

# BALANCING THE RIGHTS OF THE VICTIMS AND THE ACCUSED IN CASES OF SEXUAL ABUSE OF MINORS AND VULNERABLE BY CLERICS

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## **Abstract**

Cases of sexual abuse of minors and vulnerable by clerics present a challenging dilemma for the penal system in the Church, as they involve the delicate balance of protecting the rights of the victim and ensuring due process for the accused. This article explores the complexities of this issue and examines various legal, ethical, and psychological considerations involved in achieving a fair and just resolution. By analyzing the rights of both parties, as well as relevant laws and precedents in the Church, it aims to provide a comprehensive understanding of the intricate balance required in addressing such sensitive cases.

**Keywords:** Innocence, justice, Pope Francis, offence, minor, vulnerable adult

## **Introduction**

Even from a sociological point of view, sexual abuse of minors and vulnerable adults is a grave and deeply distressing crime that inflicts lasting harm on its victims and leaves deep wounds in society. In the life of the Church, its gravity becomes all the graver when such crimes are committed by persons holding positions of trust, respect and authority, more particularly by priests and consecrated persons who

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are obliged to observe perfect and perpetual continence and are therefore bound to celibacy. The pursuit of justice in these cases is essential, as it not only holds perpetrators accountable but also offers justice, care and support to survivors. The catholic Church is armed with a penal system aimed at achieving the three fundamental objectives namely, the repair of scandal, the restoration of justice and the reform of the offender. However, the rights of the accused must also be safeguarded to ensure fair treatment and prevent wrongful convictions of innocent people who are unjustly accused of a crime they have never committed. Achieving a balance between these often-competing interests is a complex task for the legal system, as it must seek justice while upholding the principles of due process and fairness. This paper makes an effort to study how the Codes of Canon Law and the updated teachings from the Apostolic See try to bring about a balance in administering justice between the rights of the abused and the rights of the accused in the cases of abuse of minors and the vulnerable by clerics with special reference to the teachings of Pope Francis as a contemporary guide for understanding and addressing this complex issue.

## **1. Protecting the Rights of the Victim**

The Catholic Church gives paramount importance to protecting the rights of minors and vulnerable adults who have suffered physical, emotional and spiritual harm from sexual offences. It upholds the principle that the Church must safeguard those not in a position to defend themselves. Pope Francis in his apostolic letter *Come una madre amorevole* states thus: “The Church loves all her children like a loving mother, but cares for all and protects with a special affection those who are smallest and defenseless. This is the duty that Christ himself entrusted to the entire Christian community as a whole. Aware of this, the Church is especially vigilant in protecting children and vulnerable adults.” In the apostolic letter, the Pope speaks specifically of the responsibility incumbent on bishops and their equivalents in ensuring that such abuses don’t happen.

### **1.1. Rights of the Victim:**

The apostolic letter *Vos estis lux mundi* issued by Pope Francis on 25 March 2023 spells out the following rights of the victims:

- i) Right to report the abuse, they have suffered personally or through other persons (VELM art. 3).

- ii) Right of Protection of the person submitting the report (VELM art. 4).
- iii) Right to be treated with dignity and respect (VELM art. 5).
- iv) Right to be welcomed, listened to and supported, including through the provision of specific services (VELM art. 5).
- v) Right to be offered spiritual and medical assistance including therapeutic and psychological assistance, as required by the specific case (VELM art. 5).
- vi) The legitimate protection of the good name and the privacy of all persons involved, as well as ensuring the confidentiality of their data (VELM art. 5).

Apart from ensuring protection from further harm from the accused and other persons, those who hold positions of authority in the Church also must provide all the necessary support, care and assistance to the victims and their family members who have undergone emotional, mental, spiritual and social upheaval to help them cope with the trauma they have suffered. Rules of justice demand that the perpetrator is held accountable for his actions which would involve penal procedures and the consequent imposition of just and suitable penalties with the potential to serve as a deterrent to the further occurrences of similar crimes.

In a canonical trial, in addition to lodging the petition, victims and those who present their cases have the right to present their version of the case and to substantiate it with supporting witnesses and evidence during the investigations. They could also claim gratuitous legal aid and the assistance of a canon lawyer or any other expert to pursue their rights. As clearly articulated in VELM art 18 §3 and Vademecum 164, as a person bearing the wounds of the abuse and gross violation of justice, notwithstanding the right of the accused for the protection of his/her reputation, the victim has the legitimate right to be informed of the progress and outcome of the investigations and the penalty imposed on the aggressor by the competent authority.<sup>1</sup>

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<sup>1</sup> According to *Vos estis lux mundi*, art 18 §3 "In compliance with the instructions of the competent Dicastery, the Metropolitan, upon request, shall inform the person who has alleged an offence and, when applicable, the person who made the report, or their legal representatives of the outcome of the investigation"; Along the same line, Vademecum art 164 states thus: "Taking into account the provisions of art. 28 SST, the competent ecclesiastical authority (Ordinary or Hierarchy) should inform the alleged victim and the accused, should they request it, in suitable ways about the

The clear stipulation of VELM art. 20 that the norms given in the apostolic constitution “apply without prejudice to the rights and obligations established in each place by state laws, particularly those concerning any reporting obligations to the competent civil authorities” is a clear indication that the Church recognizes the sexual abuse against minors and vulnerable adults is an offence not only in Canon law but also in civil law.

## **1.2. Strong Stand against Cover-Ups**

It is an undeniable fact that as in civil society, in the Catholic Church too, sexual abuse cases of minors by clerics and members of consecrated life were covered up to save the offender and to protect the good name of the Church. This in effect led to a situation of lawlessness where the perpetrators of crime escaped the clutches of law and the victims were denied the justice they deserved. The strong stand of the Church against such cover-ups is articulated in article 1 §1 (b) of VELM which makes it abundantly clear that not only the clerics and members of consecrated life and societies of apostolic life who commit the offence of sexual abuse against minors, those who habitually have imperfect use of reason and vulnerable adults but also the actions or omissions intended to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal is also a crime which is liable for penalties.

## **1.2. Ensuring the Protection of the Rights of the Victim**

When a child is sexually abused, the family along with the child undergoes traumatic and devastating experiences. Every member in the Church must express solidarity with the victim and his/her family members. Those who hold positions of authority in the Church have a decisive major role to play when such heinous acts occur from the clerics. The diocesan bishop and the superiors of consecrated life should take every step to heal the wounds caused by the abuses perpetrated by their clerics and should demonstrate that they truly care for the victims of the sexual abuse by their clerics. “The well-being of the minor who has fallen victim to sexual abuse by a cleric is to be of paramount concern of the Church.”<sup>2</sup> In dealing with the cases of the

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individual phases of the proceeding, taking care not to reveal information covered by the pontifical secret or the secret of office, the divulging of which could cause harm to third parties.”

<sup>2</sup> Cf., C. J Scicluna, “Sexual Abuse of Children and Young People by Catholic Priests and Religious: Description of the Problem from a Church Perspective,” in Hanson R.K et al. (eds.), *Sexual Abuse in the Catholic Church: Scientific and Legal Perspectives*, Citta del

clerical sexual abuse of minors, one of the priorities of the diocesan Bishop/major superior must be to ensure the well-being of the victim and his/her family by providing the psychological and spiritual assistance that the victim and the family require to overcome this trauma and to find renewed faith in the life of the Church. It would be an act of positive impact, if the parish priest, members of consecrated life and the other Christian faithful also make all the possible efforts within the realm of their competence to give the victim and the family the feeling that the Church is truly with the victim and is ready to help them out in their moments of great anguish.

The victims should be assured that the abuser is confronted, and justice is done in due course of time. The victims are to be further made aware that adequate measures are taken to protect the vulnerable and to prevent further abuses to the victims and others. One way of sustaining the victim's confidence in the penal process is to make his/her presence felt both at the stage of investigation and in the future process. This can be done by providing the victim with the right to information relating to the investigation and its various procedures. The victim and other people who are aware of such acts have the right to bring to the Church their concerns about the good of the Church<sup>3</sup> and have the right to be heard and judged according to the precepts of the law, applied with equity<sup>4</sup>. The bishop or his representative should offer to meet with the victims and their families to listen with patience and compassion and to share with them a profound sense of solidarity and concern. The victim should feel vindicated that the wrongdoing has been acknowledged and that the perpetrators as well as Church authorities are sorry about it. The victim also has the right to a good reputation and privacy.<sup>5</sup> Without the consent of the accuser, the names of the accuser cannot be indicated to the accused or his patron where the case of the sexual abuse is connected with another delict against the dignity of the Sacrament of Penance<sup>6</sup>. The victim has the right to resolution of the

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Vaticano: Libreria Editrice Vaticana, 2004, 17, as cited in Ligo Mathew Edattukalayil, *The Clerical Sexual Abuse of Minors and the Role of the Diocesan Bishop: In the Light of the Norms Promulgated by the Catholic Bishop's Conference of India*, Dharmaram Canonical Studies 27, Bengaluru: Dharmaram Publications, 2020, 140.

<sup>3</sup> CIC c. 212 §3; CCEO c.15.

<sup>4</sup> CIC c. 221; CCEO c.24.

<sup>5</sup> CIC c. 220; CCEO c.23.

<sup>6</sup> Cf., *Sacramentorum sanctitatis tutela*, 2010, Art. 24; Dicastery of the Doctrine of Faith, Circular Letter to assist the Episcopal Conferences in developing guidelines for dealing with the cases of sexual abuses of minors perpetrated by clerics, 411, cited in Ligo Mathew Edattukalayil, *The Clerical Sexual Abuse of Minors*, 141.

grievance suffered and it is the responsibility of the diocesan bishop to safeguard that right of the victim and to render justice to the victim.

### **1.3 Providing Support to the Victim and the Victim's Family**

The Church indeed must provide support to the victim and to the victim's family by providing them whatever psychological or medical assistance is necessary for them to get out of this trauma and to lead a normal life. There should be ongoing contact with the victim and his or her family to show the caring and supporting nature of the bishop and the diocese.<sup>7</sup> They should be informed of the further actions the diocese has taken in response to their complaint.

Child sexual abuse does not reveal itself easily, nor do children make disclosures readily and openly. Children may feel trapped by the context and the nature of the relationship surrounding the abuse. They may be sensitive to the disruption they fear will follow their disclosure. Some children, therefore, never talk about their abuse experience. Others may not feel capable of doing so until well into adult life.<sup>8</sup> Clerical sexual abuse of minors has a profoundly negative impact on the faith of those abused and on that of their families. The betrayal of trust by a cleric who abuses a child may destroy the victim's and his or her family's trust in the Church and confidence in its ministers. Therefore, there should be a structure set up of spiritual support for those dealing with the issues of faith following the trauma of clerical sexual abuse.

### **1.4. Penal Measures of the Church in the Case of Abuse of Minors and the Vulnerable by Clerics**

The Codes of Canon Law have provisions to constrain penal sanctions on Christ's faithful who commit offences against minors and vulnerable adults. The Catholic Church has its inherent right to impose penalties on the offenders. They are always to be applied with canonical equity. It is because the Penal Sanctions of the Church has the following purposes<sup>9</sup>:

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<sup>7</sup> Cf. T.P Doyle, "The Canonical Rights of the Priests Accused of Sexual Abuse," 339, cited in Ligo Mathew Edattukalayil, *The Clerical Sexual Abuse of Minors*, 142.

<sup>8</sup> Cf., Irish Catholic Bishop's Advisory Committee, *Child Sexual Abuse- Framework for a Church Response: Report of the Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse by Priests and Religious*, Dublin: Veritas Publications, 1996, 12.

<sup>9</sup> CIC c. 1311§2; CCEO c 1415.

- the restoration of justice,
- the reform of the offender, and
- the repair of the scandal.

The primary aim of the ecclesiastical penalty is the search for the sheep that has gone astray (Mt 18: 12-14; Lk 15: 4-7); in other words, the betterment of the offender. It mentions penalty as the last resort to reach this end when all other means such as exhortation etc. (cf. 2 Tim 4: 2) have failed. It hints that every offence hurts not only individuals but the whole ecclesiastical community. It offers standards for the application of penalties: punishment should neither be so severe nor so mild as to lead to dissoluteness of life or contempt of the law.<sup>10</sup> Penalty as "medicine" for the improvement of the offender necessarily demands the assessment and the diagnosis of the illness.<sup>11</sup> The Penal laws of both the Latin Church and the Oriental Churches spell out more clearly the penalties for a cleric who commits sexual abuse against minors or vulnerable adults. This involves removal from office and possible dismissal from the clerical state (CIC c. 1398 §1; CCEO c. 1453 §5 and §7).

#### 1.4. 1. *Sacramentorum sanctitatis tutela, 2021*

In the year 2001, *Motu Proprio Sacramentorum sanctitatis tutela*<sup>12</sup> determined for the universal Church that the offence against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen is reserved to the Dicastery for the Doctrine of Faith (DDF). The scope of such clerical misconduct has been expanded in the revised versions of *Sacramentorum sanctitatis Tutela* of 2010<sup>13</sup> and 2021.<sup>14</sup> Though the delict is reserved to the Dicastery of Doctrine of Faith, the local ordinary has to conduct the preliminary investigation either personally or through some suitable person.

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<sup>10</sup> Carl G. Furst, " Title 27: Penal Sanctions (CCEO cc 1401-1467)" in G. Nedungatt, *A Guide to the Eastern Code*, Rome: PIO, 2002, 789.

<sup>11</sup> Carl G. Furst, " Title 27: Penal Sanctions (CCEO cc 1401-1467), " 792.

<sup>12</sup> [https://www.vatican.va/content/john-paul-ii/en/motu\\_proprio/documents/hf\\_jp-ii\\_motu-proprio\\_20020110\\_sacramentorum-sanctitatis-tutela.html](https://www.vatican.va/content/john-paul-ii/en/motu_proprio/documents/hf_jp-ii_motu-proprio_20020110_sacramentorum-sanctitatis-tutela.html), Accessed on 4 December 2023.

<sup>13</sup> [https://www.vatican.va/resources/resources\\_norme\\_en.html](https://www.vatican.va/resources/resources_norme_en.html), Accessed on 4 December 2023.

<sup>14</sup> [https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20211011\\_norme-delittiriservati-cfaith\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20211011_norme-delittiriservati-cfaith_en.html), Accessed on 4 December 2023.

### 1.4.2. VADEMECUM

Dicastery for the Doctrine of the Faith published *Vademecum*<sup>15</sup> on certain points of Procedure in treating cases of Sexual Abuse of Minors committed by Clerics on 5 June 2022. In addition to the delicts listed in art. 6 of the *Normae* promulgated by the *motu proprio Sacramentorum sanctitatis tutela*, what is given in *Vademecum* is to be observed – with eventual adaptations – in all cases involving delicts reserved to the Dicastery for the Doctrine of the Faith. The updating "became necessary mainly as a result of the entering into force of the reformed Book VI of CIC is called "Penal Sanctions in the Church" and the "Norms regarding Delicts Reserved to the Congregation for the Doctrine of Faith" (7 December 2021), the *motu proprio "Fidem servare"*<sup>16</sup> (14 February 2022) as well as the *motu proprio "Competentias quasdam decernere"*<sup>17</sup> (15 February 2022), and finally, the Apostolic Constitution "*Praedicate Evangelium*"<sup>18</sup>(5 June 2022). The Dicastery for the Doctrine of Faith concludes its statement by reiterating that the text is again open to future development and says it welcomes input and suggestions.

This *Vademecum* prepared by the Dicastery for the Doctrine of the Faith is intended primarily for Ordinaries and other personnel who require to apply the canonical norms governing cases of the sexual abuse of minors by clerics. The present manual is meant to serve as a handbook for those charged with ascertaining the truth in such criminal cases, leading them step-by-step from the *notitia criminis* to the definitive conclusion of the case.

The delict in question includes every external offence against the sixth commandment of the Decalogue committed by a cleric with a minor (cf. CIC c. 1398 § 1, 1<sup>o</sup>; CCEO c. 1453 §5, 1<sup>o</sup>; SST, art. 6, 1<sup>o</sup>). The age of the minor was universally raised to 18 years, and this is the age currently in effect. It gives details (1) about What must be done when information

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<sup>15</sup> [https://www.vatican.va/roman\\_curia/congregations/cfaith/ddf/rc\\_ddf\\_doc\\_20220605\\_vademecum-casi-abuso-2.0\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_ddf_doc_20220605_vademecum-casi-abuso-2.0_en.html), Accessed on 4 December 2023.

<sup>16</sup> [https://www.vatican.va/content/francesco/en/motu\\_proprio/documents/20220211-motu-proprio-fidem-servare.html](https://www.vatican.va/content/francesco/en/motu_proprio/documents/20220211-motu-proprio-fidem-servare.html), Accessed on 4 December 2023.

<sup>17</sup> [https://www.vatican.va/content/francesco/en/motu\\_proprio/documents/20220211-motu-proprio-assegnare-alcune-competenze.html](https://www.vatican.va/content/francesco/en/motu_proprio/documents/20220211-motu-proprio-assegnare-alcune-competenze.html), Accessed on 4 December 2023.

<sup>18</sup> [https://www.vatican.va/content/francesco/en/apost\\_constitutionsdocs/men-ts/20220319-costituzione-ap-praedicate-evangelium.html](https://www.vatican.va/content/francesco/en/apost_constitutionsdocs/men-ts/20220319-costituzione-ap-praedicate-evangelium.html), Accessed on 4 December 2023.



is received about a possible delict (*notitia de delicto*). (2) How does the preliminary investigation take place? etc.,

### 1.4.3. Revised Penal Law on the Abuse of Minors and the Vulnerable by Clerics

The revised Penal Law<sup>19</sup> was promulgated by Pope Francis on 23 May 2021 through his Apostolic Constitution *Pascite gregem Dei* and the reformed Book VI of CIC is called **Penal Sanctions in the Church** and it became binding on the Latin Church on 8<sup>th</sup> December 2021. In the same way through the apostolic letter given in the form of Motu Proprio *Vocare Peccatores*<sup>20</sup> Pope Francis updated the **Penal Sanctions in the Church** (Titles XXVII and XXVIII) of the CCEO of Oriental Catholic Churches on 20 March 2023 and it became binding on the Oriental Catholic Churches on 29 June 2023.

The revised text of CIC c. 1398 §1 and that of CCEO Can. 1453 §5 speaks evidently of the penalties to be given to a cleric or a member of an institute of consecrated life who commits the following three delicts, namely i) committing an offence against the sixth commandment of the Decalogue with a minor or with a person who habitually has an imperfect use of reason or with one to whom the law recognizes equal protection; ii) grooming or inducing a minor or a person who habitually has an imperfect use of reason or one to whom the law recognizes equal protection to expose himself or herself pornographically or to take part in pornographic exhibitions, whether real or simulated and iii) immorally acquiring, retaining, exhibiting or distributing, in whatever manner and by whatever technology, pornographic images of minors or of persons who habitually have an imperfect use of reason. If these crimes are committed by a cleric the law mandates that he be punished with deprivation of office and with other just penalties, not excluding, where the case calls for it, dismissal from the clerical state. If the same crimes are from the part of a member of an institute of consecrated life or a society of apostolic life, or any one of the faithful who enjoys dignity or performs an office or function in the Church, he/she is to be punished with an appropriate penalty according to the gravity of the delict.

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<sup>19</sup> [https://www.vatican.va/content/francesco/en/apost\\_constitutions.index.html](https://www.vatican.va/content/francesco/en/apost_constitutions.index.html) : Apostolic Constitution "*Pascite Gregem Dei*" of Pope Francis, reforming Book VI of the Code of Canon Law (23 may 2021).

<sup>20</sup> [https://www.vatican.va/motu\\_proprio/documents/LitteraeApostolicaeMotuProprioatae/Vocarepeccatores](https://www.vatican.va/motu_proprio/documents/LitteraeApostolicaeMotuProprioatae/Vocarepeccatores) (20 March 2023).

### **1.5. Major Initiatives of Pope Francis for the Protection of the Rights of the Victim**

The pontificate of Pope Francis has brought about several concrete steps aimed at preventing all acts of sexual abuse of minors especially by clerics and members of institutes of consecrated life.

In the past, several sexual abuses of minors by clerics and consecrated persons were pushed under the carpet and consequently the guilty was never punished and justice was not meted out to the victims. Pope Francis has been outspoken about the need to protect and support victims of sexual abuse. Under his leadership, the Church has taken concrete steps to ensure that victims' rights are at the forefront of its response to abuse allegations. Some of these measures include:

1. Insistence that eparchies/ dioceses must provide institutions or offices that are easily accessible to the public for the submission of reports (VELM art. 2).
2. Making covering up of such offences and the actions or omissions intended to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal, against such abuses as a crime (VELM art. 2).
3. Establishment of the Pontifical Commission for the Protection of Minors, which advises the Pope on effective ways to safeguard minors and vulnerable adults from sexual abuse and to deal with effective with situations where the abuse has occurred.
4. The apostolic letter '*Come una madre amorevole*' which provides even for the removal of a negligent hierarch who through his acts of omission or commission facilitated or did not prevent the occurrences of such abuses.
5. The dicastery for the doctrine of faith has come out with clear instructions with its *Vademecum* on dealing with sexual abuse of minors and the vulnerable by clerics and consecrated persons.
6. The Roman Pontiff has even reformed the penal law contained in CIC through the apostolic constitutions *Pascite Gregem Dei* and that in CCEO through the apostolic constitution *Vocare peccatores*.

### **2. Measures to Protect the Rights of the Accused**

The Catholic Church through its canon law and the instructions given by the Apostolic See from time to time has made it obvious without any room for doubt that the Church wants justice to prevail in the Church.

The Church, which is ready to go even an extra mile in protecting the rights of the victims in sexual abuse cases is also keen on protecting the legitimate rights of the accused. Though the person convicted of a crime is liable to penalties, that penalty cannot be imposed arbitrarily by the competent authority. It is precisely because of this reason that the law prescribes just penalties for the offences according to their gravity strictly adhering to the procedures stipulated by the norms of law. The law also has to take into account the possibility that there are many instances where many innocent persons are wrongly accused of a crime they have never committed.

### 2.1. The Rights of the Accused Cleric for Defence

Codes of Canon Law provide every Christian faithful the right to judicial protection of one's rights, using a process with sufficient safeguards.<sup>21</sup> Everyone is to be judged with justice and with legal safeguards in the penal sanctions of the Church. CIC c 220 and CCEO c. 23 stipulate that every cleric has a right to his good reputation and therefore, he has the right to be protected from false accusations. The Church as a mirror of justice (*speculum iustitiae*) always protects the right to defence of the accused. According to CIC c.1341,<sup>22</sup> the Ordinary before imposing or declaring a penalty has to use various means of pastoral solicitude to reform the offender. CCEO canon 1403 §1<sup>23</sup> determines that the accused cleric must be informed of the accusations and should be allowed to defend himself against the allegation.

According to Charles J Scicluna, the praxis of the Dicastery of the Doctrine of Faith is to encourage the accused person to respond to the allegations even during the preliminary investigation on the condition that this should hamper neither the investigation nor the freedom of

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<sup>21</sup> CIC c. 221; CCEO c.24.

<sup>22</sup> CIC c.1341: "The Ordinary must start a judicial or an administrative procedure for the imposition or the declaration of penalties when he perceives that neither by the methods of pastoral care, especially fraternal correction, nor by a warning or correction, can justice be sufficiently restored, the offender reformed, and the scandal repaired."

<sup>23</sup>CCEO c.1403 §1: "Even when it is a question of delicts that carry an obligatory penalty by law, the hierarch, after having heard the promoter of justice, can abstain from a penal process and even abstain totally from imposing penalties, provided that, in the judgment of the hierarch himself, all these conditions simultaneously concur: the offender, not yet brought to trial and moved by sincere repentance, has confessed his delict to the hierarch in the external forum and has appropriately provided for the reparation of the scandal and harm."

the witnesses.<sup>24</sup> Similarly, the Circular Letter issued by the Dicastery of the Doctrine of Faith to assist the Episcopal Conferences, in developing guidelines for dealing with the cases of sexual abuse of minors recommend that the accused cleric be informed about the accusations and he must be allowed to clarify and defend his position even during the preliminary investigation.<sup>25</sup> Therefore, it is very appropriate for the investigator to notify the accused and allow him to respond to the allegations, which have been brought against him.

The right of defence comes from the natural law. It is the essence of making judgements in the Penal Process. It is one of the primary requirements for making any judgment in the judiciary. Precisely it means, listening to the respondent from a position of serene and objective impartiality before evaluating any eventual culpability. This obligation to listen to the respondent and to consider his defence is particularly important in the penal process of the Codes of Canon Law in which the good of the accused has special importance.<sup>26</sup>

## **2.2. Mechanism to Protect the Rights of the Accused Cleric**

The fact that a cleric is accused of sexual abuse of minors and vulnerable adults does not extinguish all his rights. Following the example of Jesus, the Good Shepherd who goes after the lost sheep and loves the sinners and outcasts, the Church especially those who are the legitimate superiors of the accused cleric are to protect their legitimate rights and see that they fulfil, the obligations proper to their state, without in any way obstructing the rights of the victim. Similarly, the competent authority is to make sure that the spiritual, intellectual, and material means that they require are available to them.<sup>27</sup>

This right has added relevance in the course of the investigation on the accused delict. According to CIC c.1720, if the Ordinary believes that the matter should proceed by way of an extra-judicial decree, he should

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<sup>24</sup> Cf., C. J Scicluna, " Clerical Rights and Duties in the Jurisprudence and Praxis of the Dicastery of the Doctrine of the Faith on *Graviora Delicta*," 276 cited in Ligo Mathew Edattukalayil, *The Clerical Sexual Abuse of Minors*, 111.

<sup>25</sup> Cf., Dicastery of the Doctrine of Faith, Circular Letter to assist the Episcopal Conferences in Developing Guidelines for Dealing with the Cases of Sexual Abuses of Minors Perpetrated by Clerics, 411 cited in Ligo Mathew Edattukalayil, *The Clerical Sexual Abuse of Minors*, 112.

<sup>26</sup> Joaquin Llobell, "The Balance of the Interests of the Victims and the Rights of the Accused: The Right to Equal Process," Patricia M. Dugan, *The Penal Process and the Protection of Rights in Canon Law* (Montreal, Canada: Wilson & Lafleur Ltee, 2005) 69.

<sup>27</sup> CIC c. 384; CCEO c.192 §4 - §5.

summon the accused and provide the opportunity for defence, carefully weigh with the help of two assessors the incriminating evidence and the arguments raised by the accused in his defence. When the Ordinary has seen all the forgoing, if the offence is certainly proved, and the penal action has not extinguished, he is then to issue an extrajudicial decree declaring the penalty according to CIC cc 1342-1350. The Codes of Canon Law, give certain rights to the accused priest to safeguard his dignity. The investigation should in no way illegitimately harm the right of the accused cleric to his good reputation and privacy<sup>28</sup> because the accused cleric is presumed to be innocent until the contrary is proven. Care should be taken since there can be also false accusations of the clerical sexual abuse of the minors to damage the cleric's good reputation. Therefore, the Bishop must conduct an impartial investigation to prove the authenticity of the accusation.<sup>29</sup> The accused also has the right of all the Christian faithful to vindicate and defend his rights according to the norm of the law, the right to be judged according to the prescripts of the law applied with equity and the right not to be punished with canonical penalties except according to the norm of law.<sup>30</sup>

Another important right of the accused cleric to consider here is the right to a canonical counsel. The right to canonical "counsel is constitutive of the right to self-defence."<sup>31</sup> This right of the accused is upheld by the Dicastery of the Doctrine of Faith in its Circular Letter to the Episcopal Conferences when it states that even during the preliminary investigation of the clerical abuse of a minor, the accused cleric should be informed of the accusation and allowed to respond to it.<sup>32</sup>

Clerics have the right to sustenance even if they incur penalties, provided that the penalty incurred is not dismissal from the clerical

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<sup>28</sup> CIC c. 220; CCEO c.23.

<sup>29</sup> Cf. T.P Doyle, "The Canonical Rights of the Priests Accused of Sexual Abuse," 340, cited in Ligo Mathew Edattukalayil, *The Clerical Sexual Abuse of Minors*, 137.

<sup>30</sup> CIC c. 221; CCEO c. 24.

<sup>31</sup> V.Tamayo, "Canonico-Pastoral Implications of Placing a Cleric on 'Administrative Leave,'" 127, cited in Ligo Mathew Edattukalayil, *The Clerical Sexual Abuse of Minors*, 138.

<sup>32</sup> Cf., Dicastery of the Doctrine of Faith, Circular Letter to assist the to assist the Episcopal Conferences in developing guidelines for Dealing with the Cases of Sexual Abuses of Minors Perpetrated by Clerics, [https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20110503\\_abuso-inori\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20110503_abuso-inori_en.html), Accessed on 4 December 2023.

state.<sup>33</sup> It implies that the right to sustenance remains, even when the accused cleric is under investigation, the bishop must provide him with decent support.<sup>34</sup>

## 2.4. Protection from False and Malicious Accusations

A cleric accused of a crime may be proved guilty or it may happen that the accusation was false and baseless and was raised only to tarnish the reputation of the innocent cleric or to harm the Church. For the protection of an innocent person falsely accused of having committed a crime CCEO c. 1454<sup>35</sup> stipulates that a person who has falsely accused someone of an offence is to be punished with an appropriate penalty, not excluding a major ex-communication, especially if the accused is a confessor, hierarch, cleric, religious, member of a society of common life in the manner of religious, or a lay person appointed to an ecclesiastical function (*munus*) with due regard for c.731.<sup>36</sup>

It is not unusual that many times out of personal animosity, contempt for the Church and selfish personal gains, baseless allegations without an iota of truth are made against clerics and consecrated persons, which the falsely accused person is unable to defend. Many innocent clerics and consecrated persons have been punished for crimes which they had not even thought of. It is because of this reason that the revised penal law in both codes namely CCEO c. 1414 §1 and CIC c. 1321 § 1 contain the new norm that each person is considered innocent until the contrary is proven. As Juan Arias writes, this provision “is intended to safeguard the integrity of a falsely accused person and implies the need for evidence to demonstrate the guilt of the accused and to enable those who must impose a penalty to form moral certainty. It also means that those who have been given the onerous task to judge should set aside any prejudice, and evaluate the circumstances of each case impartially

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<sup>33</sup> CIC c. 1350 §1; CCEO c.1410.

<sup>34</sup> Cf., Dicastery of the Doctrine of Faith, Circular Letter to assist the to assist Episcopal Conferences in developing guidelines for Dealing with the Cases of Sexual Abuses of Minors Perpetrated by Clerics, 411 cited in Ligo Mathew Edattukalayil, *The Clerical Sexual Abuse of Minors*, 139.

<sup>35</sup> CIC c. 1390 also speaks of the same crime.

<sup>36</sup> The norm given CCEO c. 731 gives the unambiguous instruction that a person who confesses a false denunciation of an innocent confessor to ecclesiastical authority concerning the crime of solicitation to sin against chastity is not to be absolved unless that person formally retracts the denunciation and is prepared to repair damages if there are any.

and objectively."<sup>37</sup> To ensure the right administration of justice to the accused, CCEO c. 1139 § 2 and CIC c. 1481 make it mandatory that in a penal trial, the accused must always have an advocate either appointed by the accused himself or given by the judge.

Thus, whenever an investigation is carried out in the backdrop of accusations made against priests/religious or anyone accused of crimes, it's important to begin with the presumption of innocence and with an earnest intention to discover the truth. To defend themselves with the help of law and facts the judge or the tribunal which deals with the case is to make available the assistance of legal advocates to the accused.

### **Conclusion**

Balancing the rights of the victims and the accused in a sexual abuse case of minors and the vulnerable is undoubtedly a delicate task. Not only a cleric who really has committed the crime and is thus liable to a penalty in accordance with the gravity of the crime he has perpetrated, but even an innocent priest could be falsely and maliciously accused of a crime he has never thought. There are also instances where innocent clerics were removed from active ministry as a measure to forestall any possible scam. The loss of reputation the consequent emotional trauma and the social isolation, he and his near and dear ones suffer are often unimaginable and indescribable. While making every effort to protect the rights of those who are truly victims of sexual abuse and to punish the offenders who have left a deep wound in the mystical body of Christ, no stone should be unturned to ensure that the innocent is never punished. There is a maxim which states, "It is better for a thousand culprits to escape punishment than for one innocent person to be wrongly convicted. In the administration of justice towards the victims and the accused in the cases of abuse of minors and the vulnerable, the role of those holding positions of authority in the Church is very important and crucial. They need to show extreme sensibility in safeguarding the rights of both the victim and the accused. Even if the accused person has done the crime he is accused of, the matter must be investigated and the accused must be judged and punished only according to the clear stipulations and safeguards of law.

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<sup>37</sup> Juan Arias – Juan Ignacio Arrieta "Book Vi: Penal Sanctions in The Church," in Juan Ignacio Arrieta, *Code of Canon Law Annotated*, 4th Edition, Montreal: Wilson & Lafleur Inc., 2022, 1026.

It can be reasonably concluded that with this intention in mind, the law instructs the bishop/competent authority to engage himself very diligently and with extreme pastoral prudence from the time he receives the *notitia criminis*. This diligence needs to be shown in assessing the admissibility of the initial information regarding the offence and in appointing the team of the preliminary investigators. Similarly, the *votum* has to be prepared with maximum care because, to a greater extent, the future course of action depends on it. The preliminary investigation mandated by the law to ascertain the truth and the possibility for the victim and the accused to present their version of the case are effective means to make sure that justice is administered with equity devoid of fear and favour or prejudice. Saint Pope John Paul II way back in 2003 through his post-Synodal exhortation *Pastores gregis*, recalled the necessity of balancing the interests of the injured parties and the rights of the accused.<sup>38</sup> The Pontifical Magisterium, even that of recent times, has insisted both inside and outside the Church on the necessity of harmonizing, of balancing, the protection of the public good with the dignity of the rights of the abused and the rights of the accused. Such equilibrium is intrinsically involved in the juridical order, and it is in this context of a complex of norms and applications that the Pontiffs have affirmed that the canonical order must be a “mirror of justice.”

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<sup>38</sup> John Paul II, *Pastores Gregis*. [https://www.vatican.va/content/john-paul-ii/en/apost\\_exhortations/documents/hf\\_jp-ii\\_exh\\_20031016\\_pastores-gregis.html](https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_20031016_pastores-gregis.html). (Assessed on 28 October 2023).