

CCEO AND INTER-EPARCHIAL TRIBUNALS With Special Reference to Sagar-Satna and Ujjain- Jagdalpur Inter-Eparchial Tribunals

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Regi Njaralakkattukunnel deals with the evolution of Inter-eparchial tribunal in the Church and the erection of Inter-eparchial Tribunals of Sagar-Satna and Ujjain-Jagadalpur, India. The article examines Inter-eparchial Tribunals of Sagar-Satna and Ujjain-Jagadalpur in the light of the two recent *motu proprio* *Mitis Iudex Domini* *Jesus* and *Mitis et misericors Iesus*. Even though in principle these tribunals are competent to treat matrimonial cases, penal cases, and other cases which are not reserved to the eparchial bishop, in practice they handle only matrimonial cases. The author concludes with the remark that the provision of the briefer matrimonial process before Bishop introduced by the recent *motu proprio* may eliminate these tribunals if practically they are not enabled to handle other cases.

Introduction

Like all Churches *sui iuris*, the Syro-Malabar Church is called to administer justice according to the teachings of Christ as adapted to the demands of time and place. To fulfill this mandate as effectively as possible, this Church *sui iuris* has utilized all the tribunal systems that CCEO allows for this purpose. Unfortunately, most mission eparchies have been unable to implement the complete judicial system envisioned by the Eastern code. Due to their particular circumstances, these tribunals have relied on inter-Church tribunals, i.e., tribunals shared with Latin dioceses, to adjudicate their cases. However, thanks to Joseph Pastor Neelankavil, Bishop-emeritus of Sagar, steps have been taken toward fully implementing the Eastern code's system even

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in these eparchies. At his initiative, the Syro-Malabar mission eparchies of Madhya Pradesh and Chattisgarh established their own inter-eparchial tribunals at Sagar-Satna and Ujjain-Jagdarpur. This article focuses mainly on these inter-eparchial tribunals, examining them in light of the two recent *motu proprio* *Mitis Iudex Domini Iesus* and *Mitis et misericors Iesus*.¹

1. Structure of the Tribunal System according to CCEO

Excluding the internal tribunals of religious institutes, CCEO canons 1062-1069 envisage four levels or grades of tribunals in patriarchal and major-archiepiscopal Churches: a) eparchial/ inter-eparchial /common; b) metropolitan; c) patriarchal or major-archiepiscopal;² and d) apostolic.³

1.1. The Notion and Development of Inter-Eparchial Tribunals

The concept of inter-eparchial tribunals is an innovation of CCEO. These tribunals are frequently named "regional tribunals," an expression used in the initial Latin and Eastern codification processes,⁴ in the previous Eastern code, and in various Church documents.⁵

¹These two *motu proprio*s were signed by Pope Francis on 15 August 2015, the day of the Assumption and were released on 8 September, the day of the Nativity of our Lady. They came into effect on 8 December 2015, the day of the Immaculate Conception by which cases regarding the nullity of marriage are reformed.

²There are three types of tribunals in the superior tribunal in the patriarchal/major archiepiscopal Church. They are (1) the synod of bishops, (2) synodal tribunal namely, a group of three bishops under the chairmanship of a general moderator and (3) the ordinary tribunal.

³Although the CCEO cc. 1056, 1059, 1061, 1065 make mention of the Apostolic Tribunals, they do not enumerate them. Apostolic Constitution *Pastor bonus* art. 117-130 enumerate and describe the judicial powers of the apostolic tribunals namely, Apostolic Penitentiary, Supreme Tribunal of the *Apostolic Signatura*, and the Roman Rota.

⁴*Communicationes* 8 (1976) p. 186; *Nuntia* 5 (1977) pp. 16-17.

⁵See Pius XII, *Motu proprio Qua cura*, 8 December 1938, in AAS 30 (1938) pp. 410-413; Sacred Congregation for Discipline of Sacraments, *Normae pro exsequendis litteris Apostolicis "Qua cura"* Die 8 Dec. 1938 *motu proprio* datis, 10 July 1940, in AAS 32 (1940) pp. 304-308; Paul VI, *Motu proprio Catholicam Christi Ecclesiam*, 6 January 1967, in AAS, 59 (1967) pp. 25-28, *Supremum Signaturae Aposolicae Tribunal, Litterae Circulares ad Conferentiarum Episcopatum de Tribunalium Ecclesiasticorum statu et activate*, 28 December 1970, in AAS 63 (1971) pp. 480-486; *Supremum Signaturae Aposolicae Tribunal, Normae pro tribunalibus interdioecesis vel*

Inter-eparchial tribunals are erected primarily according to need, not ecclesiastical circumscription. Consequently, while some are formed for an entire province or nation, others encompass only some eparchies from one or more provinces. Some even encompass an entire nation or a province except for one or two eparchies.⁶

The first mention of the institute of regional tribunals occurs in the *motu proprio Qua cura* issued by pope Pius XII on 8 December 1938.⁷ On 10 June 1940, the Congregation for the Discipline of the Sacraments issued a series of twenty-one norms for the establishment and functioning of regional tribunals.⁸ From 1940 to 1967, the Holy See founded such tribunals throughout the world through the Sacred Congregation for the Discipline of the Sacraments. In 1968, Paul VI transferred this competence to the *Apostolic Signatura*.⁹

1.2. Inter-Eparchial Tribunal after *Regimini Ecclesiae Universae*

After *Regimini Ecclesiae Universae* assigned responsibility for inter-eparchial/diocesan tribunals to the *Apostolic Signatura*, the *Signatura* issued norms governing their erection on December 28, 1970.¹⁰ Article 1 §1 of these norms explains the need for inter-eparchial tribunals and the competence of the *Signatura* to erect them. The second article establishes that eparchial bishops have the duty to establish inter-eparchial tribunals after receiving a *nihil obstat* from the *Signatura*. To request this *nihil obstat*, the bishops who want to participate in the

regionalibus aut inter-regionalibus, 28 December 1970, in AAS 63 (1971) pp. 486-492; Pontifical Commission for the Interpretation of the Decree of Vatican Council II, *Responsum ad propositum dunium*, 14 February 1977, in AAS 69 (1977) p. 296; Paul VI, Apostolic Constitution *Regimini Ecclesiae Universae*, 15 August 1967 in AAS 59 (1967) pp. 921-922.

⁶Zenon Grocholewski, "Commentary on c. 1423," in Ángel Marxa et al. (eds.), *Exegetical Commentary of the Code of Canon Law*, vol. IV/1, Chicago, Midwest Theological Forum, 2004, p. 739.

⁷Pius XII, *motu proprio Qua cura*, pp. 410-413; see William A. Schumcher, "Regional Tribunal in the U.S.A.: History, Structure and Functioning, 1968-1989," in *CLSA Proceedings*, 51(1989) p. 140.

⁸Sacra Congregatio De Disciplina Sacramentorum, Normae pro exsequendis litteris Apostolicis "Qua cura" Die 8 Dec. 1938 *motu proprio* datis, pp. 304-308.

⁹Paul VI, Apostolic Constitution *Regimini Ecclesiae Universae*, pp. 921-922; see *CLD*, 6 (1969) p. 351.

¹⁰Supremum Signaturae Apostolicae Tribunal, Normae pro tribunalibus interdioecesanis vel regionalibus aut inter-regionalibus, pp. 486-492; see English translation in *CLD*, 7 (1975) pp. 920-926.

tribunal must consent, agree among themselves, and report to the *Signatura*.

1.3. Inter-Eparchial Tribunal according to *Sollicitudinem Nostram*

The *motu proprio Sollicitudinem nostram* gave specific norms with regard to an inter-eparchial tribunal, then called a “regional” tribunal.¹¹ Its erection was reserved to the Apostolic See; however, the Apostolic See could permit the synod of the bishops to exercise this function. Once the tribunal was erected, the hierarchs who had consented to it could no longer validly erect their own eparchial tribunals (*SN* c. 38 §1, 2^o).

The appointment of the inter-eparchial tribunal’s personnel depended upon the tribunal’s location. Within the proper territory of the Church *sui iuris*, the patriarch/major archbishop appointed judges, promoters of justice, and defenders of the bond with the consent of the permanent synod. Outside the proper territory, the metropolitan appointed these officials with the consent of the two senior most bishops in the province. Other tribunal personnel were nominated by the patriarch/archbishop or metropolitan (*SN* c. 38 §2).

The decree of erection determined the forum competent to receive appeals from decisions of the inter-eparchial tribunal. If the decree designated a particular tribunal for this purpose, appeals were to be lodged before that tribunal. However, if the decree did not designate an appeal tribunal, appeals were made before the patriarch/archbishop or metropolitan (*SN* c. 72 §1, 5^o).

1.4. Drafting of the *CCEO* c. 1067

Based on the guidelines for the revision of *CICO*, the *Coetus de processibus* prepared canon 12 of the text proposed in 1975.¹² The draft text mandated the erection of inter-eparchial tribunals where eparchial tribunals could not be created (see c. 12 §1). It reserved erection within the proper territory to the synod of the bishops, and outside of it to the Apostolic See. Once an inter-eparchial tribunal is established other independent eparchial tribunals could not be erected. The judges, defender of bond and promoter of justice were nominated by the patriarch with the consent of the permanent synod in the proper territory and outside the territory by the metropolitan with the consent of the two senior suffragan bishops. The patriarch and the

¹¹*SN* c. 38 §§1-2.

¹²For the full text of the draft see *Nuntia* 5 (1977) pp. 16-17.

metropolitan nominated the other personnel (see c. 12 §3). This was discussed repeatedly in the *coetus*, which was inclined to make it obligatory. However, the opinion that it was sufficient to express simple desire with the expression "*quod semper suadetur*" (always advisable) prevailed. But this tribunal was obligatory where each eparchy could not organize its own tribunal for whatever reason (in general, it is always lack of judges).¹³ This draft underwent much change in the subsequent redactions.

1.5. Procedures to Establish Inter-Eparchial Tribunal according to the CCEO

Following the directive principles and the *SN*, the *CCEO* c. 1067 sets up norms for establishing the inter-eparchial tribunal. The promulgated canon differs only slightly from the former *SN* canon and the original text drafted during the revision process.

1.5.1. Constitution of the Inter-Eparchial Tribunal

According to the *CCEO* c. 1067, within the territorial boundaries of a patriarchal Church, a first-instance inter-eparchial tribunal of a single Church *sui iuris* is erected by the patriarch/major archbishop with the consent of the eparchial bishops for whom it is established.¹⁴ Outside the proper territory, such a tribunal may be erected by the eparchial bishops who have consented to it (*CCEO* c. 1067 §1). Presently, the Syro-Malabar Church has, as mentioned above, two inter-eparchial tribunals outside its proper territory (Sagar-Satna & Ujjain - Jagadapur).

1.5.2. Reasons for the Erection of Inter-Eparchial Tribunals

The creation of inter-eparchial tribunals is justified by the need for qualified and suitable judges and other personnel to administer justice. While *CCEO* c. 1067 §2 does not list sufficient reasons for erecting inter-eparchial tribunals, it specifies that any cause preventing the erection of an eparchial tribunal can be the basis for an inter-eparchial tribunal. As we have already seen, the eparchial bishops who wish to erect the tribunal must demonstrate this necessity in order to receive a *nihil obstat* from the Apostolic See. By way of example, the following

¹³*Nuntia* 5 (1977) p. 16.

¹⁴The table of corresponding canons of the *CIC* and *CCEO* given with the Codes regarding this inter-eparchial tribunal is not having a parallel in the *CIC*. The inter diocesan tribunal of *CIC* 1423 equal to the common tribunal for diverse Churches *sui iuris* envisaged by *CCEO* c. 1068 §1.

reasons were presented as the motivation for establishing the Sagar-Satna & Ujjain – Jagadapur tribunals:

1. Shortage of qualified tribunal personnel.
2. Small number of catholics and tribunal cases.
3. Differences between *CCEO* and *CIC*.¹⁵
4. Proximity of places

1.5.3. Unanimous Decision of the Bishops

In erecting inter-eparchial tribunals, the Eastern code adheres to the long-standing legal principle that that which concerns all must be approved by all. Therefore, to establish an inter-eparchial tribunal, all the eparchial bishops who want to be part of it must also consent to it. This requirement is clearly articulated in *CCEO* c. 1067 §1, which mandates that the patriarch obtain the consent of the eparchial bishops before he erects such a tribunal for their eparchies. Moreover, since the inter-eparchial tribunal will restrict certain judicial prerogatives of its member bishops, unanimous approval is also required.¹⁶ Consequently, a tribunal may lawfully be considered “inter-eparchial” only when the eparchial bishops of several eparchies, by unanimous decision and with the participation of all, constitute it in accordance with *CCEO* c. 1067 and place it under their collective responsibility.¹⁷

1.5.4. Intervention of the *Apostolic Signatura*

According to *Pastor Bonus* (*PB*), no inter-eparchial tribunal may be constituted without the approval of the Apostolic See (*probante Sede Apostolica*). Under *Pastor bonus*, the competent dicastery is the *Apostolic Signatura* (*PB* art. 124, 4^o). Therefore, before they can constitute an inter-eparchial tribunal, the interested bishops must request and obtain a *nihil obstat* from the *Apostolic Signatura*. Once they receive the *nihil obstat*, all the interested bishops must sign the decree of erection,

¹⁵In spite of the similarities in the procedural norms in both Codes there is still some difference (see *CCEO* cc. 999-1006, 1084 §1 3^o, 1402 §§1-2, 1469 §3, 1473, 1476, 1486 §§1-2, 1487 §§1-3, 1517; *CIC* cc. 1342 §§1-3, 1353, 1425 §1 2^o, 1718 §3, 1720, 1722, 1734 §§1-2, 1737 §2, 1739). Sacred rite is very essential for the valid marriage in the Eastern Church (see *CCEO* c. 828 §§1&2). The blessing of a priest is very essential in the Eastern Church (see *CCEO* cc. 832 §§1-3). In the Latin Church a deacon can bless the marriage (*CIC* c. 1108). Spiritual relationship arising from baptism is also an impediment in the Eastern Church (see *CCEO* c. 811 §1).

¹⁶Klaus Lüdicke and Ronny E. Jenkins, *Dignitas Connubii: Norms and Commentary*, Canon Law Society of America, 2006. p. 60.

¹⁷Grocholewski, “Commentary on c. 1423,” pp.740- 742.

which Apostolic See must also approve.¹⁸ Express provision is made for the approbation of the *Apostolic Signatura* in this CCEO c. 1067 §1, as well as in *Pastor bonus* art. 124, 4^o. The request for the *nihil obstat* is relevant for two reasons: a) it offers the possibility of resolving ahead of time, those questions which the *Apostolic Signatura* might find difficult to approve; b) the *Apostolic signatura* can make constructive suggestions to bishops who are facing this challenge for the first time. These suggestions might relate to options to be considered or to the writing of the decree of erection.

1.5.5. Role of the Synod of Bishops

The role of the Synod of the Bishops is explained in CCEO c. 1067 § 2. In this canon, we can see that this tribunal must be erected whenever any reason prevents individual eparchial bishops from erecting their own tribunals. When such cases occur within the territorial boundaries of a patriarchal Church, the synod of bishops must erect the inter-eparchial tribunal or tribunals.¹⁹ However, since the Eastern code limits this competence to the proper territory, the synod has no role in erecting inter-eparchial tribunals outside of it.

1.6. Effects of Inter-Eparchial Tribunal

Paragraph three of c. 1067 deals with erecting inter-eparchial tribunals instead of eparchial tribunals as described in CCEO c. 1066. Thus, the eparchial bishop may exercise his judicial responsibility through his own eparchial tribunal or through a tribunal collegially constituted with other eparchial bishops. In the latter case, the bishop loses the right to have his own tribunal to treat the same matter. He cannot exercise his judicial responsibility by means of an ordinary and an alternative forum when judging the same matter.²⁰ Once an inter-eparchial tribunal is erected for some eparchies the eparchial bishops lose their power to erect their own eparchial tribunal at the same time (CCEO c. 1066 §3).²¹

¹⁸See *Dignitas Connubii* art. 23 §1; *Supremum Signaturae Aposolicae Tribunal, Normae pro tribunalibus interdioecesanis vel regionalibus aut inter-regionalibus*, pp. 486-492.

¹⁹Jobe Abbass, "Trials in General," in Goerge Nedungatt (ed.), *A Guide to the Eastern Code*, Rome, Pontificio Istituto Orientale, 2002, p. 720.

²⁰Grocholewski, "Commentary on c. 1423," p. 741.

²¹The recent *motu proprio Mitis Misericors Iesus* Art. 8 §2 says "The bishop can withdraw from an intereparchial tribunal constituted in accordance with c. 1067 §1."

However, the erection of an inter-eparchial tribunal does not alienate or revoke the bishop's power to judge. When the judges of an eparchial tribunal adjudicate causes, the *potestas iudicialis* of the eparchial bishop is being exercised through others (*per alios*). Just as this function of eparchial judges in no way removes the eparchial bishop's power to judge, neither does the erection of an inter-eparchial tribunal detract from the judicial prerogatives of the eparchial bishop. Consequently, his right to reserve individual cases to his own judgment (CCEO c. 1086 §2), remains intact.²²

1.7. The Inter-eparchial Tribunals in the Syro-Malabar Church

Because of the differences in the laws on marriage in *CIC* and *CCEO*, the Syro-Malabar eparchies of Madhya Pradesh felt the need for tribunals that exclusively followed the Eastern code. On 15 December 1994, the bishops of these eparchies submitted a written request to the *Signatura* asking for tribunals for each of the Syro-Malabar eparchies in Madhya Pradesh. However, the *Apostolic Signatura* instead proposed erecting two inter-eparchial tribunals that would function as first and second instances. The Syro-Malabar bishops accepted this proposal. On 25 November 1995, the bishops submitted a decree erecting the inter-eparchial tribunals of Sagar-Satna and Ujjain-Jagdalpur for the approval of the *Signatura*. The latter responded positively contingent upon some modifications to the decree.²³ Finally, the official decree was signed on 27 May 1996.

1.7.1. Evolution of the Sagar-Satna & Ujjain-Jagdalpur Inter-eparchial Tribunals

Ujjain was part of the inter-diocesan tribunal of Bophal, and Jagdalpur and Satna were part of the inter-diocesan tribunal of Raipur which was erected on 23 September 1988. At the meetings of the bishops of Madhya Pradesh on 14 January 1994, it was expressed that there should be separate tribunals for the Latin and Syro-Malabar Churches. Because the canons governing marriage are not the same for both

²²After coming into effect of *motu proprio Mitis Misericors Iesus* the briefer matrimonial process before the Bishop according to cc. 1369-1373 seems to be dealt by each eparchial bishop and only the ordinary process dealt in the inter-eparchial tribunal.

²³Supremum Signaturae Aposolicae Tribunal, Response to the Letter on 25 November to the Bishop of Sagar Erecting the Inter-eparchial Tribunal, 17 January 1996, Prot. No. 3233/95 SAT, Archives of the Eparchy of Sagar, File No. 10.

Churches, it was believed that judges in common tribunals would find it difficult to handle the cases.²⁴

1.7.1.1. The Proposal for Eparchial Tribunal

Madhya Pradesh Bishop Conference met on 9 and 10 August 1994 and agreed:

"Syro Malabar Dioceses of the Region will form their own marriage tribunals. The Syro Malabar Dioceses of Madhya Pradesh have the required number of qualified personnel to constitute their own marriage tribunals, if all the four dioceses collaborate. Hence we have among ourselves agreed to avail the service of the qualified personnel in different offices of the tribunal. The Judicial vicar and notary belong to the same diocese in every case."²⁵

Accordingly, they proposed to the *Apostolic Signatura* to have tribunals for each eparchy in collaboration with each other. For second instance, a separate team of four judges would be selected and proposed from the four tribunals. Provided they have not judged the case in first instance, any three of the four judges could be selected as collegial judges for the second.²⁶ The *Signatura*, however, disapproved for the following reasons:

- a) From the proposal it appears that two priests would exercise at the same time two different offices at two or three tribunals. The judicial vicar of Sagar would exercise at the same time the office of defender of the bond at the eparchial tribunals of Jagdalpur and Ujjain, and the judicial vicar of Ujjain at same time the office of defender of the bond at eparchial tribunal of Sagar.
- b) The judicial vicar/judge must always maintain a strict impartiality in searching for the truth and rendering judgment, while the task of the defender of the bond is to propose and clarify everything which can be reasonably adduced against nullity. Therefore, it might be difficult for the same persons to switch regularly from one to the other office and still maintain the proper

²⁴Supremum Signature Apostolicae Tribunal, Response to the Letter on 5 February 1994 to the Bishop of Satna Erecting Inter-Eparchial Tribunal, 2 July 1994, Prot. No. 3270/94 SAT.

²⁵Bishops of Jagdalpur, Sagar, Satna and Ujjain, Letter to *Apostolic Signatura* Erecting Eparchial Tribunal, 15 December 1994, Archives of the Eparchy of Sagar, File No. 10.

²⁶There was no mention about the defender of bond, promoter of justice and the notary.

respect for the individual nature of each office. It might also be difficult for the faithful to understand how, e.g. the same person could really defend the bond of marriage in one tribunal when in another eparchy he declares the same bond of marriage null and void.

c) If the judicial vicar of Sagar were to be impeded, three eparchial tribunals would become inactive; in the same way, two tribunals would become inactive, should the judicial vicar of Ujjain be impeded.

d) *Apostolic Signatura* insisted therefore that as soon as possible each mentioned eparchy should have its own qualified defender of the bond (CCEO c. 1099 §2).²⁷

With regard to the proposed inter-eparchial appellate tribunal at Sagar the *Apostolic Signatura* pointed out the following:

e) From a comparison of the officials of the proposed appeal court with those of the first instance eparchial tribunals, it appears that all ministers of the appeal tribunal would hold at the same time an office at one of the subordinate eparchial tribunals.

f) Undoubtedly, the Code of canons of the Eastern Churches requires for the second instance another tribunal distinct from the eparchial tribunal of first instance (CCEO cc. 1063 §§1, 3; 1064, 1067 §5)

g) The lack of complete separation of the judicial personnel of the appeal tribunal could – contrary to the mind of the legislator – easily reduce the distinction between the tribunal of papal and its subordinate tribunals to a rather formalistic one and compromise the impartiality and freedom required for a true review, by the tribunal of appeal, of the decisions given in the first instance.

h) The *Apostolic Signature* considers the complete separation of the judicial personnel of the appeal tribunal from that of the hierarchically subordinate eparchial tribunals to be required for the proper administration of justice and therefore cannot approve the proposed tribunal of appeal.

i) The *Apostolic Signatura* however told that it is ready to grant its approval for another tribunal of appeal, which the individual Syro-Malabar bishops of Madhya Pradesh would propose- with the consent of its moderator- as stable tribunal of ‘appeal for their

²⁷Supremum Signature Apostolicae Tribunal, Response to the Letter on 15 December to the Bishops of Sagar, Satna, Gagdapur and Ujjain Erecting Eparchial Tribunal, 7 February 1995, Prot. Nos. 3233/94 SAT, 3267/2/94 SAT, 3270/94 SAT, 3283/94 SAT, Archives of the Eparchy of Sagar, File No. 10.

eparchial tribunals, provided that each eparchial tribunal be completely distinct from its court of appeal and that the right of the parties remain intact to propose appeal for the second instance to the Roman Rota instead of to the ordinary tribunal of appeal.

j) The proposed appellate tribunal could be e.g. the Syro-Malabar Major Archiepiscopal Tribunal of Ernakulam-Angamaly or another functioning tribunal which can judge cases with a college of three judges.²⁸

As the eparchy of Satna expressed that it preferred to withdraw from the inter-diocesan tribunal of Raipur in order to erect its own eparchial tribunal the *Apostolic signatura* proposed another option:

This Supreme Tribunal would like to point out that it is possible to address this difficulty without changing the present tribunal structure. If each Syro-Malabar eparchy which helped to erect and has responsibility for an inter-diocesan tribunal- namely Satna and Jagdaplur for the inter-diocesan tribunal of Raipur and Ujjain for the Inter-diocesan Tribunal of Bhopal -were to offer at least one trained canonist for tribunal work, those tribunals would be better equipped to judge the cases of the faithful of the Syro-Malabar Church.²⁹

However, the Supreme Tribunal responded that Satna could withdraw from the inter-diocesan tribunal of Raipur to erect own on two conditions. First, to judge matrimonial cases, an eparchial tribunal must consist of at least three persons; a judicial vicar, a defender of the bond and a notary (CCEO cc. 1086, 1096 and 1101). Second, the judicial vicar and the defender of the bond must have a doctorate or at least a licentiate in canon law (CCEO cc. 1086 §4 and 1099 §2). If it is not possible to have two qualified priests, a dispensation for the required degree should be sought from the *Signatura*, indicating the reasons for requesting the dispensation and attaching a brief *curriculum vitae* illustrating especially the candidate's preparation for and experience in tribunal work. The *Signatura* would consider such a request only if the eparchial tribunal has at least one canonically qualified priest, and

²⁸Supremum Signature Apostolicae Tribunal, Response to the Letter on 15 December to the Bishops of Sagar, Satna, Gagdapur and Ujjain Erecting Eparchial Tribunal, 7 February 1995, Prot. Nos 3233/94 SAT, 3267/2/94 SAT, 3270/94 SAT, 3283/94 SAT.

²⁹Supremum Signature Apostolicae Tribunal, Response to the Letter on 5 February 1994 to the Bishop of Satna Erecting Inter-Eparchial Tribunal, 2 July 1994, Prot. No. 3270/94 SAT.

the priest to be indulged has some specific preparation for and practical experience of tribunal work.³⁰

1.7.1.2. The Proposal for Inter-Eparchial Tribunal

After the initial proposal was rejected, a new one was drafted for the consideration of the *Signatura*. On 25 November 1995, the bishops of Sagar, Satna, Jagdalpur and Ujjain sent a joint letter in response to Ref. Prot. Nos. 3233/94 SAT, 3267/2/94 SAT, 3270/94 SAT, 3283/94 SAT. The letter stated that the Syro Malabar Bishops of Madhya Pradesh, namely, Bishop Joseph Pastor Neelankavil CMI of Sagar, Bishop John Perumattam MST of Ujjain, Bishop Abraham Mattom VC of Satna and Bishop Simon Stock Palathara CMI of Jagdalpur, have decided to erect two inter-eparchial tribunals as per the norms of CCEO c. 1067. Considering the convenience of the tribunal personnel and the proximity of the places, the tribunals would be located at Sagar-Satna and Ujjain-Jagdalpur. Moreover, given the small number of faithful and cases, the bishops themselves would function as tribunal judges. Appeals from each tribunal would go to the other in accord with CCEO cc. 1059 and 1065. Finally, the letter requested exemption from CCEO c. 1099 §2 for some of the personnel to be appointed defenders of the bond and promoters of justice.³¹

After studying the second proposal, the *Apostolic Signatura* granted the *nihil obstat* for the erection of the two proposed inter-eparchial tribunals on 17 January 1990. The *Signatura* ordered that a decree of erection, based on a draft decree enclosed with the latter, be drawn up and signed by the concerned bishops and an ecclesiastical notary. An authentic copy of the decree was to be sent to the *Signatura* as soon as possible for its final approval.³² The two inter-eparchial tribunals (Sagar-Satna and Ujjain-Jagdalpur) were erected on 2 April 1996, and

³⁰Supremum Signature Apostolicae Tribunal, Response to the Letter on 5 February 1994 to the Bishop of Satna Erecting Inter-Eparchial Tribunal, 2 July 1994, Prot. No. 3270/94 SAT.

³¹Bishops of Sagar, Satna, Ujjain and Jagdalpur, Response to the Letter of *Apostolic Signatura* of 7 February 1995, Erecting Eparchial Tribunal, 25 November 1995.

³²Supremum Signaturae Apostolicae Tribunal, Response to the Letter on 25 November 1995 to the Bishop of Sagar Erecting Inter-Eparchial Tribunal, 17 January 1996, Prot. Nos. 3233/95 SAT, 3267/2/95 SAT, 3270/95 SAT, 3283/95 SAT, Archives of the Eparchy of Sagar, File No. 10.

the decree of erection submitted for approval on 3 April 1996.³³ Approval was given on 29 May 1996, and the inter-eparchial tribunals came into existence on 14 September 1996.³⁴ Because only two eparchies belonged to each tribunal (Sagar & Satna and Ujjain & Jagdalpur),³⁵ they were named the Sagar-Satna and Ujjain-Jagdalpur inter-eparchial tribunals.³⁶ In accord with the stipulations of the decree, the seats of the Sagar-Satna and Ujjain-Jagdalpur tribunals would be located in the cities of Sagar and Ujjain, respectively.

1.7.2. The Competence of Inter-Eparchial Tribunal of Sagar-Satna and Ujjain-Jagdalpur

The first inter-eparchial tribunals were constituted by SCDS (Sacred Congregation for Discipline of Sacraments) or with its collaboration. Because SCDS had competency only over sacraments, these tribunals were erected only for marriage cases. However, once competency was transferred to the *Apostolic Signatura*, inter-eparchial tribunals began to be erected for all judicial cases. In effect, if an inter-eparchial tribunal is constituted solely for marriage cases, it would be necessary that a tribunal for other cases be erected in each eparchy.³⁷ This does not seem appropriate, since there are very few cases in ecclesiastical tribunals other than marriage cases. When those rare cases arise, the people normally best qualified to judge them are those already working in an inter-eparchial tribunal.³⁸ Thus, unless the tribunal's statutes specifically limit its competence, it can adjudicate any case not reserved to eparchial bishop (see, *CCEO* c. 1086 §2). The spirit of *CCEO* c. 1067 §3 seems to suggest that it is competent to deal with all the cases that an eparchial tribunal is competent. With the establishment of an inter-eparchial tribunal, the judicial power referred in *Dignitas Connubii* art. 22 (see *CCEO* c. 1066) is now exercised by the inter-

³³Joseph Pastor Neelankavil, Letter to *Apostolic Signatura* Requesting for the Approval for Sagar-Satna Inter-Eparchial Tribunal, 3 April 1996, Reg. N. 056/011/96, Archives of the Eparchy of Sagar, File No. 10.

³⁴Joseph Pastor Neelankavil and John Perumattam, *Decree Erecting Inter-Eparchial Tribunal*, 18 September 1996, Archives of the Eparchy of Sagar, File No. 10.

³⁵Bishops of Sagar, Satna, Jagdalpur and Ujjain, *Decree of Erection, Inter-Eparchial Tribunals Sagar-Satna, Ujjain-Jagdalpur*, 2 April 1996, Archives of the Eparchy of Sagar, File No. 10, no. 1. Here onward it is mentioned as *DEIETSSUJ*.

³⁶*DEIETSSUJ* no. 2.

³⁷See *CCEO* cc. 1066 §1 & 1086 §1; *CIC* cc. 1419 §1 & 1420 §1.

³⁸Grocholewski, "Commentary on c. 1423," p. 743.

eparchial tribunal always in the light of the rules for competence found in arts 10 and 15-18 (see *CCEO* cc. 1073, 1082 and 1359).³⁹

According to *CIC* c. 1423 §2 and *Dignitas Connubii* art. 23, the bishop-members of an inter-eparchial tribunal are free to determine whether or not the inter-diocesan tribunal will be established with competence for all types of cases or only specific ones, most commonly marriage nullity cases. When the inter-diocesan tribunal is competent to hear only a certain type of case, it is absolutely incompetent to hear cases for which it was not established. Consequently, if the inter-diocesan tribunal is erected only to hear marriage nullity cases, then the individual eparchial tribunal retains competence over all other types, including penal.⁴⁰ This seems contrary to the spirit of *CCEO* c. 1067 §3, as here we do not find an option to create inter-eparchial tribunal for specific cases.

Regarding competence, the decree erecting the tribunals of Sagar-Satna and Ujjain-Jagdapur no. 3 says:

These tribunals will be competent to examine and judge judicial causes of every kind, namely causes of matrimonial nullity – whether they are to be judged through the ordinary process according to the norms of cann. 1372-1374 *CCEO* – causes of separation of spouses and other contentious cases, as well as penal cases.

According to this norm, these inter-eparchial tribunals function like eparchial tribunals competent to examine and judge all sorts of cases, namely: matrimonial nullity, separation of spouses, contentious cases, and penal cases. Since the decree of the erection was signed by all the bishops, so to say, the eparchial bishops of the eparchies concerned have not reserved any cases to themselves (*CCEO* c. 1086 §2). According to the decree no. 3, we understand that this tribunal is competent to hear the cases both through judicial and documentary process (*CCEO* cc. 1372-1374). However, the briefer matrimonial process before the bishop created by the *motu proprio Mitis et misericors Iesus* is handled by each eparchial bishop.

1.7.3. Appellate Tribunal of the Inter-Eparchial Tribunal

Within the territorial boundaries of patriarchal/major-archiepiscopal Churches, appeal from an inter-eparchial tribunal is always reserved

³⁹Lüdicke, *Dignitas Connubii: Norms and Commentary*, p. 58.

⁴⁰Lüdicke, *Dignitas Connubii: Norms and Commentary*, p. 59.

to the ordinary tribunal of the Church *sui iuris*. Outside the proper territory, the CCEO c. 1067 §5 proposes two options: either the eparchial bishops who consented to it designate an appellate tribunal with the approval of the Apostolic See, or the Apostolic See itself designates a tribunal.⁴¹ Third and further instances for such tribunals outside the territory will always be Roman Rota (*PB* art. 128).

According to the decree erecting the inter-eparchial tribunals of Sagar-Satna and Ujjain-Jagdaldpur, these inter-eparchial tribunals rank equal to the metropolitan tribunal. These tribunals can judge in the first instance according to CCEO cc. 1084 §3, 1085 §§1-3 – judicial cases with a single clerical judge - the cases of member eparchies.⁴² These inter-eparchial tribunals are designated as the forum of second instance for each other.⁴³ In the second instance the collegial judges will process the cases. Thus, both tribunals are first instance tribunals in their own eparchies and second instance to each other.

1.7.4. Role of the Eparchial Bishops

CCEO c. 1066 §1 states: "in each eparchy and for all cases not expressly excepted by law, the eparchial bishop is the judge in the first grade of the trial." The eparchial bishop is a judge by virtue of divine law.⁴⁴ He is the native judge in his own eparchy. Eparchial bishops of Sagar & Satna and Ujjain-Jagdaldpur exercise their judicial power through their inter-eparchial tribunals. The right of the eparchial bishops of Sagar, Satna Ujjain and Jagdaldpur, as stated in c. 1086 §2 and *motu proprio Mitis et Misericors Iesus* cc. 1369-1373, remains intact.⁴⁵ They, through unanimous decision, have not reserved any case to themselves. The *DEIETSSUJ*⁴⁶ is silent about reserving cases to eparchial bishops. They can still with unanimous decision, reserve cases to themselves. Appointing a judicial vicar, adjutant judicial vicar (CCEO c. 1086 §§ 1 and 3), other eparchial judges (CCEO c. 1087 §1), the promoter of justice, and defender of the bond (CCEO c. 1099 §1), punishing the ministers (CCEO c. 1115 §§1 and 2) as well as removing these persons

⁴¹See CCEO c. 1067 §5; Abbass, "Trials in General," p. 721.

⁴²Both the inter-eparchial tribunals have received the permission from the *Apostolic Signatura* for single clerical judge.

⁴³*Decree of Erection, Inter-Eparchial Tribunals Sagar-Satna, Ujjain-Jagdaldpur*, no. 4.

⁴⁴See LG no. 27; CD no. 8; CS cc. 392, 399 §1, 432 §1 and 434; SN cc. 37 §1 and 40 §1; CCEO cc. 178 and 191.

⁴⁵See Lüdicke, *Dignitas Connubii: Norms and Commentary*, p. 60.

⁴⁶*Decree of Erection, Inter-Eparchial Tribunals Sagar-Satna, Ujjain-Jagdaldpur*.

(CCEO cc. 1088 §§1-3, 1100 §2) are reserved to these two member bishops of each tribunal.⁴⁷ The eparchial bishops have the right to name one or more auditors (CCEO c. 1093 §2) and one or more notaries (CCEO c. 1101) in their own eparchies.⁴⁸

1.7.5. Tribunal Personnel

The officials of the inter-eparchial tribunals of Sagar-Satna and Ujjain-Jagdapur are the moderator, judicial vicar, adjutant judicial vicar, judges, auditors, the promoter of justice, defender of bond, advocates, notary etc.⁴⁹ The bishops of the various eparchies that form the inter-eparchial tribunals may allow personnel from their own tribunal to be appointed to the inter-eparchial tribunal. However, once they are appointed to that tribunal, the bishop cannot demand that they function on behalf of his own causes; that is, he cannot act as if the inter-eparchial tribunal had a subsection in service to his eparchy.⁵⁰

1.7.5.1. The Moderator Inter-Eparchial Tribunals

As in an eparchial tribunal, designating the moderator of an inter-eparchial tribunal (i.e. the eparchial bishop) belongs to the *coetus* of bishops who have erected the tribunal or to the bishop designated by the *coetus*. In this regard CCEO c. 1067 §4 states: "The group of eparchial bishops who consented to such a tribunal, or an eparchial bishop elected by them, has the powers that an eparchial bishop has regarding his own tribunal..."⁵¹ The designation of the moderator may be made either by indicating in the decree of erection that the function of moderator will be performed by the bishop of the eparchy in which tribunal has the See, or by indicating in the decree of erection that a bishop appointed by the *coetus* will serve as moderator. In the latter case, the *coetus* should elect a specific bishop to serve as moderator.⁵² He need not be the bishop of the eparchy in which the inter-eparchial

⁴⁷DEIETSSUJ no. 7.

⁴⁸DEIETSSUJ no. 8.

⁴⁹According to the CCEO c. 1102 §1. Judges and other officers of the tribunal can be taken from any eparchy, religious institute or society of common life in the manner of religious, of one's own or even of another Church *sui iuris*.

⁵⁰See Lüdicke, *Dignitas Connubii: Norms and Commentary*, p. 59. As the result of reformation brought by new *motu proprio Mitiset Misericors Iesus* they could withdraw from the inter-eparchial Tribunal. See art. 8 §2.

⁵¹See *Dignitas Connubii*, arts. 24 §2, 25 4° & 26.

⁵²See Grocholewski, "Commentary on c. 1423," p. 742.

tribunal is physically located. However, he must be the bishop of one of the member eparchies.⁵³

The *DEIETSSUJ* no. 5 stated that the moderators of the Sagar-Satna and Ujjain-Jagdarpur tribunals will be the bishops of Sagar and Ujjain, respectively. The moderators will exercise the functions of an eparchial bishop in an eparchial tribunal (*CCEO* c. 1067 §4).⁵⁴ As moderators, these bishops hold extensive administrative authority and exercise immediate vigilance over the tribunals. Thus, referring difficult cases (*CIC* c. 1425 §2) or those of greater importance to a larger number of judges (*CCEO* c. 1084 §2), assigning cases to judges without following the pre-arranged rotation (*CCEO* c. 1490 §1), deciding objections made against the judges (*CCEO* c. 1107 §1),⁵⁵ and hearing recourse against rejected petitions (*CCEO* c. 1163 §2) are all within the competence of the moderators.

Upon appointment to office, tribunal personnel must promise to fulfill their functions faithfully (*CCEO* c. 1112). Although *CCEO* and *DEIETSSUJ* do not indicate before whom the promise is to be made, this would certainly include the authority competent to confer the office in question. In inter-eparchial tribunals, this authority is the *coetus* of bishops. However, for practical purposes, it would be advisable for the *coetus* to delegate the moderator to receive the promise.⁵⁶ The moderator is also responsible for the proper formation of the tribunal personnel. The tribunal personnel are required to receive continuing education in marriage and procedural law. The moderator is charged with the duty of assuring sufficient time for such opportunities. He should also see that continuing education is available to them and that they dedicate suitable time to it.

1.7.5.2. Other Tribunal Persons

The other tribunal persons such as the Judicial Vicars, the Adjunct Judicial Vicars, the Judges, the Defender of Bond and the Promoter of Justice for each tribunal will be named by the joint vote of two Bishops who form that tribunal. These officials, appointed for a *quinquennium*, can be reappointed when their terms expire (*CCEO* c. 1088 §§1-3).⁵⁷

⁵³Lüdicke, *Dignitas Connubii: Norms and Commentary*, p. 66.

⁵⁴See also *Dignitas Connubii*, arts 24 §2, 25 4°, 26.

⁵⁵See Grocholewski, "Commentary on c. 1449," pp. 718-719.

⁵⁶See Lüdicke, *Dignitas Connubii: Norms and Commentary*, p. 79-80.

⁵⁷*DEIETSSUJ* no. 7.

Judges must be priests of unimpaired reputation,⁵⁸ known for prudence and zeal for justice, and have a doctorate or licentiate in canon law. In addition, Judicial Vicars and their Adjuncts must be at least thirty years old (CCEO cc. 1084 §1, 1086 §4, 1087 & 1090).⁵⁹ Clerics and laypersons of unimpaired reputation who hold doctorates or licentiates in canon law can be appointed defenders of the bond and promoters of justice (CCEO c. 1099 §2),⁶⁰ although the *Signatura* can dispense from this academic requirement. Defenders and promoters must also possess a good reputation, prudence, and zeal for justice. The appointment of defenders and promoters who are otherwise truly expert is not permitted.

The moderator of the tribunal appointed other personnels, like the moderator⁶¹ in charge of the tribunal chancery (CCEO cc. 1225, 181 §1 and 1345 §1). *DEIETSSUJ* no. 8 prescribes that each eparchial bishop can appoint one or more notaries within his eparchy (see CCEO c. 1101 §§1-2). Qualifications for this appointment, which clerics and laypersons alike may hold, include a good reputation and freedom from all suspicion. *DEIETSSUJ* no. 8 also specifies that each eparchial bishop can name one or more auditors in their eparchies. The prerequisites for this function are not very stringent: outstanding for good character, prudence, and doctrine.⁶² Assessors are chosen by the judge from among those approved for the function by the moderator (see CCEO cc. 1089, 1084 §3).⁶³

⁵⁸The c. 1359 §3 of *motu proprio Mitis et Misericors Iesus*, however, does broaden the scope to allow for two or more lay judges on a panel.

⁵⁹See Abbass, "Trials in General," p. 725; Doogan, "The Tribunals of the Catholic Church," p. 8.

⁶⁰See Madappallikunnel, *The Tribunals of a Major Archiepiscopal Church*, p. 47; Lüdicke, *Dignitas Connubii: Norms and Commentary*, p. 108; Kochupurackal, "Role and Function of the Defender of the Bond in CCEO," p. 65; Stallard, "Defender of the Bond," pp. 166-167.

⁶¹We do not find this term in the CCEO. The Instruction *Dignitas Connubii* art. 61 uses the head of chancery. This title is necessary as the *DEIETSSUJ* no. 8 prescribes each eparchial bishop can appoint one or more notaries in their own eparchies. But the decree does not mention who is the head of the chancery.

⁶²The use of the word doctrine should not be understood to mean imply Christian doctrine, but also knowledge of those mater that are required to carry out the task one is assigned (legal doctrine and practice).

⁶³See *Dignitas Connubii* art. 52; Lüdicke, *Dignitas Connubii: Norms and Commentary*, p. 104. We do not find any list of approved assessors in the Sagar-Satna inter-eparchial tribunal.

Besides these, parties may use service of procurators and advocates.⁶⁴ Although not officers of the court, these persons are intimately connected with the tribunal and stand in for and advise petitioners and respondents.⁶⁵ The nomination of the advocates and procurator is generally the responsibility of the litigating parties, who may authorize one person to simultaneously fulfill both functions.⁶⁶ These figures must be of mature age, enjoy a good reputation, and possess a doctorate or true expertise in canon law (CCEO c. 1141). They must also be Catholic, unless the authority immediately superior to the tribunal permits otherwise. They are to have a doctorate in canon law or truly be an expert in it and he must be approved by the competent authority,⁶⁷ either for a particular case or by inclusion in the roster of advocates.⁶⁸ CCEO cc. 1142 and 1143, describe the responsibilities of procurators and advocates and indicate that they are to be enumerated in the mandate by which they acquire their office.

1.8. Impact of *Motu Proprio Mitis et Misericors Iesus*

The document *Mitis et Misericors Iesus* has altered chapter one on "Matrimonial Procedures" in title XXVI of the Eastern code. The very purpose of this document is affirmed to be of assistance to the faithful and to show the Church's merciful outreach. In art. 8 §2, the *motu proprio* stipulates that the eparchial bishops can withdraw from an intereparchial tribunal to establish their own eparchial tribunal. Accordingly, if any bishop of Inter-Eparchial Tribunals of Sagar-Satna and Ujjain-Jagdarpur withdraws, that inter-eparchial tribunal will cease to exist as only two eparchies belong to each. At the same time, the eparchial tribunal is not an obligation as c. 1359 §2 states: "the bishop is to establish an eparchial tribunal for his eparchy to handle cases of nullity of marriage without prejudice to the faculty of the same bishop to approach another nearby eparchial or inter-eparchial tribunal." The appointment of single clerical judges (see, §3) is unaffected, since the *Signatura* has granted this permission now used

⁶⁴See cc. 1139, 1140 §§ 1-3, 1148, 1240, 1349 §2, 1242, 1364 §1, 2°

⁶⁵Doogan, "The Tribunals of the Catholic Church," p. 9.

⁶⁶McGuckin, "The Respondent's rights in a Marriage Nullity Case," p. 140.

⁶⁷According to no. 7 of *DEIETSSUIJ* the moderator is the competent authority. Regarding the qualifications Statutes of the Syro-Malabar Ordinary Tribunal art. 24 avoids the reference to the mature age, and it does not require that the advocates be Catholic.

⁶⁸Madappallikunnel, *The Tribunals of a Major Archiepiscopal Church*, pp. 47-48; Hesh, "The Right of the Accused Person to an Advocate in a Penal Trial," p. 730.

by the inter-eparchial tribunals of Sagar-Satna and Ujjain-Jagdapur. The new provision of briefer matrimonial process before the bishop (c. 1369-1373) also will have little impact on the function of these tribunals. According to the *motu proprio*, the tribunal will deal with the cases only after the eparchial bishop assigns them to the ordinary process following the preliminary investigation (c. 1362 §2). Even though a mandatory appeal of every affirmative judgement is no longer necessary, the *motu proprio* retains the possibility of appealing any decision. Indeed, both the parties, the defender of the bond, and the promoter of justice (if he is involved in the case) appeal to the inter-eparchial tribunal when they consider it appropriate (c. 1366).⁶⁹

Conclusion

The Syro-Malabar Church can be proud that she effectively employs all tribunal systems envisaged by CCEO for the administration of justice, which shows her eagerness to dispense justice properly. The inter-eparchial tribunals of Sagar-Satna and Ujjain-Jagdapur are in their infant stage. It was the result of an earnest effort from the part of the Syro-Malabar bishops of Madhya Pradesh to administer justice in the given situation. There is no doubt that these tribunals could function as a model for other eparchies in mission territories.

There seems to be a general impression that ecclesiastical tribunals are meant only for matrimonial cases. If this were true, the briefer matrimonial process before Bishop would eliminate the need for tribunals in mission eparchies. However, as we have seen, the tribunal is meant for matrimonial cases, penal cases, and indeed all cases not reserved to the eparchial bishop. Since these eparchies lack sufficient legal experts, reserving cases to their eparchial bishops will deny justice to the parties, who are not well versed in legal procedure and principles. In penal cases, a bishop's failure to apply proper procedure will result in especially great injustice to the accused. However, once all kinds of cases are entrusted to this tribunal, its personnel will have sufficient work and the tribunal itself will be providing justice for all.

⁶⁹See *motu proprio Mitis et Misericors Iesus*, cc. 1365-1368.