

Editorial

**PATRIARCH WITH THE SYNOD OF BISHOPS:
SUPREME AUTHORITY OF A CHURCH *SUI IURIS***

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Independence or autonomy for any institution is a great help to grow, develop and mature. In the secular world we see that many nations, which had been colonies of developed countries, have attained greater growth and development and have been able to restore or preserve their patrimony through the realization of freedom from the colonial clutches and autonomy in governance. Church is not an exception to it.

The Church originated and spread into different parts of the world through the evangelizing mission of the 12 apostles and their successors. These churches flourished rooted in the different socio-cultural backgrounds but remaining united to Catholic Church and its head, the successors of St. Peter whom Jesus placed as the head of the apostles.

Now the Catholic Church is a communion of 23 (*Annuario Pontificio*, 2018) Churches *Sui Iuris*, 22 Eastern Churches and one Latin Church that enjoy autonomy in governance in varying degrees.

As per the prescription of CCEO c. 27 for a Church to be *sui iuris*, that is to have the right, ability and autonomy for self-governance, it should fulfil the following four elements: i) there should be a community of the faithful that is ii) held together by a hierarch as its head and father iii) according to the norms of law and vi) the supreme authority of the Church should recognize it as such.

Such Churches *sui iuris* are categorized into for types based on various facts, mainly on the degree of autonomy they enjoy: i) Patriarchal, ii) Major Archiepiscopal, iii) Metropolitan and iv) Other (eparchial and exarchial) Churches *sui iuris*. All the 22 churches could be reduced to anyone of these four categories.

Among these the Patriarchal Church has the highest degree of autonomy in the self-governance that CCEO accords to these Oriental Churches. Major Archiepiscopal Church is, however, having almost the same powers as that of the Patriarchal church (CCEO c. 152). There

are now six patriarchal and four Major archiepiscopal Churches in the Catholic communion of Churches. Vatican Council II while referring to the patriarchal Churches specified that

The patriarchs with their synods are the highest authority for all business of the patriarchate, not excepting the right of setting up new eparchies (dioceses) and appointing bishops of their rite within the patriarchal territory, without prejudice to the inalienable right of the Roman Pontiff to intervene in any particular case (OE 9).

Eastern Code gives a detailed account of the patriarchal Churches in its Title IV (cc. 55-149), dedicating its third chapter to deal with the synod of bishops (cc. 102-113) and of Major Archiepiscopal Churches (cc. 151-154).

Highlighting the important role liturgy and discipline play in the life of a Church *sui iuris* the legislator entrusts the Synod of bishops with the duty of enacting genuine liturgical norms and disciplinary measures in line with the tradition but without neglecting the signs of the times and to see to their faithful implementation. On the legislative power of the patriarchal Churches the code states, "The synod of bishops of the patriarchal Church is exclusively competent to make laws for the entire patriarchal church..." (CCEO c. 110 §1). In these churches, under the pope and above the eparchial bishop there is the patriarch or major archbishop functioning as the head and father of the Church. The supreme authority under the Holy Father is the Patriarch with the synod. It is, therefore neither the patriarch nor the synod alone who governs the Church; neither dictatorship nor democracy is the style of governance, but it is a sharing of responsibility by the head and the representatives of the body of the faithful as John D. Faris reminds (see, *Iustitia*, Vol. 2. n. 2 [2011] 313-337).

While the supreme authority of the patriarchal or major archiepiscopal Churches can take decisions independent of the Holy See in matters not reserved to the latter, Roman Pontiff is endowed with the right to intervene in the affairs of these Churches at any time as and when required, as per the norm of law. The autonomy is, therefore, not absolute but reasonably restricted, for the organic health, the good of the universal Church. Thus the common law, while protecting the autonomy of the individual oriental Churches, safeguards at the same time their communion with the Universal Catholic Church recognizing the supremacy of the Roman Pontiff.

The code, having established the exclusive competence of the Synod to make law for the entire Church in c. 110 §1 as we mentioned above, rules that "Laws enacted by the synod of bishops of the patriarchal

church and promulgated by the patriarch, have the force of law everywhere in the world if they are liturgical laws. However, if they are disciplinary laws or in the case of other decisions of the synod, they have the force of law within the territorial boundaries of the patriarchal church" (CCEO c. 150 §2). It does not mean that disciplinary laws enacted by the synod of bishops have nothing to do with the faithful outside the proper territory. CCEO c. 110 §3 further specifies, "bishops outside the territory also can implement them if they do not exceed their competence. And if they have been approved by the Apostolic See, they will have force of law everywhere in the world." The patriarch and major archbishop in the patriarchal and major archiepiscopal Churches can in addition, propose methods and means for the better application of these laws in the particular Church.

On 16 December 1992 the Syro-Malabar Church was constituted a Major Archiepiscopal Church naming it as Ernakulam Angamaly Major Archiepiscopal Church and appointed Mar Antony Cardinal Padiyara as the Major Archbishop (see, apostolic constitutions, *Quae Maiori & Venerabili fratri*).

Therefore, at this occasion of commemorating the 25th year of its upgrading (1992-2017), it is opportune to deliberate with gratitude and to critically evaluate the application of the above-mentioned two legal provisions of CCEO in this Church.

Indeed, the solution to the irregular situation of being 'no where among the four types' of Churches *sui iuris* as per CCEO c. 27 effected by the elevation to Major Archiepiscopal status with autonomy has helped the Church to accomplish much spiritual as well as geographical progression.

However, it is no more a secret that there is division in the Syro-Malabar Church, mainly regarding liturgy. The disunity that prevails at various levels and in diverse aspects of the Church continues to afflict her under stress, shame and disgrace.

As seen above the Patriarch with the synod of bishops as the supreme authority of the Church has exclusive competence to enact liturgical laws that have force of law everywhere in the world. Therefore the supreme authority of the Church *sui iuris* has the right and obligation to arrive at a synodal decision regarding liturgical norms based on the tradition but without neglecting the signs of the times and to see to it that these norms are observed in all eparchies by all clerics and the faithful everywhere. The local hierarchs are having the binding responsibility to see to it that the liturgical life in the respective eparchies are in accordance with the norms established by the Synod

of bishops. The observation of one's own church's liturgical rite, use of prescribed liturgical texts and vestments, commemoration of the Patriarch after the Roman Pontiff, to name a few, are binding on all. Nobody other than the supreme authority that has established it has the competence to introduce changes neither in theory nor in practice. Violation of these norms and the division in this regard, in addition to creating confusions and scandal for the clerics as well as faithful, trigger various disciplinary issues as well.

It is natural that ideological differences or problems occur in organizations, societies and communities but it is important that through proper forums solutions are found. The conflict existing in the Church regarding liturgy creates a lot of difficulties and hence the Synod of Bishops has the grave obligation to find ways and means to settle the issue by even convening an extraordinary synod, if required. CCEO provides that the patriarch can, besides other times according to the norms, convene the synod of bishops whenever he "with the consent of the permanent synod, considers it necessary" (c. 106 §1, n. 2).

In the Jerusalem council described in the Acts of the Apostles (chapter 8) we see that when there arose a problem in the Church it was brought to the attention of the apostles and elders who with much deliberation and debate unanimously ("then it seemed good to the apostles and the elders, with the whole church" - v. 22) arrived at a solution. Three things we notice there: i) The apostles and elders together discuss the matter and find a solution; ii) It was with the help of the Holy Spirit that they took the decision ("For it has seemed good to the Holy Spirit and to us..." - v. 28); and finally iii) the congregation of the gentile believers accepted the decision of the apostles with joy ("they rejoiced at the exhortation" - v. 31).

The Synod of bishops of the Churches *sui iuris* has the grave duty to discuss, debate, and deliberate under the guidance of the Holy Spirit and to reach at a unanimous decision in view of resolving issues that destroy the unity of the Church. The unity of the bishops in the synod is a major factor in bringing about uniformity in liturgical matters and implementing them preserving ecclesiastical discipline in all the eparchies because the bishop is the moderator, promoter and guardian of liturgical matters in his diocese: "As the moderator, promoter and guardian of the entire liturgical life in the eparchy entrusted to him, the eparchial bishop must be vigilant that it be fostered to the greatest extent possible and be ordered according to the prescriptions and legitimate customs of his own Church *sui iuris*" (CCEO c. 1999 §1). If anybody or any group of persons abuse and misuse the liturgy it is up

to the eparchial bishop first and then to the supreme authority to be vigilant. Therefore the Jubilee year of the Syro-Malabar Church poses a great challenge before its supreme authority to effect lasting solution to the differing views and practices regarding the liturgy which directly or indirectly turn out to be the fundamental reason for several problems within the Church.

Another defect that harms any organization or institution is the disregard towards the laws and regulations of it and indiscipline that creeps in. Church is no exception to this, be it the universal Catholic Church or any individual Church *sui iuris* for that matter. CCEO c. 84 §1 expresses the responsibility of the patriarch and the bishop together to foster unity of all Christians and to protect more effectively "ecclesiastical discipline, and also to foster more harmoniously the unity of all Christians."

CCEO c. 150 §2 stipulates that while liturgical laws are having force of law everywhere in the world other laws, "... if they are disciplinary laws or in the case of other decisions of the synod, they have the force of law within the territorial boundaries of the patriarchal Church." Besides the common law the particular law of the Churches *sui iuris* also can establish norms to foster discipline. Once indiscipline creeps in, the competent authority of any institute and organization has the right and grave obligation to resort to legitimate corrective measures to restore discipline and to guide it in the right path.

In the Catholic Church in general and in every individual Church *sui iuris* there are several disciplinary norms, sufficient systems and provisions to ensure the observance of those norms lest Church suffers no harm. In case there arise persons or groups of persons showing not only disrespect for such norms but also challenging and protesting against them openly and publicly causing damage to the Church, then the respective competent authorities directly responsible and if it does not work finally the supreme authority of the Church *sui iuris* need to intervene in order to safeguard the Church's values in accordance with the teachings of the Church based on the Holy Scriptures.

Let me make mention, for example, of some of the norms in the common law. CCEO c. 91 speaks of the obligation of the clerics to commemorate the Roman Pontiff and the patriarch/major archbishop and local hierarch in the divine liturgy and divine praises: "The patriarch must be commemorated in the divine liturgy and in the divine praises after the Roman Pontiff by all bishops and other clerics according to the prescriptions of the liturgical books." According to CCEO c. 370 "Clerics are bound by a special obligation to show

reverence and obedience to the Roman Pontiff, the patriarch and the eparchial bishop." CCEO c. 384 §2 orders that "clerics are not to have an active role in political parties nor in the direction of labour unions unless, in the judgment of the eparchial bishop or, if particular law so states, of the patriarch or of another authority, the need to protect the rights of the Church or to promote the common good requires it."

CCEO c. 82 §1 states that the Patriarch can issue decrees determining more precise methods to apply laws or urging the faithful to observe them (n.1); direct instructions to the faithful "in order to explain sound doctrine, foster piety, correct abuses and approve and recommend practices that foster the spiritual welfare of the Christian faithful" (n.2); "issue encyclical letters to the entire Church over which he presides ..." (n 3); and "issue orders to bishops and other clerics as well as members of institutes of consecrated life of the entire Church... to have his decrees, instructions and encyclical letters read and displayed publicly in their churches or houses" (§2). The non-observance of these norms weakens the Church.

CCEO c. 202 urges the eparchial bishops of several Churches *sui iuris* to "foster unity of action" and to "more effectively safeguard ecclesiastical discipline," and dealing with the assemblies of hierarchs of several Churches *sui iuris* c. 322 §1 stipulates that through such opportune meetings "unity of action is fostered" for the common good and "ecclesiastical discipline is preserved more effectively."

The CCEO c. 89 stipulates that it is the "right and obligation of the patriarch to exercise vigilance according to the norm of law over all clerics; if it appears that one of them merits punishment, he is to warn the hierarch to whom the cleric is immediately subject and, if the warning is in vain, he himself is to take action against the cleric according to the norm of law." Patriarchal and Major Archiepiscopal Churches have the judicial systems and structures to help it live its patrimony in accordance with the norms. Synod of bishops is "a tribunal according to the norm of can. 1062" which stipulates that "The Synod of bishops of the patriarchal Church, without prejudice to the competence of the Apostolic See, is the superior tribunal within the territorial boundaries of the patriarchal Church" (§1) which also functions as an appeal tribunal (c. 110 §4) "with any further appeal excluded, without prejudice to can. 1059," according to which every faithful can make recourse to the Roman Pontiff, any time. CCEO c. 1063 provides for an ordinary tribunal (cf. c. 110 §2) which the patriarch should constitute.

In the modern world there seems to be increase in the conflict between the state and the Church in many parts of the world, tension between the civil law and Church laws. Paul Pallath in his article "Relationship between Church and State, Canon Law and Civil Law: Problems and Prospects" examines the Lateran Pacts between the Holy See and the Italian State which constitutes the foundation for the relationship between the Catholic Church and the State even in modern times and exposes Vatican II's teaching on the autonomy and independence of the Church and civil society in their respective fields, indicating the possibility and manner of observing canon law in democratic, theocratic, confessional, secular, atheistic or totalitarian states. He also provides a compendium of the canons on the theme, and indicate the provisions in the Codes of canon law regarding the relationship between canon law and civil law. The article ends with a treatment on marriage, temporal goods of the Church and penal law.

The present world witnesses many so-called broken marriages, separated or divorced spouses, and consequently families who find themselves in 'irregular' situation. Sijeesh Pullankunnel's article "The Use of Different Means of Proofs in Marriage Nullity Cases on the Ground of *dolus* (CCEO c. 821 and CIC c. 1098)" explains that Marriage nullity trials confirm a juridic act which must have both substantial and formal elements for them to be valid and they serve to ascertain whether factors invalidated a marriage according to natural, divine or ecclesiastical law. The author analyses various means of proofs and the constitutive elements of *dolus* as a ground of marriage nullity.

Every physical or juridical person does need money or temporal goods for his or her/its sustenance and mission. Religious institutes are not exception to this. Koluthara in his article "Religious and the Administration of Temporal Goods" articulates how the Codes of Canon Law require religious institutes to draft norms (*typikons*, constitutions or statutes) on administering temporal goods consistent with the vow of poverty appropriate to the institute integrating the universal norms on temporal goods and harmonizing them with the institute's particular charism and spirit. Church obliges all religious institutes to a corporate witness of poverty. The author after giving brief overview of the vow of poverty, explains that before the first profession a candidate should cede the administration of his possession to another person, dispose the use of and revenue from such possession and make a final will. Having dealt with the norms requiring the renunciation of ownership and its legal consequences the article treats in detail the administration of temporal goods by the religious institutes.

Having dealt with *The Roman Pontiff and the Religious Institutes* in the first part (see, *Iustitia*, Vol. 8/2 [2017] pp. 193-216) of her article “The Hierarchical Authorities of the Church and the Religious Institutes” in this second part Rosmin discusses *Patriarch as the Hierarchical Authority of the Institutes of Consecrated Life*. This article presents in a systematic order the various aspects of the relationship of religious institutes and their members to the patriarch/major archbishop, to the eparchial bishop and to other local hierarchs, as envisaged in the canons of CCEO comparing it with the norms of CIC. She concludes by stating, “while these canons affirm the rightful autonomy of every religious institute, they also clearly articulate the areas in which hierarchical authorities can rightfully intervene in the life and mission of these institutes. Consequently, by properly understanding and applying these canons, religious institutes and hierarchical authorities can build strong, effective relationships between themselves.”

Thomas Kulandaisamy’s article “Religious Poverty of Persons in Religious Institutes according to *CIC* and *CCEO*: A Comparative Approach,” after giving a general view of religious life provided in the Codes of Canon Law, treats also the practice of religious poverty by the individual religious in *CIC* and *CCEO*. As normally religious life begins in most of the institutes with a temporary profession, the author discusses the theoretical and practical aspects of poverty among the temporarily professed and then that among the perpetually professed. It is done with a comparative approach evaluating the provisions in both *CIC* and *CCEO*. As a result of his comparative study of life of poverty in religious institutes and their members the author affirms, “most *CIC* and *CCEO* norms regulating the vow of poverty are similar. Laws governing the ceding, administration, change in the disposition and renunciation are the same, albeit with appropriate modifications in their respective institutes depending on its nature. However, the codes differ in minor ways that help to preserve identity and tradition.”