or eparchial bishop has designated in a stable manner with the approval of the Apostolic See (CCEO c. 1066 §2). In the case of Syro-Malabar Major Archiepiscopal Church, cases tried in the first instance by a metropolitan tribunal are handled in the second instance by one of the benches of the Major Archiepiscopal Ordinary Tribunal of that Church. For example a case handled in the first instance by the Metropolitan tribunal of Trichur is handled in the second instance by one of the benches of the Major archiepiscopal Ordinary Tribunal.

With regard to appeal in the third instance, CCEO c. 1065 clearly states that "the tribunal of the third instance (grade) is the Apostolic See (Roman Rota), unless the common law expressly provides otherwise. Thus in the Latin Church and in Eastern Churches which are neither patriarchal nor major archiepiscopal, Roman Rota is the tribunal on third instance. However, on the basis of the explicit provision of common law contained in CCEO c. 1063 §3 within the territorial boundaries, the Syro-Malabar major archiepiscopal ordinary tribunal like other patriarchal/major archiepiscopal Churches has the competence to judge cases in the third and further grades.

It is to be stated in this connection that just as the Roman Rota has its own in-built mechanism to ensure the just and impartial adjudication of a case at the final instance, the Syro-Malabar Church too has taken sufficient care to include in its Statutes appropriate measures in conformity with CCEO to achieve such an end.

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<sup>103</sup> SOT stands for the statutes of the ordinary tribunal of the Syro-Malabar Church.

Thus after its elevation to Major archiepiscopal status and the subsequent erection of Superior and Major Archiepiscopal tribunals the Syro-Malabar Church regained the judicial autonomy it lost after the arrival of the foreign missionaries in the sixteenth century. Though in structure and form it is different from the indigenous structures of *Yogam*, it serves the purpose of resolving conflicts among its members.<sup>104</sup> But this judicial autonomy is limited by the fact that it can't be exercised outside the proper territory. At present the proper territory is limited to the four ecclesiastical provinces of Ernakulam, Changanacherry, Trichur and Thalasserry. Only when the Syro-Malabar Church attains the competence to handle cases up to the final instance of all its members without territorial restrictions, one can say that it has completely regained the autonomy it lost with the Synod of Diamper.

### 2.3.3. Metropolitan, Inter-Eparchial and Eparchial Tribunals

According to CCEO c. 1064 §1, "The metropolitan tribunal which is not distinct from the tribunal of the eparchy of the metropolitan is the appellate tribunal for sentences of the eparchial tribunals". The eparchies within the proper territory of the Syro-Malabar Church come under four metropolitan provinces namely, Ernakulam-Angamaly, Changanassery, Trichur and Tellicherry. The tribunals of these metropolitan sees are the appeal tribunals of the suffragan eparchies.<sup>105</sup> For the eparchies outside the proper territory, the tribunal system is similar to the Latin Church (CCEO cc. 1064-1065 and CIC c. 1438).<sup>106</sup>

Since in every eparchy, the eparchial bishop is the judge of the first instance for all cases not expressly excepted by law (CCEO c. 1066 §1), every eparchy should have its own tribunal. However, some of the Syro-Malabar mission eparchies outside the proper territory do not have tribunals in each eparchy due to dearth of sufficient personnel and less number of cases. In such situations, following the norms of

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<sup>104</sup> Cfr. Andrews Thazhath, "The Superior and Ordinary Tribunals of a Sui Iuris Eastern Catholic Church," *Studia Canonica* 29 (1995), 375-396, at pp. 379-380.

<sup>105</sup> Andrews Thazhathu, "Administration of Justice in the Syro-Malabar Church," 79.

<sup>106</sup> Andrews Thazhathu, "Administration of Justice in the Syro-Malabar Church," 63.

CCEO c. 1067 inter-eparchial tribunals of first instance are established.<sup>107</sup>

#### **2.4. Right to Elect the Major Archbishop and Bishops**

The right given to its synod of bishops to elect its head and other bishops is one right the Syro-Malabar Church got consequent to its elevation to major archiepiscopal rank. This competence which was initially reserved to the Roman Pontiff was granted to the Syro-Malabar Church on 23<sup>rd</sup> December 2003. Following the norms given in CCEO and the particular law it elects the major archbishop (CCEO cc. 63-74, 153; SSB art. 6), bishops (CCEO c. 183; SSB art. 11) and the candidates (at least three) for filling the office of eparchial bishops, coadjutor bishop or auxiliary bishop outside the territorial boundaries of the patriarchal Church (CCEO c. 149; SSB art. 11).<sup>108</sup>

#### **Conclusion**

This work has been a historical and canonical analysis on the impact of CCEO in the life of the Syro-Malabar Church especially the advancement of its hierarchical structure and the rightful autonomy it has achieved in the legislative, executive and judicial power of governance in the past 25 years. The elevation of the Syro-Malabar Church to major archiepiscopal rank and the installation of major archbishop as the hierarchical head of the Church in 1992 empowered this apostolic Church to govern itself with the rightful autonomy it deserves. Within a short span of 25 years, the Church successfully and effectively established the canonical structures corresponding to her new hierarchical and canonical status. The effective functioning of the synod of bishops which is convoked twice every year which functions as the supreme legislative power and the superior tribunal within the Syro-Malabar Church, the establishment of the major archiepiscopal curia, the permanent synod, the commissions and offices which assist the major archbishop in the effective administration of the Syro-Malabar Church, the major archiepiscopal tribunal with the competence to handle cases up to the final instance are evident indications of the growth of this Church *sui iuris*. The successful codification of the Code of Particular Law and its effective

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<sup>107</sup> Andrews Thazhathu, "Administration of Justice in the Syro-Malabar Church," 83.

<sup>108</sup> Mons Kurian Arakkal, *Conferences and Synods in the Indian Church*, 134-136; John D. Faris, "Patriarchal Churches," 175.

implementation within this time is a remarkable achievement which would make every member of this Church feel proud. The legislative, executive and judicial levels of growth it has achieved over the years undoubtedly proves that it has the potential and vibrancy to be promoted to patriarchal status which is the traditional form of governance in the Eastern Catholic Churches.