

## **PARTICULAR LAWS OF THE SYRO-MALABAR CHURCH**

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### **Varghese Koluthara CMI\***

The author presents a picture of the newly promulgated Code of Particular Law of the Syro- Malabar Church in a single volume on 3 December 2013. He indicates the provisions for particular law in CCEO tracing back to the genesis of particular laws. He sketches the structure of the Code of Particular Law of the Syro-Malabar Church, highlighting codification process, explaining its preamble sketching on the chequered history of the Church, its juridical sources. Finally he reviews the promulgated particular laws, statutes of various organs of administration and guidelines for the diverse institutes of the Syro-Malabar Church. Each section is concluded with the author's observations indicating the room for further improvement.

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\*Varghese Koluthara CMI, a member of the Syro-Malabar Church, born in 1953 in Kerala, India, was ordained priest in the Congregation of the Carmelites of Mary Immaculate (CMI) in 1983. He holds Master's Degree in Theology (MTh.) from Dharmaram Vidya Kshetram (DVK), Bangalore and LLB and BA from Bangalore University. He did Licentiate in Lateran University and Doctorate in Canon Law from the Pontifical Oriental Institute, Rome. At present he serves as Ordinary Professor at DVK. He is an executive member of the International Society for the Law of the Eastern Churches (Vienna) since 1999 and of the Canon Law Society of India since 2008. He is a consultant of the Pontifical Council for the Interpretation of Legislative Texts (Vatican) since 2008. He serves in the Bangalore Archdiocese as a collegiate Judge of its Marriage Tribunal and as the Chairman of the Conciliation Committee. He has published a book titled *Rightful Autonomy of Religious Institutes* and published many articles in national and international journals.

This article was originally presented at the Conference of the International Society for the Law of the Eastern Churches held in Bari, Italy in September 2013 and the text will appear in the forthcoming issue of *Kanon*.

The work of the codification of the Particular Law<sup>1</sup> (PL)<sup>2</sup> of the Syro-Malabar Church (SMC) started soon after the promulgation of the *Code of Canons of the Eastern Churches*<sup>3</sup> (CCEO). The Code of Canons of the Eastern Churches limits itself to the codification of the discipline common to all Eastern Churches, leaving to the competent authorities of these Churches the power to regulate by Particular Law all other matters not reserved to the Holy See.<sup>4</sup> CCEO defines the term Particular Law in canon 1493 §2. When CCEO was

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<sup>1</sup>Originally, this study was made on particular laws which were promulgated and published part by part and they have been in force in the Syro-Malabar Church. Major Archbishop George Cardinal Alencherry on 3 December 2013 decreed “the publication of the particular laws, statutes of the important organs and guidelines for various commissions” in a **single volume** entitled *Code of Particular Law of the Syro-Malabar Church*. Thus, the study is updated. SMMAC, *Code of Particular Law of the Syro-Malabar Church*, Mount St. Thomas, Kochi: Syro-Malabar Major Archiepiscopal Curia, 2013, vii (address: Syro-Malabar Major Archiepiscopal Curia, Mount St. Thomas, P.B. No. 3110, Kochi-682 030, India).

<sup>2</sup>The following abbreviations are used in this study: art./artt. = article/articles; c./cc. = canon / canons; CCEO = Code of Canons of the Eastern Churches; CPL= Code of Particular Law; CPLSMC= Code of Particular Law of the Syro-Malabar Church; MAC = Major Archiepiscopal Church; PL = Particular Laws; PLSMC = Particular Law of the Syro-Malabar Church; SMC = Syro-Malabar Church; SMMAC = Syro Malabar Major Archiepiscopal Church; SMMAc = Syro Malabar Major Archiepiscopal curia; SMPL = Syro-Malabar Particular Law

<sup>3</sup>For a short study on the topic, Andrews Thazhath, “Prathyekaniyamangal Syro-Malabar Sabhayil,” S.Vadakkal, G. Madathikkandathil (eds.), *Paurastyasabagalude Kanonakal Sabhajivithathil* (Kottayam 1998), 970-80. George Nedungatt, S.J. has made a historico-juridical study: George Nedungatt, *Laity and Church Temporalities, Appraisal of a Tradition* (Bangalore 2000) 334-378.

<sup>4</sup>This is explicitly stated in the guidelines for the revision of the Code of Oriental Canon Law. cf., Pontificia Commissione Codici Iuris Canonici Orientalis Recognoscendo, *Nuntia*, no. 3 (Roma 1976), 21-23. Particular Law in the Code of Canons of the Eastern Churches by Ivan Žužek is a good study on this topic: Ivan Žužek, “Particular Law in the Code of Canons of the Eastern Churches,” Jose Chiramel, & Kuriakose Bharanikulangara (eds.), *The Code of Canons of the Eastern Churches, A Study and Interpretation* (Rome 1993), 39-55.

promulgated in 1990, the Roman Pontiff expressed his mind regarding all that the Code entrusts to Particular Law thus:

Besides, in this matter, let it be noted well that this Code leaves to the Particular Laws of each *sui iuris* Church, those things which are considered not necessary for the common good of all Oriental Churches. On this matter our mind is that those who are endowed with legislative power in each *sui iuris* Church take steps to formulate their Particular Laws as quickly as possible, keeping in mind the traditions of their own rite as well as the teaching of the Second Vatican Council.<sup>5</sup>

The Syro-Malabar Church which is the second largest Churches *sui iuris* after Ukrainian Church in the Oriental Catholic communion of the 22 Churches *sui iuris*, has the distinction of being the first of all the Eastern Catholic Churches to start and finish the codification of its Particular Laws. I shall sketch briefly the *iter* of this codification, the main provisions and the *lacunae*. I conclude the study pointing out the challenges of this Church *sui iuris* in the realm of its Particular Laws.

### 1. Particular Laws in CCEO

CCEO c. 1493 reads as follows:

§1. Under the name "common law" in this Code come, besides the laws and legitimate customs of the entire Church, also the laws and legitimate customs common to all the Eastern Churches.

§2. Under the name "Particular Law" come all laws, legitimate customs, statutes and other norms of law, which are neither common to the entire Church nor to all the Eastern Churches.<sup>6</sup>

From this canon, it is evident that the term *ius particulare* applies to all those laws that are not applicable to all Oriental Churches, much less to the entire Catholic Church, but to a "part" of it – to one *sui*

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<sup>5</sup>Quibus de rebus mens Nostra est, ut qui legislativa potestate in singulis Ecclesiis sui iuris gaudent, peculiaribus normis, proprii ritus traditionibus praeoculis habitis necnon Concilii Vaticani II praeceptis, qua, celerrime consulant, AAS 83(1990), 1038.

<sup>6</sup>Pope John Paul II, *Codex Canonum Ecclesiarum Orientalium*, AAS Vol., LXXXII (18 Octobris 1990 n. 11) 1344.

*iuris* Church, whether patriarchal Church or a Metropolitan Church or Rmainder Church.<sup>7</sup> The ter mis used as correlative of *ius commune*. The expression *ius particulare (propriae) Ecclesiae sui iuris* excludes eparchial laws and every other inferior PL. Prof. Ivan Žužek in 1991 at Bari in the International Congress on the Meeting of the Eastern and Western Canons, explained about this canon in his paper “Particular Law in the Code of Canons of the Eastern Churches.” He explains: “This canon contains the conciliar text (LG no 27) relative to the ‘proper, ordinary and immediate’ power of the eparchial bishops, who govern their eparchy *ut vicarii et legati Christi*, the exercise of which can be circumscribed only by the supreme authority of the Church.”<sup>8</sup> However, the history of canon law shows that local synods have made canons circumscribing the exercise of the power of eparchial provisions, which require the making of Particular Law.

## 2. The Genesis of Particular Laws

The Code of Canons of the Eastern Churches (CCEO) contains those canons that are common to all the Oriental Catholic Churches, which however, may differ as regards liturgy, theology, spirituality, discipline, custom, traditions etc. To safeguard and promote them the CCEO has more tan 200 provisions, which require the making of Particular Law by the legislative authority of each Church *sui iuris*.<sup>9</sup>

## 3. History of the Codification of Particular Laws

### 3.1. Bishops’ Committee

Giving heed to the words of the Supreme Pontiff the Syro-Malabar Bishops’ Conference held on 30 November 1990 agreed on the need for formulating Particular Laws including the Synodal Statutes for the SMC and consequently elected a Bishops’ Committee to facilitate

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<sup>7</sup> Kuriakose Bharanaikulangara, “Particular Law of the Oriental Catholic Churches,” in *Journal of St. Thomas Christians*, vol. 23, nos. 2-4, (April- December 2012) 87.

<sup>8</sup> Ivan Žužek, “Particular Law in the Code of Canons of the Eastern Churches,” in *Papers of the International Congress: the Meeting of the Eastern and Western Canons* (Bari 1991) 45.

<sup>9</sup> Particular Laws of Patriarchal and Major Archiepiscopal Churches need no approval of the Roman Pontiff wherever the provisions are given in CCEO.

the process of codifying the Particular Laws.<sup>10</sup> The bishops' committee was assisted by an Expert's committee.<sup>11</sup>

### 3.2. The Synodal Commission

After the elevation of the SMC to the dignity of Major Archiepiscopal Church, both the Bishops' committee as well as the expert committee was re-constituted by Archbishop Abraham Kattumana, the Pontifical Delegate to the Syro-Malabar Church,<sup>12</sup> and he officially opened the first SM synod of bishops (from 20-25 May 1993) at Ernakulam.<sup>13</sup> Mar Antony Cardinal Padiyara, the then Metropolitan Archbishop of Ernakulam was elevated to the dignity of the Major Archbishop and he was installed as the first Major Archbishop on 20 May 1993.<sup>14</sup>

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<sup>10</sup>James Thalachallor, "Particular Law of the Syro-Malabar Church," in Francis Eluvathingal (ed.), *Syro-Malabar Church since the Eastern Code* (Festschrift in honour of Prof. George Nedungatt S.J), (Trichur: Marymatha Publications, 2003),104; SMMAC, *Code of Particular Law of the SMC*, SMMAC: Mount St. Thomas, Kochi, viii. The Committee consisted of Mar Matthew Vattackuzhy (convener) Mar Kuriakos Kunnassery and Mar Jacob Thoomkuzhy. The Bishops' committee Chairman collected the names of Canon Law experts from all the Syro-Malabar dioceses. From a list thus prepared, the Bishops' committee selected 37 experts with the provision to include any additional member, whose name was not in the list proposed by the hierarchs. However this inclusion needed previous clearance from the hierarch concerned. The first meeting of the committee of experts was held at Renewal Centre, Ernakulam on 4-5 March 1991. Three more members were co-opted to the committee after the first meeting and the total members of the expert committee became 43 including the Bishops.

<sup>11</sup>SMMAC, *Code of Particular Law of the SMC*, viii.

<sup>12</sup>The Congregation for the Eastern Churches through its decree dated Dec. 16, 1992 made it public the appointment of Archbishop Abraham Kattumana by the Roman Pontiff as his special delegate to the newly erected Major Archiepiscopal Church. Ref., *Synodal News*, vol. 1, no. 1 (1993), 8.

<sup>13</sup>*Synodal News*, vol. 1, no. 1 (1993), 4-7.

<sup>14</sup>SMMAC, *Code of Particular Law of the SMC*, ix; *Synodal News*, vol. no.1 (1993)10-11.

### 3.3. The Pontifical Delegate and the Codification

Fr. George Nedungatt had formulated certain model guidelines.<sup>15</sup> They were taken over by the Particular Law Committee. The Bishops' committee, with its consulters as well as the expert committee under the direction of the Pontifical Delegate Archbishop Abraham Kattumana worked assiduously in preparing drafts of Particular Laws<sup>16</sup> on the various activities of the Church. The expert committee was divided into seven different subcommittees. These committees worked according to the procedural guidelines given to them.<sup>17</sup> The drafts prepared by the subcommittees were brought to

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<sup>15</sup>George Nedungatt S J presents "Guidelines for the Particular Code of the Syro-Malabar Church" under the following headings: (1) Preamble, (2) Title, (3) A Code true to the Church Identity, (4) Oriental Character of the PCSMC, (5) Indian Character of PCSMC, (6) Principle of Subsidiary, (7) A Code for today and Tomorrow and not for Yesterday, (8) Ecumenical Character of PCSMC, (9) Pastoral Nature of PCSMC, (10) The Laity, the Clergy and the Religious, (11) The Missionary Thrust of PCSMC, (12) Mindful of the Diaspora, (13) Participation of all, (14) The Structure of PCSMC, (15) Other Directives, (16) Bishops' Commission and (17) Approval, in *The Spirit of the Eastern Code* (Rome and Bangalore: Centre for Indian and Inter-Religious Studies; Dharmaram Publications, 1993), 218-221.

<sup>16</sup>The pontifical delegate invited Fr. George Nedungatt to the major archiepiscopal curia to draft the statutes of the permanent synod, the superior tribunal, the major archiepiscopal tribunal and the major archiepiscopal assembly. Though the pontifical delegate had already got someone to draft them, he was not satisfied with the drafts provided by them. Therefore, he requested the help of Fr. Nedungatt. He came to the curia and stayed there for almost two weeks during summer vacation in 1994 and completed the drafting of the statutes. The synod approved all the four for promulgation without many modifications. See, Jose Porunnedom, "Memoirs: Rev. Dr. George Nedungatt SJ: Canonist and Teacher," in Francis Eluvathingal (ed.), *Syro-Malabar Church since the Eastern Code* (Festschrift in honour of Prof. George Nedungatt S.J)16; also in *Journal of St. Thomas Christians* 23(2011) 2, 3, 4 (Festschrift) p. 14.

<sup>17</sup>Procedural Guidelines for The Drafting of The Particular Laws of The Syro-Malabar Church: (1) The Particular Laws should be based on the *Codex Canonum Ecclesiarum Orientalium* (2) Each Sub-Committee is expected to point out to the General Committee those canons which give provision for particular law (3) In drafting the canons of the particular laws special attention should be given to the following points (3.1) The Sources (3.1.1)

the general meetings of the members of the subcommittees. These drafts were simultaneously published in the *Synodal News* with the request to the readers to send their observations to the Curia. The observations and suggestions received in the Major Archiepiscopal Curia were given to the Synodal Commission. In the light of the observations and suggestions, the Commission had to submit the revised drafts to the Synod for final discussion and approval.<sup>18</sup> On 1 January 1995 the Pontifical delegate promulgated *ad experimentum* for a period of three years the Statutes of the Permanent Synod, the Statutes of the Superior Tribunal the statutes of the Major Archiepiscopal Ordinary Tribunal and the Revised Statutes of the of the St. Thomas Apostolic Seminary Vadavathoor.<sup>19</sup>

The sudden and unexpected demise of the Pontifical Delegate on April 4, 1995 slowed down considerably the pace of the activities of the commission for PL. Following the death of Mar Abraham Kattumana, Mar Antony Cardinal Padiyara, the Major Archbishop, continued to lead the Church.

### **3.4. Completion of Codification Process and the Code of PLSMC**

Subsequent to the resignation of Mar Antony Padiyara from the office of the Major Archbishop, Mar Varkey Vithayathil C.Ss.R. was appointed the Apostolic Administrator in 1997 and as Major Archbishop in 1999. It was he as Apostolic Administrator and later as Major Archbishop who promulgated the rest of the Particular Laws.<sup>20</sup>

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Pre-Portuguese (until the 16<sup>th</sup> century), (3.1.2.) From 1599-1887, (3.1.3) From 1887-1990, (3.1.4) Present constitutions and statutes of Juridical Institutes, (3.2.) The existing particular customs, traditions and laws (Their variants in dioceses and regions are to be noted), (4) Specify the laws and structures to be supplemented, (5) Find the lacunae in the present code and in the present juridical structures in the Syro-Malabar Church, (6) Make a study of the particular laws of other Churches and Christian denominations and (7) Each sub-committee has to prepare a schema of the particular laws in the sections assigned to it, indicating their sources. Ref. James Thalachallor, "Particular Law of the Syro-Malabar Church," 105; SMMAC, *Code of Particular Law of the SMC*, ix-x.

<sup>18</sup>*Synodal News*, no. 4, February 1995, 20.

<sup>19</sup>SMMAC, *Code of Particular Law of the SMC*, x-xi.

<sup>20</sup>SMMAC, *Code of Particular Law of the SMC*, xi.

All the Particular Laws promulgated up to 2003 and the Particular Laws on the Permanent Diaconate were published as a single volume of the *Synodal News*.<sup>21</sup> The codified version of the Particular Laws of the SMC was published in 2003 in *Synodal News*.<sup>22</sup> Since then a few studies have been published on the Particular Law of the SMC.<sup>23</sup> It constituted the

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<sup>21</sup>*Synodal News*, vol. 11, no. 1 (2003), Mar Paul Chittilapilly, the chairman of the Commission for Particular Law had informed the Synod held during 5-16 November 2001 that the particular laws promulgated in different periods would be edited into one code. See *Synodal News*, vol. 9, nos. 1&2 (2001), 21; Mar Paul Chittilapilly had been appointed the chairman of the Commission during the synod held from 12 to 21 June 1997, following the resignation of Mar Mathew Vattackuzhy from the chairmanship due to his ill health. See *Synodal News*, vol. 5, no. 2 (1997), 19.

<sup>22</sup>*Synodal News* vol.11, No. 1 (May 2003) "Preamble," 3-11. *Synodal News* is the official organ of the Syro-Malabar Major Archiepiscopal Church. It started publication in August 1993. In its first issue the origin of the *Synodal News* could be traced. "It was the wish of the Fathers who assembled together for the First Syro-Malabar Bishop's Synod from 20 to 25 May 1993 at Earnakulam that a bulletin be published at least after each synod to keep the Church informed of the work of the Synod and of the Major Archiepiscopal Curia and to communicate all important news in our Church. They themselves proposed a provisional title '*Synodal News*.'" It continues to be published after every Synodal session.

<sup>23</sup>James Thalachallor, "Particular Law of the Syro-Malabar Church," in Francis Eluvathingal (ed.), *Syro-Malabar Church since the Eastern Code* (Festschrift in honour of Prof. George Nedungatt S.J), (Trichur: Marymatha Publications, 2003), 100-116; Sunny Kokkaravalayil, "The Particular Law of the Syro-Malabar Church: an Appraisal" *Ephrem's Theological Journal* 11 (2007): 178-197; Michael Vattappalam, Jose Porunnedom and Mathew Kochupurackal (eds.) *A Study on the Particular Laws of The Syro-Malabar Major Archiepiscopal Church*, Bharananganam 2007; Sunny Kokkaravalayil, "Syro-Malabar Particular Law: an Adequate Response to CCEO's Call?," *Pontificio Consiglio per i Testi Legislativi, Il Codice delle Chiese orientali: la storia, le legislazioni particolari, le prospettive ecumeniche*, Vatican City, Libreria Editrice Vaticana, 2011, 225-242; M. Kochupurackal, "Particular Law of the Syro-Malabar Church: An Evaluation of the Present Stage," *Eastern Legal Thought*, vol. 9 & 10 (2010-2011): 177-191. These are the studies published so far on Syro-Malabar Particular Law. The present study has been facilitated by these studies. Gratefully I acknowledge it.



Text of the PL of the Syro-Malabar Church till the promulgation of the Code of Particular Law of the Syro-Malabar Church.<sup>24</sup>

The newly published (3rd December 2013) *Code of Particular Law of the Syro-Malabar Church* text has the following structure: 1. Decree of Promulgation (v-vii) 2. Preface (viii-xiv) 3. Preamble with Sections one and two (xv-xix) 4. Part I deals with Particular Laws (1-48) 5. Part II deals with Statutes (49-108) and Part III deals with Guidelines (135-176). In promulgating it Mar George Alencherry wrote: "The laws contained in this Code have already been promulgated and published part by part and they have been in force since they were promulgated". The Preface of the *Code of Particular Law of the Syro-Malabar Church* gives a brief general account of the codification history of the Code of Particular Law SMC. It follows Preamble of the Particular Code of SMC. In it Section One first sketches a brief history of SMC and Section Two deals with the sources of its PC.

#### **4.0. Preamble of the Code of PLSMC**

The Preamble of the Code of PLSMC has got two sections. Section one deals with the history of the Syro-Malabar Church and Section two deals with the sources of PLSMC. We make a brief study on it.

#### **4.1. Section one: A Note on the chequered History of the Syro-Malabar Church**

The Church of St. Thomas Christians is an apostolic Church founded in India by the apostle Thomas. This Church later came into life-relation with the Persian Church (East Syrian Church). This relationship made the St. Thomas Christians share the liturgical, spiritual and other ecclesial traditions with the East Syrian Church. At the same time the Christians of St. Thomas kept their distinctive character especially in Church administration and socio-cultural and

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<sup>24</sup>Fulfilling the long desired dream of the Syro-Malabar Church, the Major Archbishop George Cardinal Alencherry promulgated *Code of Particular Law of the Syro- Malabar Church* in a single volume on 3<sup>rd</sup> December 2013. In promulgating it Mar George Alencherry wrote: "The laws contained in this Code have already been promulgated and published part by part and they have been in force since they were promulgated." Cf. Major Archbishop George Cardinal Alencherry, *Code of Particular Law of the Syro- Malabar Church*, Mount St. Thomas, Kochi: Syro-Malabar Major Archiepiscopal Curia, 2013, vii

ascetic-spiritual life.<sup>25</sup> The effective administration of the community was in the hands of the archdeacon a native priest. The archdeacon carried out the administration through general and local assemblies (*Palliyogam*). The sum total of this life was called the Law of Thomas (*Mar Thoma Margam*).<sup>26</sup>

The chequered history of the SMC can be classified under four periods: (i) the Indian Christian Period<sup>27</sup> (1<sup>st</sup> century to 4<sup>th</sup> century), (ii) the Chaldean Period<sup>28</sup> (4<sup>th</sup> century to 16<sup>th</sup> century), (iii) the Latin Period<sup>29</sup>-under *Padroado* and *Propaganda Fide* (16<sup>th</sup> century to 19<sup>th</sup> century) and (iv) the Syro-Malabar Period<sup>30</sup> (from 19<sup>th</sup>-). Accordingly we also trace the juridical sources successively of each period to understand better the present Code of Particular Law.<sup>31</sup>

With the promulgation of the *Code of Canons of the Oriental Churches* (CCEO) in 1990, the Syro-Malabar Church entered into a juridical crisis, as it did not fit into any of the four categories of Churches *sui iuris* envisaged by this Code.<sup>32</sup> It was a Church with two independent metropolitans and without a common head. The code had not provided for such a Church. Therefore, with the promulgation of the Code the status of SMC became canonically anomalous. Pope John Paul II appointed a three member Pontifical Commission. On 16<sup>th</sup> December 1992, following the recommendation

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<sup>25</sup>Chief Editor, "Preamble," *Synodal News* vol. 11, no. 1 (May 2003), 5.

<sup>26</sup>Chief Editor, "Preamble," 5.

<sup>27</sup>A. M. Mundadan, *History of Christianity in India*, vol.I (Bangalore: Church History Association of India, 1989), 9-77

<sup>28</sup>A. M. Mundadan, *History of Christianity in India*, vol.I, 78-115.

<sup>29</sup>A. M. Mundadan, *History of Christianity in India*, vol.I, 242- 347.

<sup>30</sup>A. M. Mundadan, *Indian Christians Search for Identity & Struggle for Autonomy* (Bangalore: Dharmaram Publications, 1984), 50-108.

<sup>31</sup>Chief Editor, "Preamble," 6-7; The name Syro-Malabar was in use locally: When Rome took it over, it became official.

<sup>32</sup>It was Fr. George Nedungatt, SJ. who articulated the canonical anomaly and alerted the SMC hierarchy against accepting any compromise offered by a Pontifical commission in Sept. 1992. See, Jose Porunnedom, "Memoirs: Rev. Dr. George Nedungatt SJ Canonist and Teacher," *Journal of St. Thomas Christians*, vol. 23, nos. 2, 3, 4 (April-Dec. 2012), 14-16.

of the Pontifical Commission (1992) headed by Archbishop Thomas White, raised the SMC to the status of a Major Archiepiscopal Church with the title of Ernakulam-Angamaly.<sup>33</sup> Mar Antony Padiyara, the then Metropolitan of Ernakulam was appointed its Major Archbishop. The *territorium proprium* of the SMC was determined to be the then existing two metropolitan provinces of Ernakulam and Changanacherry.<sup>34</sup>

## 4.2. Section two: The Sources of the Code of Particular Law

The Second part of the Preamble deals with the juridical sources.<sup>35</sup> The sources are many and varied. They have become complex owing to the different jurisdictions over the St. Thomas Christians during their Indian, Chaldean, Latin and Syro-Malabar periods.<sup>36</sup>

### 4.2.1. Ancient Laws and Customs of the Indian Christian Period

The sources of the first Indian Christian community, which responded to the call of the Apostle in its particular socio-cultural environment, received the identity of an Apostolic and Indian Church. Here we find the first stage. Its PL, which originated in

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<sup>33</sup>Through the Apostolic Constitution *ad perpetuam in memoriam*, the Syro-Malabar Church was elevated to the dignity of Major Archiepiscopal Church on the 16<sup>th</sup> of December 1992, *Synodal News* no. 1 (August 1993), 10.

<sup>34</sup>Chief Editor, "Preamble," 7.

<sup>35</sup>In the programme of the Publication of the sources of Oriental Canon Law through auspices of the Roman Pontifical Commission for the Oriental Code, a study of the sources of the canon law of Syro-Malabar Church had been included and assigned to Msgr. Joseph Panjikanan. A similar project assigned to Placid Podipara CMI was an analogous study of the sources of the Canon law of the Syro-Malankara Church. Whereas the work of Placid Podipara CMI was published in two volumes in 1937 and 1940 among the *Fonti*. The former never saw the light of day. It is said that the task was completed and submitted by Msgr. Joseph Panjikanan. The text he submitted was in English and he was paid for his work in dollars by Vatican. Then, we don't know what happened to the text in the transit for translation of it into Latin or Italian. Andrews Thazhath through his work titled *The Juridical Sources of the Syro-Malabar Church: A Historico-Juridical Study* seeks to fill that long felt lacuna. Andrews Thazhath, *The Juridical Sources of the Syro-Malabar Church: A Historico-Juridical Study* (Kottayam: Paurastya Vidyapitham, 1987).

<sup>36</sup>Chief Editor, "Preamble," 8.

response of the first Christians to the teaching of the Blessed Apostle, came to be known as the “Law of Thomas,”<sup>37</sup>

#### **4.2.2. The Sources of the Chaldean Period**

During the Chaldean period, the St. Thomas Christians shared some of the East Syrian rules and regulations, as the East Syrian prelates brought with them some of the East Syrian Law Codes.<sup>38</sup>

#### **4.2.3. The Sources of the Latin Period**

During the Latin period, after the 16<sup>th</sup> century, many Western Church laws were introduced in the Syro-Malabar Church.<sup>39</sup> The synod of Diamper (1599), the statutes of Bp Ros (1606) and the statutes of Archbishop Mellano (1879) were the most important canonical sources of this period. The Coonan Cross Oath was an expression of the revolt of the St Thomas Christians against Latinization introduced through the Synod of Diamper.

#### **4.2.4. The Sources of the Syro-Malabar Period**

Many canonical enactments were made during the Syro-Malabar period starting from 1887. Almost all the Syro-Malabar eparchies enacted eparchial statutes.<sup>40</sup>

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<sup>37</sup> Andrews Thazhath, *The Juridical Sources of the Syro-Malabar Church: A Historico-Juridical Study*, 1-63.

<sup>38</sup> Andrews Thazhath, *The Juridical Sources of the Syro-Malabar Church: A Historico-Juridical Study*, 64-107; See also Jacob Kollaparambil, “Sources of the Hierarchical Structure of the St. Thomas Christian Church in the Pre-Diamper Period,” in Bosco Puthur, ed., *The Life and Nature of the St. Thomas Christian Church in the Pre-Diamper Period* (Kochi: LRC Publications, 2000)161-181.

<sup>39</sup> See, Jonas Thaliath, *The Synod of Diamper* (Roma: Pont. Institutum Orientalium Studiorum, reprinted Bangalore: Dharmaram Vidya Kshetram 1958 and 1999). Chief Editor, “Preamble,” 9; see Andrews Thazhath, *The Juridical Sources of the Syro-Malabar Church: A Historico-Juridical Study*, 108-237.

<sup>40</sup> Chief Editor, “Preamble,” 9-10; see Andrews Thazhath, *The Juridical Sources of the Syro-Malabar Church: A Historico-Juridical Study*, 238-308.

## 5.0. Review of the Code of Particular Law of the Syro-Malabar Church

First of all, I present a summary of the present Code of PL of the Syro-Malabar Church. The newly promulgated *Code of Particular Law* contains three parts:

### Part I: Particular Laws

### Part II: Statutes

### Part III: Guidelines

While studying the newly promulgated Code of Particular Laws, I mention about *iter* of each title of the Particular Laws, the new major amendments introduced in them, place a few observations on them and suggest the Particular Laws yet to be enacted in the context of *lacunae*.

#### 5.1.0. Part I: Particular Laws

These Particular Laws could be termed as norms complimentary to CCEO. It is because these norms are made wherever the provisions are indicated in CCEO to apply the particular law of each Church *sui iuris*. The first part of the CPLSMC, i.e., norms complementary to CCEO, comprises of fifteen titles and it contains altogether 220 articles.

#### 5.1.1. Title I: Major Archbishop and the Structures at the Major Archiepiscopal Level<sup>41</sup>

The PL of this section was approved by synod (5-17 November 2001) and it was promulgated on 10 January 2002.<sup>42</sup> It had 20 articles. In the newly promulgated Code of PLSMC it has 21 articles and is treated in three titles such as: (1) Title I- on Major Archbishop and the Structures at the Major Archiepiscopal Level (artt. 1-7); Title II- on Eparchies and Bishops (artt. 8-19) and Title III- deals with Exarchates and Exarchs (artt. 20-21).

#### Observations

(1). Art.1 fixes the frequency of the canonical visit of the eparchies by the major archbishop as once in 10 years. It is a response to CCEO c. 83 §1, which requires that the frequency of the major archbishop's visit be fixed by the PL.

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<sup>41</sup>*Synodal News*, vol. 11, no. 2 (2003), 10-12.

<sup>42</sup>*Synodal News*, vol. 9, no.1 and 2 (2001), 101-102.

(2). CCEO 86 §1 n. 2 prescribes that if the Particular Law provides, the patriarch can ordain all the bishops of the patriarchal Church. CPLSMC is silent about it.<sup>43</sup>

### **5.1.2. Title II: Eparchies and Bishops**

This is a new division of CPLSMC on Eparchies and Bishops different from PL existed. It has twelve articles.

### **5.1.3. Title III: Echarchies and Exarchs**

It is also a new division made in the present CPLSMC differing from the PL existed.

### **5.1.4. Title IV: Parishes and Parish Priests**

It is an entirely new title in the CPLSMC different from that of the existed PL. There are seven articles in it. It is a pooling of articles from various sections of the existed PL. For example, artt. 22-23 are taken from the existed PL on section dealing with Major Archbishop, Metropolitan, Bishops, Exarchs and the Organs assisting the Eparchial bishop in the governance of the Eparchy (artt. 18-19); Artt. 24-27 are pooled from the sections on Clerics in General of the existed PL (artt. 45, 47, 48 and 52); And art. 28 is transferred from the section on Monks and Other Religious as well as the Members of Other Institutes of Consecrated Life of the existed PL (art. 92).

### **5.1.5. Title V: Clerics<sup>44</sup>**

This title was named in the existed PL as Clerics in general. These laws were promulgated on 1<sup>st</sup> January 1999<sup>45</sup> became effective on the same day. There were 32 articles in it. In the new title of CPLSMC there are only 26 articles. They deal with annual vacation, requested transfer, promotion of vocations, seminaries and programme of formation, minor orders of the SMC like *Karoyus* and *Heupadiaknusa* (diaconate and sub-diaconate) and their functions, rights and obligations of clerics and clerical dress etc.

## **Observations**

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<sup>43</sup>Sunny Kokkaravalayil, "The Particular Law," 183. He made this comment on the PL existed before the present CPLSMC was published. It is a *lacuna* in the CPLSMC.

<sup>44</sup>*Synodal News* vol. 7 no.1&2 (December 1999): 100-103.

<sup>45</sup>*Synodal News*, vol. 12 (December 1998), 53

(1). Art. 46 §1 (former PLSMC art. 34 §1): To excel in the virtue of chastity clerics shall follow the means taught by the holy fathers and the masters of spiritual life (CCEO c. 374). Art. 46 §2 (former PLSMC art. 34 §2): Before receiving the order of diaconate candidates destined for priesthood shall freely declare in writing their commitment to a state of celibate life.

Among the St. Thomas Christians of India the clergy was married or celibate till their discipline was Latinized by the synod of Diamper in 1599.<sup>46</sup> The Second Vatican Council directed such Churches to return to their ancestral traditions if they have deviated from them (OE 6). George Nedungatt makes the following comment in this regard: "It is paradoxical that while people show much zeal in liturgical matters for de-latinization and for returning to the Chaldean forms, no comparable move is made for the restoration of the Chaldean discipline of married clergy. It does not necessarily follow, however, that all that is pre-Diamper must be restored without discerning what is best suited for today whether in canon law or in liturgy."<sup>47</sup>

(2). Art. 32 of the title V of CPLSMC is an amended version of the previous PLSMC art. 51. The reason for the amendment is that the term 'cleric' is generic. Therefore, distinction is made as parish priest, parochial vicar, parochial administrator, etc. The term 'other clerics' may refer to persons like protosyncellus, syncellus, judges, finance officer, chancellor, permanent deacons, etc. Their cases are determined by the eparchial norms.<sup>48</sup>

### 5.1.6. Title VI: Permanent Diaconate

This title on the Particular Laws on permanent diaconate originally was approved by the Syro-Malabar synod (15 to 27 July 2002) and it

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<sup>46</sup>Gouvea's printed text of the manuscript on the decrees of the synod of *Diamper* we find the following details: Decree 16, deals with the nature of the celibacy of priest; Decree 17, deals with invalidly married priests to officiate only after separation; Decree 18, deals with wives of priest to receive privilege only on separation and Decree 19, deals with when can priest who are sons of priests officiate. See, Jonas Thaliath, *The Synod of Diamper* (Roma: Pont. Institutum Orientalium Studiorum, reprinted Bangalore: Dharmaram Vidya Kshetram 1958 and 1999), 224 (appendix).

<sup>47</sup>George Nedungatt, *The Spirit of the Eastern Code*, 59.

<sup>48</sup>M. Kochupurackal, "Particular Law," 180.

was promulgated on March 31<sup>st</sup>, 2003.<sup>49</sup> There are 32 articles (artt. 55-86) at present in it just like the former PLSMC (artt. 53-84). CCEO speaks of permanent diaconate, in c. 354, which legislates on the formation of the deacons not destined for priesthood.

### **Observation**

It seems that since the SMC is having enough vocations to priesthood the creation of permanent diaconate is not a legal exigency at present. In this context making 32 articles for this section seems to be unwarranted. Whether the permanent diaconate belonged to the juridical traditions of the SMC is a debatable issue.

#### **5.1.7. Title VII: Monks and Other Religious as well as Members of Other Institutes of Consecrated Life**

The former PLSMC of this section was originally approved by the Syro Malabar synod, and it was promulgated on 10 Jan. 2002.<sup>50</sup> The present title VII of CPLSMC has only 10 articles (artt. 87-96) in contrast to the former PLSMC which had 13 (artt. 85-97) and later artt. 86 and 87 are omitted.

#### **Secular Institutes (c. 569)**

The former PLSMC of this section was approved by the Syro-Malabar synod in its session from 5 to 17 Nov. 2001, and it was promulgated on January 10<sup>th</sup>, 2002.<sup>51</sup> In the new CPLSMC there are 5 articles (artt. 97-101) and it is *verbatim* of the former PLSMC (artt. 98-102).

#### **5.1.8. Title VIII: Societies of Apostolic Life (c. 572)**

The former PLSMC of this section on the Societies of Apostolic Life was originally approved by the Syro-Malabar synod (in its session from 5 to 17 Nov. 2001), and it was promulgated on 10 Jan. 2002.<sup>52</sup> In the present title of CPLSMC there are 23 articles (artt. 102-124) whereas in the former PLSMC they are numbered from artt. 103-125. There is only one canon in CCEO (c. 572)<sup>53</sup> which governs this form

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<sup>49</sup>*Synodal News*, vol. 11, no.1 (May 2003), 136.

<sup>50</sup>*Synodal News*, vol. 9 (December 2001), 101-102.

<sup>51</sup>*Synodal News*, vol. 9 (December 2001), 101-102.

<sup>52</sup>*Synodal News*, vol. 9 (December 2001), 101-102.

<sup>53</sup>There was no corresponding canon in the 1986 Draft of *Codex Iuris Canonici Orientalis*. Sebastian Vadakkal, now bishop of Ujjain noted in his



of consecrated life, and that canon leaves it to the PL to regulate the Societies of Apostolic Life. There are a few such Societies in the Syro-Malabar Church.

### Observations

(1). Art. 111 of the former PLSMC has been commented Sunny Kokkaravalayil: "Members of another *sui iuris* Church cannot licitly be admitted to a Society of Apostolic Life of the SMMAC without the permission of the Apostolic See (c. 451). However, can the SMC candidates join the Societies of the Apostolic Life of other *Churches sui iuris* without such permission? No specific norm is given in the Syro-Malabar PL in this regard, which is much more urgent today in Kerala."<sup>54</sup> To understand it better, this comment is to be read along with the present article 110 of the title VIII of CPLSMC on Societies of Apostolic Life.

(2) When we check through the *iter* of c. 572 of CCEO we understand that it was a last minute inclusion in to the Code by PCCICOR at the expressed wish of the pope John Paul II.<sup>55</sup> After the promulgation of the CCEO, the synod of bishops of SMC took over the statutes of the Missionary Society of St. Thomas (MST) and ruled that it is the PL of which there is question in canon 572 until the PL that governs the Societies of Apostolic Life is formulated and promulgated<sup>56</sup> which was understandable and perhaps unavoidable in the circumstances. It was a provisional arrangement and it becomes the PL today. But to take over the statutes of MST for future as the PL for SMC is perhaps

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doctoral dissertation on the statutes of the Missionary Society of St. Thomas (MST), the practical difficulties that would be created for MST, destined to work mostly in areas under Latin jurisdiction, if the Oriental code contained no norm at all, which MST could invoke but had to rely simply on the particular law of SMC. Prof. George Nedungatt SJ advised him to move his Superior General to have recourse to the Pope. The Pope ordered the insertion of a canon.

<sup>54</sup>Sunny Kokkaravalayil, "The Particular Law," 187.

<sup>55</sup>Boby Kochuparampil, "Societies of Apostolic Life in CCEO and CIC and Societies of Common Life According to The Manner of Religious of CCEO," (Unpublished LOCL Thesis, Institute of Oriental Canon Law, Dharmaram Vidya Kshetram, Bangalore 2013), 35.

<sup>56</sup>*Synodal News*, vol. 10 (August 1997), 40-42.

unwarranted. If MST changes its statutes, would the PL of SMC change *ipso iure*?

### 5.1.9. Title IX: Evangelisation of Peoples

The former PLSMC of this section was originally approved by the Syro-Malabar synod (in its session from 5 to 17 Nov. 2001), and it was promulgated on January 10<sup>th</sup>, 2002.<sup>57</sup> The present new title of CPLSMC on Evangelization of Peoples has 6 articles (artt. 125-130) just as the former PLSMC (artt. 126-131).

### 5.1.10. Title X: Divine Worship and especially Sacraments

The former PLSMC of this section was originally approved by the Syro-Malabar synod (in its session from 5 to 17 Nov. 2001), and it was promulgated on January 10<sup>th</sup>, 2002.<sup>58</sup> There were 24 articles in it (artt. 132-155). In the present title X of CPLSMC on 'Divine Worship and especially Sacraments,' there are only 19 articles.

### Observations

(1). Article 135 §1 provides the possibility of giving the sacrament of Divine Eucharist together with baptism and chrismation. It was a Synodal decision published in Synodal News of 2010.<sup>59</sup> It is directed towards reviving the ancient practice of 'administering the sacraments of initiation-baptism, confirmation and the Eucharist which lay the foundations of every Christian life'<sup>60</sup>. From the history we understand that in the context of adult baptism, the administration of initiatory sacraments together happened in the Church. How far it is prudent and pastorally relevant today if we revive the ancient practice along with infant baptism is debatable.

(2). Article 145 §1 of the title X of CPLSMC is art. 148 §1 of the former PLSMC. It states that the names of candidates for promotion to sacred orders of **presbyterate and diaconate**, whether **eparchial or non-eparchial** are to be announced in the parish church of each candidate during the Divine Liturgy on two consecutive days of obligation before the

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<sup>57</sup> *Synodal News*, vol. 9 (December 2001), 101-102.

<sup>58</sup> *Synodal News*, vol. 9 (December 2001), 101-102.

<sup>59</sup> *Synodal News*, vol. 18, nos. 1& 2 (2010), 102.

<sup>60</sup> *Catechism of the Catholic Church*, n. 1212.

ordination.<sup>61</sup> It seems that it is a revival of the ancient *yogam* and its customary practices of St. Thomas Christians community.

It also expresses an inclusive language for denoting candidates to sacred orders whether they are of eparchial, religious institutes and other institutes of consecrated life of the Syro-Malabar Church.

## Marriage

The former PLSMC of this section was originally approved in the Syro-Malabar synod and promulgated them on 15 July 1997.<sup>62</sup> There were 41 articles in PLSMC (artt. 160-200). In the new CPLSMC also there are only 41 articles (artt. 150-190). It is a *verbatim* of the PLSMC section on Marriage.

### Observations:

(1). The marriage laws of CPLSMC are elaborate and have taken into account the customs of the Syro-Malabar faithful and their cultural situation.

(2). Article 163 §2 mentions that the permission may be granted by the protopresbyter of either of the parties for the publication of banns even before betrothal on written application of both the parties, endorsed by the respective parish priests. The parish priest of the party who has obtained the dispensation shall communicate the matter to the parish priest of the other party along with *Form B*.<sup>63</sup> This provision is made because for this purpose the local hierarch need not be approached.<sup>64</sup>

(3). The provision in art. 165 §4 states that in the case of dispensation from banns as per §§2&3, either of the parties shall submit a petition, stating the reasons, to the competent authority.<sup>65</sup> This PL is necessitated because the competent authority of the place where the marriage is celebrated need not be a competent superior of either of the parties.

(4). The present article 178 §2 of CPLSMC on Marriage was art. 188 §2 published in Synodal News of 2004, which states that 'petition for this

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<sup>61</sup>*Synodal News*, vol. 17, nos. 1& 2 (2009), 70.

<sup>62</sup>*Synodal News*, no. 10 (August 1997), 43.

<sup>63</sup>*Synodal News*, vol. 17, nos. 1&2 (2009), 70-71.

<sup>64</sup>M. Kochupurackal, "Particular Law," 82.

<sup>65</sup>*Synodal News*, vol. 12 nos.1 and 2 (2004), 35.

dispensation must have the endorsement of the parish priest and recommendation of the local hierarch of the Catholic party'.<sup>66</sup>

(5). The present article 178 §3 of CPLSMC on Marriage was art. 188 §3 **published** in Synodal News of 2009. It states that 'even if dispensation from the form of celebration of marriage is granted for a most grave reason, there should be a public form of celebration'.<sup>67</sup> This PL is made because the clause 'sacred rite'<sup>68</sup> contained in article 188 §3 of PLSMC was dropped from the text.<sup>69</sup>

(6). There is an amendment in Art. 189 §2: **Amended text:** However, avoiding scandal, the officiating Catholic priest may invite a non-Catholic minister to read a scriptural passage or to give a brief exhortation.<sup>70</sup> The reason for the amendment is that multiple blessing to a marriage is forbidden. Celebration of marriage with dispensation from form is in no way encouraged.<sup>71</sup>

#### **5.1.11. Title XI: Sacramentals, Sacred Times and Places, Venerations of the Saints and Other Acts of Devotion**

The new title XI has 4 introductory articles (artt. 191-194) which speaks about sacramentals and its ministers. It also speaks about a register to record deaths in all parishes.

#### **Feast and Penance (cc. 880 §3; 882)**

The former PLSMC of this section was approved by the Syro-Malabar synod (in its session from 5 to 17 Nov. 2001), and it was promulgated on 10 Jan. 2002.<sup>72</sup> There were four articles (artt. 156-159) in it. In the new CPLSMC on Feast Days and Penance there are 5 articles (artt. 195-199). The Abstinence is obligatory in SMC on all Fridays except the Fridays between Christmas and Epiphany and the first Friday after Easter. Abstinence is recommended on all days of

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<sup>66</sup>*Synodal News*, vol. 12, nos. 1&2 (2004), 35

<sup>67</sup>*Synodal News*, vol. 17, nos. 1&2 (2009), 71.

<sup>68</sup>The sacred rite defined by CCEO c. 828 §2, that is, the intervention of a priest who assists and blesses the marriage.

<sup>69</sup>M. Kochupurackal, "Particular Law," 182.

<sup>70</sup>*Synodal News*, vol. 12, nos. 1&2 (2004), 35

<sup>71</sup>M. Kochupurackal, "Particular Law," 179.

<sup>72</sup>*Synodal News*, vol. 9 (December 2001), 101-102.

Lent (*Sauma*), period of Annunciation (*Suvara*), all days 3 days fast (*Moonnu nombu*), 8 days of fast (*Ettu nombu*), and 15 days of fast (*Pathinachu nombu*) (art. 198).

### Observations

(1). In the former PLSMC Art. 156 §2 stated that the obligation of the feasts of Epiphany, Ascension, Peter and Paul may be fulfilled on the following Sunday after the actual day. But the Synod of SMC decided to delete altogether from the PL as the Apostolic See did not give approval. It does not appear in the present CPLSMC.

(2). The art. 156 §3 of former PLSMC stated that the feasts of the Blessed and Saints of the SMMAC are important and are to be celebrated with due solemnity. But the new CPLSMC art. 195 §2 states that the feasts of the Blessed and Saints of the SMMAC are important and are to be celebrated as per the directions of the Apostolic See, with due solemnity.<sup>73</sup> Canonization and veneration of saints are regulated by the norms of the Apostolic See. There are sufficient norms of the Apostolic See in the matter, which are to be observed. SMC can have particular norms, if needed.

### 5.1.12. Title XII: Baptized non-Catholic Coming into Full Communion

The former PLSMC of this section was approved by the Syro-Malabar synod and is promulgated on 10 Jan. 2002.<sup>74</sup> There were only 2 articles (artt.210-211) in it but in the new CPLSMC on this title there are 3 (artt.200-202) articles.

### Observation

Art. 210 of the former PLSMC is amended in present text of art. 200 of CPLSMC as follows: "The parish priest can receive a baptized 'non-Catholic individual lay person' into the Catholic Church as per the eparchial norms. The person to be received into the Catholic Church shall submit a written petition to the authority determined in the eparchial norms, with the recommendation of the parish priest."<sup>75</sup> This amendment is justified by the following reason. The wording of the article

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<sup>73</sup> *Synodal News*, vol. 12, nos. 1&2 (2004), 35.

<sup>74</sup> *Synodal News*, vol. 9 (December 2001), 101-102.

<sup>75</sup> *Synodal News*, vol. 17, nos. 1& 2 (2009), 71.

‘individual lay persons’ in the former text of Art. 210 of PLSMC was not specified.<sup>76</sup>

### **5.1.13. Title XIII: Recourse against Administrative Decrees**

The former PLSMC of this section was approved by the Syro-Malabar synod in its session from 5 to 17 Nov. 2001, and it was promulgated on 10 Jan. 2002.<sup>77</sup> It had only one article (art.213).<sup>78</sup> The present title XIII with a single article (art. 203) is verbatim of the former PLSMC.

### **5.1.14. Title XIV: Temporal Goods of the Church**

The former PLSMC of this section was approved by the Syro-Malabar synod and they were promulgated on, 17 Dec. 1999.<sup>79</sup> It had 9 (artt. 201-209) and the present title on Temporal Goods of the Church has 14 (artt.204-217) articles.

### **Observations**

(1). An amendment in the former PLSMC on Art. 207 were made and the present article 212 reads: “The term of perpetual foundations shall be for a maximum period of twenty-five years. Afterwards it shall be made use of for the purposes envisaged in c. 1047 §2”.<sup>80</sup> This amendment is made because the PL has no competence to establish a norm against the common law. As per c. 1047, §2, the temporal goods of a non-autonomous foundation entrusted to a juridical person subject to an eparchial bishop must be designated for the institute mentioned in c. 1021, §1. The institute mentioned, that is, the fund for the support of the clergy who offer service to the eparchy unless the donor has expressly manifested some other intention.<sup>81</sup>

(2). The former PLSMC of this section in art.208 has undergone an amendment introduced by the synod in 2010 and at present the article is 214: “Alienation of property exceeding an amount of Rupees Ten

<sup>76</sup> M. Kochupurackal, “Particular Law ,” 182-183.

<sup>77</sup> *Synodal News*, vol. 9 (December 2001), 101-102.

<sup>78</sup> *Synodal News*, vol. 11 no.1 (May 2003), 51.

<sup>79</sup> *Synodal News*, vol. 7 (December 1999), 100.

<sup>80</sup> SMMAc, CLSMC, art. 212, p. 45. Cf., *Synodal News*, vol. 12, nos. 1&2 (2004), 35.

<sup>81</sup> M. Kochupurackal, “Particular Law ,” 179-180.

Lakhs/One Million (Rs. 10, 00,000) up to Twenty five Crores/Two Hundred and Fifty Million (Rs. 25, 00, 00,000) is to be done only with the consent of the finance council and the eparchial consulters. An amount exceeding Rupees Twenty five Crores/Two Hundred and Fifty Million (Rs. 25, 00,00,000) up to Fifty Crores (Rs. 50,00,00,000) needs the consent of the Major Archbishop with the Permanent Synod.<sup>82</sup> Alienation of property above Rupees fifty crores (Rs. 50, 00 00, 000) can be done only with the consent of the major archbishop who in turn needs the consent of the synod of bishops (c.1036)<sup>83</sup>. This amendment is necessitated as a result of the periodic revision due to the market fluctuation of the value of Indian rupee.<sup>84</sup>

#### **5.1.15. Title XV. Trial**

The former PLSMC of this section was approved by the Syro-Malabar synod in its session from 5 to 17 Nov. 2001, and it was promulgated on 10 Jan. 2002.<sup>85</sup> There were 3 articles (artt.214-216) in it. The present title XV 'Trial' in CPLSMC also has only 3 articles (artt. 218-220) and there is no substantial change from the text of the former PLSMC on this section.

#### **5.2.0. PART II: STATUTES**

Part II of the newly promulgated CPLSMC deals with Statutes. In general, statutes are required for the good of the Church, its smooth functioning, and to carry out its mission properly and effectively, although many of them, strictly speaking, are not demanded by the CCEO.

#### **5.2.1. Statutes of the Synod of Bishop**

One of the priorities of the SMC as soon as it was made a Major Archiepiscopal Church was to enact the statutes of the synod of bishops. The synod held from 22 November to 4 December 1993 approved the statutes. The entire text of the statutes was published in September 2000<sup>86</sup> and it was promulgated along with the entire

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<sup>82</sup> *Synodal News*, vol. 18, nos. 1& 2 (2010), 40.

<sup>83</sup> SMMAC, *CLSMC*, art. 214.

<sup>84</sup> M. Kochupurackal, "Particular Law ," 183.

<sup>85</sup> *Synodal News*, vol. 9 (December 2001), 101-102.

<sup>86</sup> *Synodal News*, vol. 8, no. 1 (2000), 44-64.

published Particular Laws of the SMC.<sup>87</sup> It contained 23 (artt. 1-23) articles, most of which are subdivided. In the newly promulgated CPLSMC also there are only 23 (artt. 1-23) articles just like the former PLSMC. Except a few beautification touches done on the former text the statutes of the Synod of Bishops in CPLSMC is verbatim of the former PLSMC.

### Observation

Jose Porunnedom, then chief editor of *Synodal News* wrote that except for certain matters many of the articles are repetition of the canons of the CCEO.<sup>88</sup>

### 5.2.2. Statutes of the Permanent Synod

The former PLSMC on these statutes were approved by the Syro-Malabar synod (of 7-23 November 1994), promulgated *ad experimentum* for three years on January 1<sup>st</sup>, 1995,<sup>89</sup> and definitively on August 1<sup>st</sup>, 2000.<sup>90</sup> They contained a preamble and 4 titles, each subdivided into different articles. Altogether there were 19 (artt. 1-19) articles. In the newly promulgated CPLSMC there are only 18 (artt. 1-18) articles. The last article on the former text of PLSMC which speaks 'when do the statutes come into force' is eliminated in the present CPLSMC. In art.16 which clarifies in what all matters permanent synod is to be consulted by the major archbishop, nn.1-12 are newly added differing from former PLSMC. Differing from the former PLSMC in the new CPLSMC art. 17 are divided into two paragraphs and a few (3) additional numbers are newly incorporated into it. Art. 17 with two paragraphs and § 2 having 36 numbers, speak about in what all instances consent of the permanent synod is needed for major archbishop and as well as for an administrator of MAC.

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<sup>87</sup>*Synodal News*, vol. 11, no.1 (May 2003), 79-97.

<sup>88</sup> Jose Porunnedom, "Particular Law on Major Archbishop, Metropolitan, Bishops, Exarchs and the Organs assists the Eparchial bishop" in M. Vattappalam, J. Porunnedom and M. Kochupurackal (eds.) *A Study on the Particular Laws of The Syro-Malabar Major Archiepiscopal Church*, 51-63.

<sup>89</sup>*Synodal News*, no. 4 (February 1995), 29.

<sup>90</sup>*Synodal News*, vol. 8 (September 2000), 66.



## Observation

Except these textual changes mentioned above it is verbatim of the former PLSMC on the statutes on the permanent synod. Most of the articles in former PLSMC as well as in the new CPLSMC are verbatim of the CCEO. All the instances are listed where the permanent synod is to be consulted and where the consent of this body is required (Articles 16 nn. 1-13 & article 17 nn. 1-36).

### 5.2.3. Statutes of the Superior Tribunal

The former PLSMC on these statutes were approved by the Syro-Malabar synod of November 7-23, 1994, promulgated *ad experimentum* on January 1, 1995,<sup>91</sup> and definitively on August 1<sup>st</sup>, 2000.<sup>92</sup> They contained 5 titles, each subdivided into articles, which amounted to 35. In the newly promulgated CPLSMC there are also 5 titles and altogether there are 35 articles (artt.1-35) and it concludes with an appendix which deals with the General Moderator of the administration of justice. The General Moderator of the Administration of Justice in the SMC is *ex officio* the president of the Synodal tribunal. He keeps vigilance over the major archiepiscopal tribunal and other lower tribunals.

The Synod of Bishops of the SMC is the Superior Tribunal of the SMC (CCEO c. 1062 §2). In receiving an appeal from the Synodal Tribunal, the major Archbishop convokes the Synod of bishops, sits as the superior Tribunal presided over by himself or his delegate, and proceeds as per canons 1309-1321.<sup>93</sup>

### 5.2.4. Statutes of the Major Archiepiscopal Tribunal

This tribunal was erected on 1 September 1<sup>st</sup>, 1994 after the Synod of bishops approved its statutes.<sup>94</sup> The former PLSMC on the statutes of

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<sup>91</sup>*Synodal News*, no. 4 (February 1995), 39.

<sup>92</sup>*Synodal News*, vol. 8 (September 2000), 67.

<sup>93</sup> Jose Mundakath, "A look into the Statutes of the Superior Tribunal and the Statute of the Major Archiepiscopal Tribunal," in M. Vattappalam, J. Porunnedom and M. Kochupurackal (eds.) *A Study on the Particular Laws of The Syro-Malabar Major Archiepiscopal Church*, 180-181.

<sup>94</sup>*Synodal News*, no. 4 (February 1995), 40. Whereas CCEO c. 1063§1 speaks of "ordinary tribunal", the qualification "ordinary" is omitted in the PLSMC. Fr. George Nedungatt, who drafted the statutes, on being asked the

Major Archiepiscopal Tribunal were approved in the synod of 7-23 November 1994, promulgated *ad experimentum* on 1 January 1995,<sup>95</sup> and definitively on 1 August 1<sup>st</sup>, 2000.<sup>96</sup> The statutes of the former PLSMC were classified into 3 titles and altogether there were 48 articles. In the newly promulgated CPLSMC, the statutes of the Major Archiepiscopal Tribunal also have 3 titles and there are only 47 (artt. 1-47) articles in it. The present text of the statutes on the Major Archiepiscopal Tribunal in CPLSMC is verbatim of the former PLSMC.

The SMMAC adjudicates matters of judicial importance at five different levels: Superior Tribunal (synod), Synodal Tribunal, Major archiepiscopal ordinary Tribunal, Metropolitan Tribunals and Eparchial Tribunals. The qualified personnel of the ordinary tribunal are chosen representing the entire territory of the Syro-Malabar Major Archiepiscopal Church.<sup>97</sup>

### 5.2.5. Statutes of the Major Archiepiscopal Assembly

The former PLSMC on the statutes of Major Archiepiscopal Assembly were approved in the synod (of October 28- November 15 1996), and promulgated on March 15, 1998.<sup>98</sup> The structure of the statutes was presented in the following way: it had a preamble and there were 12 (artt.1-12) articles in it. In the newly promulgated CPLSMC, the statutes of the Major Archiepiscopal Assembly also has a preamble and there are only 12 (artt. 1-12) in it. The present text is a verbatim of the former text of PLSMC. The preamble of the statutes states the following:

The Major Archiepiscopal Assembly of the SMC is the gathering together of a representative cross-section of the

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reason for the omission replied that since there was no canonical provision for any “extraordinary” tribunal, the qualification “ordinary” was superfluous. This reasoning was accepted. Indeed, the question should rather be why there is the qualification “*ordinarium*” in CCEO c. 1063 §1. Since that addition is not justified, the omission in the PLSMC is justified (Private communication from Fr. George Nedungatt).

<sup>95</sup>*Synodal News*, no. 4 (February 1995), 52.

<sup>96</sup>*Synodal News*, vol. 8 (September 2000), 65.

<sup>97</sup>Jose Mundakath, “A look into the Statutes,” 171-182.

<sup>98</sup>*Synodal News*, no. 11(March 1998), 75.

same Church, integrating the spirit and dynamism of the ancient ecclesial institution of the Thomas Christians called *Yogam*. In it is restored and updated that organ in fidelity to the tradition of the universal Church and in obedience to the legislation given by the Roman Pontiff to the Eastern Catholic Churches... so that it is made to correspond to the changed historical situation and the new hierarchical status of the Syro- Malabar Church.<sup>99</sup>

The Major Archiepiscopal Assembly is a consultative body for dealing with matters of major importance of the Church and its mission (Cf., Art. 1 §1).<sup>100</sup> It was an assembly or *Yogam* of representative of all the local communities that decided matters concerning the entire Church. Though the Major Archiepiscopal Assembly is not a parliament or legislature of the SMC, it is a forum for discussion and the expression of views and desires in the spirit of Christian freedom and responsibility.<sup>101</sup>

### Observations

(1). The institution of *yogam* forms part of the Way or Law of Thomas, the most fundamental source of the SMPL. By making it a mere consultative body, it is deprived of its ancient power in the decision making process.<sup>102</sup>

The PL will do well to have the laity elect their lay representatives to the Patriarchal/Major Archiepiscopal Assembly following the ancient tradition of the Church in India which was not unique to the

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<sup>99</sup>“Statutes of the Major Archiepiscopal Assembly” in SMMAC, CPLSMC, 101; Cf., *Synodal News*, vol. 11, no.1 (May 2003), 128.

<sup>100</sup>SMMAC, CPLSMC, 101; See also *Acts of the Syro-Malabar Major Archiepiscopal Assembly 1998*, (Mount St. Thomas 1999), 23. Three hundred and fifty three members participated in the first *Major Archiepiscopal Assembly* of the Syro-Malabar Church held at Mount St. Thomas from 12 to 14 Nov. 1998.

<sup>101</sup>“Statutes of the Major Archiepiscopal Assembly,” in *Synodal News*, no.11 (March 1998), 84, *Synodal News*, vol. 11, no.1 (May 2003), 134.

<sup>102</sup>Sunny Kokkaravalayil, “The Particular Law,” 195.

Thomas Christian Church since it was met with also in North Africa and elsewhere.<sup>103</sup>

(2). In no. 4 of Art. 6 of the Statutes of the Major Archiepiscopal Assembly it is stated that “the Major Archbishop in consultation with the Permanent Synod may nominate to the Assembly an adequate number of priests, religious and lay faithful to provide proper representation to the Syro-Malabar faithful living outside the Syro-Malabar eparchies or exarches.”<sup>104</sup>

(3). Better Representation for Women: The synod of bishops in its meeting from August 17-28, 2010 gave a directive regarding the presence of women in ecclesiastical bodies. Accordingly in the new CPLSMC on Statutes of the Major Archiepiscopal Assembly it is stated that the maximum number of lay delegates from an eparchy shall be ten; at least one- third of them shall be women”.<sup>105</sup> However, there was a decision of the Synod of 2010. I read as follows: “Unless the law or the nature of the bodies preclude it, 50% of the members in the eparchial and parish bodies, shall preferably be women. However, their number shall not be less than 25% of the total members in these bodies.”<sup>106</sup> However, regarding the representation for women in major archiepiscopal assembly it is reduced to one third of ten representatives from an eparchy.

### 5.2.6. *Palliyogam* -Procedure Rules

*Palliyogam* is a laudable heritage of the SMC that expresses the ecclesial communion of all Christian faithful in the Church. Though it has been a common heritage of this Church, with regard to the administrations of the parishes, the mode of its operations varied in different eparchies. Hence a uniform PL on *Palliyogam* Procedure Law, applicable to the parishes of the Church *sui iuris* was required.

The former PLSMC on the statutes of the *Palliyogam* were approved by the Syro-Malabar synod on 16 Jan. 1998, and promulgated on the

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<sup>103</sup>George Nedungatt, “Liberation from the Dark Ages of the Pre-Diamper Indian Church,” in *Journal of St. Thomas Christians* 24 n.2(2013)29?

<sup>104</sup>SMMAc, CPLSMC, 104; Cf. *Synodal News*, vol. 17, nos. 1& 2 (2009), 70. The synod in its meeting during August 17-28, 2009 enacted it may be for better representation.

<sup>105</sup>SMMAc, CPLSMC, art.6.n.4, p.104.

<sup>106</sup>*Synodal News*, vol. 18, nos. 1& 2 (2010), 166-167.

same day.<sup>107</sup> There are 77 rules. In the newly promulgated CPLSMC, the statutes of the *Palliyogam* have 78 rules treated under 3 sections. Except a few changes for example, 10.6. which speaks about representation about permanent deacons the new CPLSMC contains the text on the *Palliyogam* also is verbatim of the former PLSMC.

The *Palliyogam* Procedural Rules restored considerably the powers of the *Palliyogam* though not the complete autonomy it enjoyed in the past. The *Palliyogam* procedural Rules bestow more power, rights and duties to laity in keeping with Vatican Council II (*Apostolicam Actuositatem* 10, *Ad Gentes* 21 etc.), than the existed eparchial statutes on *Palliyogam* in the Syro-Malabar Church.<sup>108</sup>

### Observation

(1). There is provision for an administrative tribunal in every eparchy (n. 71) constituted by the eparchial bishop to deal with and settle disputes arising from the *Palliyogam* meetings and functioning. The *Palliyogam* has ample power in the decision-making process. E.g., "To pass resolutions regarding construction of church, chapels and buildings for any of the parish institutions and buying or selling or borrowing or gifting of movable or immovable properties..." (Rule 8.9).

### 6. 0. Part III: Guidelines

In the newly promulgated CPLSMC there are 11 approved Guidelines on Different Subjects. Originally, most of them were published in *Synodal News* in its various volumes. These guidelines are of juridical in nature.

**6.1. Guidelines for Pastoral Collaboration in Parishes with the Institutes of consecrated Life and Societies of Apostolic Life:** These guidelines were

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<sup>107</sup> *Synodal News*, no.11 (March 1998), 44.

<sup>108</sup> George Nedungatt presents the genesis of the *Palliyogam* Procedure rules in the chapter titled "The Particular Law of the Syro-Malabar Church on Laity and Temporalities," in his work *Laity and Temporalities*, 334-350; Mathew Madathikunnel, "Palliyogam Procedure Rule of the Syro-Malabar Major Archiepiscopal Church - A Study" in M. Vattappalam, J. Porunnedom and M. Kochupurackal (eds.) *A Study on the Particular Laws of The Syro-Malabar Major Archiepiscopal Church*, 161-170.

approved by the Synod of Bishops of the SMC in its session held from 15 to 20 November 1999.<sup>109</sup>

**6.2. Guidelines for Raising a Religious Congregation to the Major Archiepiscopal status and for granting *nihil obstat* for pontifical status to a religious congregation.**<sup>110</sup>

**6.3. Guidelines for Recognizing Lay Associations of Syro-Malabar Faithful outside the Syro-Malabar Eparchies in India and Abroad.**<sup>111</sup>

**6.4. Guidelines for Pastoral Care of Migrants.**<sup>112</sup>

**6.5. Guidelines for the Formation of Permanent Deacons in the Syro-Malabar Church.**<sup>113</sup>

**6.6. Guidelines for the Functioning of Major Archiepiscopal Commission for Finance.**<sup>114</sup>

**6.7. Guidelines for the Functioning of the Liturgical Commission.**<sup>115</sup>

**6.8. Guidelines for the functioning of Commission for Laity.**<sup>116</sup>

**6.9. Guidelines for conferring Honours and Titles.**<sup>117</sup>

**6.10. Guidelines for Giving Simple Burial:** The synod of bishops held during 3-15 November 2003 clarified the meaning of simple burial which is given to those who commit suicide. "Simple burial means a burial with no homily, no *Qurbana*, no use of microphone, using only two ornamental umbrellas (*muthukudas*), one cross and one priest for the burial. In

<sup>109</sup> SMMAc, CPLSMC, 134-136.

<sup>110</sup> SMMAc, CPLSMC, 137-139; Cf., *Synodal News*, vol. 16, nos. 1- 3 (2008), 81-83.

<sup>111</sup> SMMAc, CPLSMC, 140-142.

<sup>112</sup> SMMAc, CPLSMC, 143-147; Cf., *Synodal News*, vol. 17, nos. 1& 2 (2009), 112-116.

<sup>113</sup> SMMAc, CPLSMC, 148-154; Cf., *Synodal News*, vol. 12, nos. 1&2 (2004), 82-88.

<sup>114</sup> SMMAc, CPLSMC, 154-155.

<sup>115</sup> SMMAc, CPLSMC, 156-162

<sup>116</sup> SMMAc, CPLSMC, 163-171; Cf., *Synodal News*, vol. 19, nos. 1- 3 (2011), 161-178.

<sup>117</sup> SMMAc, CPLSMC, 172-174.

‘scandalous cases of suicide’<sup>118</sup> not even the simple burial may be given. In such cases the body will not be allowed to be taken inside the church. The priest may bless the grave sometime outside the funeral service.”<sup>119</sup> This clarification may sound too rigorist and it lacks the pastoral sense evinced by some other Patriarchal Churches.

### **6.11. Instruction regarding Free State Certificates, Kuries and Marriage Preparation Course.**<sup>120</sup>

### **7.0. Concluding Observations and Comments**

(1). I have briefly narrated the codification history of the Particular Laws of the SMC ever since its erection as a Major Archiepiscopal Church in 1992. Mar Abraham Kattumana, the Pontifical Delegate, and the Major Archbishops who efficiently succeeded him organized the activities of the various committees for the codification of the Particular Laws. After strenuous work involving research and consultation, *Code of the Particular Laws* of the SMC is published.

(2). With the publication of CPLSMC in a single volume, SMC can claim that the work on drafting the PL has come to an end, at least those parts which are demanded by the common code and the most needed sections of SMPL. The Synod of Bishops of the SMC has codified its PL by adopting and adapting the disciplinary norms that pertain to the genuine tradition of the SMC. In the same way the Malankara Oriental Catholic Church also had promulgated their Code of Particular Law.<sup>121</sup>

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<sup>118</sup>Whether a case of suicide is scandalous is to be determined by the local hierarch. Priests who have very narrow and subjective criteria may also cause public harm by denying a church burial.

<sup>119</sup>*Synodal News*, vol. 11, no. 2 (2003), 36.

<sup>120</sup>SMMAc, CPLSMC, 176.

<sup>121</sup>*The Code of Particular Canons of the Syro-Malankara Catholic Church* has completed its codification in a comparatively short time and it is promulgated on 10<sup>th</sup> March 2012 by Baselios Mar Cleemis, the Major Archbishop of Syro-Malankara Major Archiepiscopal *sui iuris* Church. The Syro-Malankara Catholic Church is the sister Church in the catholic communion of the St. Thomas Christians in India. In 1930s a group of Malankara Orthodox Syrian Christians in India under the leadership of Mar Ivanios reunited with the Catholic Church. It is a vibrant Oriental Catholic Church following the Antiochene rite in India with a population of more

(3) How has the new Code of the Particular Laws been received by the Syro-Malabar community? It is too early to give an answer to it. However, since most of these PL were in force since 2003 we could make some evaluation on it. As a whole, Syro-Malabar community is slowly assimilating the values of different units of Particular Laws. The reception of the Particular Laws by this vibrant community is positive and widespread. For example, the Procedure Rules of *Palliyogam* (the general body of the parish) was actually a restoration of the *Palli prathipurusha yogam* (the general body of the parish community) that existed in the Church in the ancient times. This gave ample opportunity for the laity in the affairs of the Church. Therefore, the procedural law of the *Palliyogam* was well received by the community. Laity is given due importance in the affairs of the Church. Clergy, Religious are better equipped in the reception of the Particular Laws of Syro-Malabar Church.

(4) The Particular Laws on divine worship and especially on sacraments have restored the ancient practice of the sacrament of initiation, that is, conferring chrismation and Holy Communion along with the sacrament of Baptism in the Syro-Malabar Church.

(5) In the same way the Particular Laws on marriage has incorporated the ecumenical spirit of the CCEO. The mutual agreement between the Syrian Orthodox Church and SMC in the area of marriage is incorporated in the Particular Laws of the Syro-Malabar Church.

(6) The promulgated Particular Laws of the SMC are true to the identity of our Church. It brings a balancing note on its Oriental, Indian and Western heritage in the making up of its Particular Laws. The lawmakers have achieved their goals by meticulously following the guidelines.

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than 500000. It is praiseworthy achievement that Syro-Malankara Catholic Church which started the codification of their *Code of Particular Canons* in March 2005 and completed its work by September 2010. They received the *recognitio* from the Holy See on 7<sup>th</sup> Sept. 2011. The promulgated *Code of Particular Canons of the Syro-Malankara Catholic Church* is printed and published as a text in 2012. When we study the text of the Code of Particular Canons of the Syro-Malankara Catholic Church, we may come to know that there are also shortcomings in it and still it has ample room for improvement.



(7). From this overview we see that SMC has made good use of the room left by CCEO for PL. While an unbiased critic will acknowledge that the work accomplished in the field of PL testifies to the sense of responsibility and seriousness with which the pastors of SMC wish to guide the Church, he may have suggestion for modification or improvement or for filling out *lacunae*.

(8). How far the guideline on subsidiarity has been followed the different units of the Particular Laws of the SMC is debatable. Did we succeed in the de-centralization and distribution of the powers at the eparchial and parish levels? Do our Particular Laws succeed in incorporating the co-responsibility aspect of our People of God and their equal dignity of being lay, clerical and men-women religious? Through our Particular Laws did we succeed in promoting the fraternity and co-operation among them?

(9). Apart from the value of these laws as complementary to CCEO, a few criteria for evaluating CPLSMC would be whether it is rooted in the traditions of St. Thomas Christians, and at the same time adequate to meet the present-day needs of SMC, whether it promotes unity among Churches, unity among the faithful within the Syro-Malabar Church, involvement of the faithful in the civil society's interests and their commitment to the gospel values, etc., all of which are areas of great concern in the situation of multifaceted existence of SMC today. Finally, critical studies have evidenced certain *lacunae* and areas needing revision in the Particular Laws of the SMC. Our review of the already promulgated Particular Laws might reveal that the codified SMC Particular Laws are open to improvement.

(10) A final Observation: In the codification of the PLSMC the minutes of the work done by the various commissions have not been published (if they were written down at all!) in a manner analogous to the periodical *Nuntia* of the PCCICOR. This omission will be regretted by those who know how useful, even necessary, it is to consult *Nuntia* for the proper understanding of CCEO. Moreover, in the PLSMC no reference to *fonti* is cited especially on the texts of Particular Laws, Statutes and Guidelines. These omissions also will be regretted especially in the future when PLSMC will be taken up for revision, since no Code, whether common or particular, is supra-temporal not needing reform or revision in course of time.