

FUNDAMENTAL RIGHTS AND DUTIES OF WOMEN IN THE CATHOLIC CHURCH

A Study Based on *the Code of Canons of the Eastern Churches* and *the Code of Canon Law*

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Abstract: Pope Francis, while answering the questions during the final session of the Union of International Superiors' General's (UISG) meeting held in Rome in May 2016, said that he would like to study through the Congregation for the Doctrine of Faith whether there could be ordained deaconesses in the Catholic Church. This answer has created a renewed interest among many within and outside the Catholic Church to look into the Canon Law of the Catholic Church to see the place and role of women in it. *The Code of Canon Law* (1983) of the Latin Church and the *Code of Canons of the Eastern Churches* (1990) have articulated the fundamental rights and duties of every Christian faithful in the Catholic Church. This study examines critically and creatively the place and role of women in the Catholic Church, examining the long way in her understanding of the fundamental rights of women and the post-Vatican II reform of her canon law; now the Church places women on par with men regarding the fundamental rights and duties.

Keywords: Diaconate, Equal Rights, *Ordinatio Sacerdotalis*, Rights and Duties of Christian Faithful, Women Ordination

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1. Introduction

Pope John Paul II, through his apostolic letter *Ordinatio Sacerdotalis* taught in 1994 in a definitive manner that the Catholic Church is unable to ordain women to priesthood. However, that document did not address the question whether women could be ordained as deacons in the Catholic Church. Recently, Pope Francis, while answering the questions during the final session of the Union of International Superiors' General's (UISG) meeting held in Rome on 13 May 2016, said that he would like to study through the Congregation for the Doctrine of Faith whether there could be ordained deaconesses in the Catholic Church.¹ This answer and his ensuing act by which he created a commission to study the matter² have created a renewed interest among many within and outside the Catholic Church to look into the Canon Law of the Catholic Church to see the place and role of women in it.

¹Zenith.org, "Full Text of Popes Q and A with Women Religious," May 13, 2016 <<https://zenit.org/articles/full-text-of-popes-q-and-a-with-women-religious/>> (28.7.2016).

²Zenith.org, "Pope Institutes Commission to Study the Diaconate of Women," August 2, 2016 <<https://zenit.org/articles/pope-institutes-commission-to-study-the-diaconate-of-women/>> (6.8.2016). It is noteworthy that the committee is headed by Archbishop Luis Francisco Ladaria Ferrer, the secretary of the Congregation for the Doctrine of Faith and the committee includes six men and six women. They are: Rev. Robert Dodaro (President of Augustinianum, Rome), Piero Coda (Gregorianum, Rome), Santiago Madrigal Terrazas SJ (Madrid), Karl-Heinz Menke (Bonn), Bernard Pottier SJ (Brussels), Aimable Musoni SDB (Salesianum, Rome), Phyllis Zagano of Hofstra University, USA, Nuria Calduch-Benages from Spain, Francesca Coccini (La Sapienza, Rome), Michelina Tenaci (Rome), Mary Malone SFA (Rector, Antonianum, Rome) and the German Professor Marianne Schlosser. The inclusion of the American Professor Phyllis Zagano, who recently vehemently argued through an article published in Harvard Bulletin in favour of ordaining women as deacons in the Catholic Church is a clear indication that the Pope has taken this issue in a very serious manner. Cf. <<http://bulletin.hds.harvard.edu/articles/summerautumn2015/ordain-catholic-women-deacons>> (6.8. 2016).

The Code of Canon Law(1983) of the Latin Church and the *Code of Canons of the Eastern Churches*(1990), the two law books of the Catholic Church, have clearly articulated the fundamental rights and duties of every Christian faithful in the Catholic Church. In these codes of canon law, there is a clear and evident departure from the pre-conciliar understanding, albeit without doctrinal foundation, that women were not equal to men. This study analyses critically the place and role of women in the Catholic Church primarily based on the canonical literature. In fact, one can see clearly that the Catholic Church has travelled a long way in her awareness, understanding and articulation of the fundamental rights of women and in the post-Vatican II reform of her canon law and now she places women on par with men regarding the fundamental rights and duties.

2. Place of Women According to CIC 1917

To understand the place given to women in the Church according to *the Code of Canon Law* of 1917, one has to study the code from two perspectives, namely, from the treatise about the faithful in general and in the section of laity in particular, and by looking into the section on religious.

2.1. Rights and Duties of Lay Persons

The Pio-Benedictine *Code of Canon Law* of 1917 did not deal with the rights and duties of the Christian faithful in a specific manner. In spite of the fact that the code divided the people of God into clergy, laity and religious, the section on laity contained only two canons (cc. 682-683). Whereas the first canon reiterated the right of the laity to receive from the clergy "according to the norm of ecclesiastical discipline" spiritual goods (CIC 1917, c. 682), the second one forbade the laity from wearing the clerical habit, with certain exceptions. It reads thus: "It is not permitted for laity to wear clerical habit, unless it concerns either a student in a Seminary or others aspiring to orders as described in Canon 972, § 2, or those laity legitimately dedicated to the service of a church while they are in the church or are outside of it taking part in some ecclesiastical ministry."

From these two canons, it is evident that there is no positive articulation of the role and rights of the laity in that pre-Vatican Code of Canon Law and the role of women also does not find a place in that section. Though not in the section on laity, there is yet another reference to laity in CIC 1917 c. 1342, § 2 and it is again a prohibition: "All laity are forbidden to preach in churches, even religious." Another reference to the faithful in CIC 1917 c. 1348 is also a duty: "The faithful are to be diligently warned and encouraged to be present frequently for holy sermons." Likewise, CIC 1917 c. 1496 stipulated: "The Church also has the right, independently of civil power, of requiring from the faithful what is necessary for divine cult, the honest sustenance of clerics and other ministers, and for the remaining ends proper to her." From these three canons it is clear that the 1917 *Code of Canon Law* lacked a positive vision and presentation of lay persons in the Church and it did not have a section on the rights proper to lay persons.

2.2. Rights and Duties of Women Religious *vis-à-vis* Men Religious

The discrimination of women in *CIC* 1917 is evident in the section on religious (cc. 487-681). This section has numerous canons on women religious which do not have counterparts. In many instances, where the men religious were given the freedom to govern themselves having the rightful autonomy, the women religious were at the receiving end. A close reading of the canons of this section would give one the impression that the Catholic Church of that time really doubted whether the women were able to govern themselves!

According to *CIC* 1917 c. 500, §3, through an apostolic indult it was permitted for a religious institute of men to have a religious institute of women subjected to it. *CIC* 1917 c. 506, §1, while legislating regarding the major superior of religious institutes of men, did not stipulate that such an election is to be presided over by the local Ordinary. However, §3 of the same canon stipulated that similar election in a religious institute of women shall have his presence in person or through another as

the president of the election. Regarding the obligation of visitation by the local Ordinary, given in CIC 1917 c. 512 too discrimination existed between the norms regarding the visitation of houses of women and men. According to CIC 1917 c. 517, there was the obligation on the part of religious institutes of pontifical right of men to have a procurator general designated "who conducts the affairs of his religious institute before the Holy See". However, the women religious institutes of pontifical right were not given this provision. Similarly, where the men religious were permitted to invest their money according to the proper law of their institute, CIC 1917 c. 533 directed that the women religious needed the permission of the local ordinary for such investments. In fact, it was in tune with CIC-1917 cc. 1520, §1 and 1521, §1 which stated that women cannot administer ecclesiastical goods.

It may sound strange to the reader that CIC 1917 c. 544 stipulated differently regarding the qualities required for the admission of male and female aspirants. §7 of the canon stated: "Women, finally, should not be received unless there has been an accurate investigation of their character and morals..." One might wonder why this is something specific for women alone!

Another discriminatory law was regarding dowry in religious institutes. CIC 1917 cc. 547-551 legislated this matter. In fact, CCEO cc. 488 §4 and 545 §4 are also about dowry. However, unlike in these post-Vatican canons where the word dowry applies to both sexes, the need of dowry was only for women religious in the Pio-Benedictine code.

The office of the novice master is another discriminatory agent that existed in CIC 1917. Unlike CIC 1983 and CCEO which envisage a member of the religious institute to be the director/directress of the novices, the 1917 code (c. 559) used the term Novice Master (*Magister*) and his associate (*socius*) implying that even in the religious institutes of women there should be Novice Masters and that the women members of their own institute were not sufficient to give adequate formation to their novices (cf. cc.559, 560, 562 and 563).

Likewise, the canons on cloister in CIC 1917 cc. 600 and 602 also discriminated against women though one may argue that it was for the better protection of women religious. However, this argument fails before canon 602: "The cloister of monasteries of nuns must be closed so that, to the extent possible, no one in it or from it has an external view of persons."

3. Fundamental Rights of Women: CIC 1983 and CCEO

The fundamental rights and duties of women in the Catholic Church are not directly and explicitly enlisted in *the Code of Canon Law* of 1983 and in the *Code of Canons of the Eastern Churches*. However, for the first time in the history of canonical legislation, both codes have a section on the rights and duties of Christian faithful and since they were formulated as part of a project called *Lex Ecclesiae fundamentalis*, the canons in this section are very similar. These canons do not distinguish between the rights and duties of men and women in the Church and hence all the rights enlisted in the canons are equally valid for both sexes.

3.1. Rights and Duties of Christian Faithful: CIC 1983

The Code of Canon Law of 1983 is divided into seven books, of which the second one titled *the People of God* is divided into three parts: 1. Christ's Faithful, 2. The Hierarchical Constitution of the Church, and 3. Institutes of Consecrated Life and Societies of Apostolic Life. The first title of the first part this book is *The Obligations and Rights of All Christ's Faithful* (cc. 208-223). The term Christ's faithful (*Christifideles*) denotes all baptized: "Christ's faithful are those who, since they are incorporated into Christ through baptism, are constituted the people of God..." (CIC c. 204 §1). Hence this term is used in the Code to denote the People of God without distinguishing them based on their particular status or office in the Church.

The opening canon in the above section CIC c. 208 reads thus:
Flowing from their rebirth in Christ, there is a true equality of dignity and action among all of Christ's faithful. Because of this equality they all contribute, each according to his or her

own condition and office, to the building up of the Body of Christ.³

This canon is not an invention of *the Code of Canon Law* of 1983; it is the reiteration of the teachings of the Second Vatican Council. For example, *Lumen Gentium* n.32 teaches:

There is, therefore, no inequality in Christ and in the Church, with regard to race or nation, social condition or sex, because "there is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus" (Gal. 3:28; cf. Col. 3, 11).

Likewise, *Gaudium et Spes*, n. 29 teaches:

Since all men and women possessed of a rational soul and created in the image of God have the same nature and the same origin, and since they have been redeemed by Christ and enjoy the same divine calling and destiny, the basic equality which they all share needs to be increasingly recognized.

Not everyone is identical in physical capacity and in mental and moral resources. But every type of discrimination affecting the fundamental rights of the person, whether social or cultural, on grounds of sex, race, colour, class, language or religion, should be overcome and done away with, as contrary to the purpose of God.

It is evident that since there is a "true equality of dignity and action" as recognized and reiterated in this canon following the lead given by *Lumen Gentium* 32 and *Gaudium et Spes* 29, then there is no place for discrimination against women in this Code. Hence the absence of a specific section on the rights and duties of women is to be considered not as a deficiency in it, but as an advancement from the earlier one.

After having affirmed the fundamental equality of everyone in the Church irrespective of sex or status in CIC c. 208, *CIC* cc. 209-223 enlist the rights and duties of every Christian faithful,

³This canon also complies very well with articles 1 and 2 of the *Universal Declaration of Human Rights* of 1948. Cf. Ian Brownlie and Guy S. Goodwin-Gill, *Basic Documents on Human Rights*, Oxford: Oxford University Press, 2002, 18-23.

without distinguishing them as man or woman, nor as clerics, religious or lay persons.⁴ James A. Coriden, a noted canonist, categories these rights as human rights, ecclesial rights, ecclesiastical rights and communal rights.⁵ Coriden writes:

The basic human rights include the rights to life, liberty, equality, privacy, movement, marriage and family, freedom of thought, conscience and religion, opinion and expression, assembly and association, work, ownership of property and education.

These fundamental human rights are not lost by a person's baptism into the church. They remain, and many of them are explicitly acknowledged by the church. ...

Some human rights are qualified or limited because of their exercise within the church. For example, while the canons recognize the right and duty of the faithful to make their opinions known to their pastors, the people are urged to do so keeping in mind the faith and moral teachings of the church and with reverence for their pastors.⁶

The rights mentioned in the Code include access to the Word of God and to the sacraments of the Church (c. 213), to worship according to the prescripts of their own rite (c. 214), to one's own form of spiritual life (c. 214), to found and direct associations for the purpose of charity or piety or for the promotion of Christian vocation in the world (c. 215), to promote or sustain apostolic action (c. 216), to a Christian education (c. 217), to a just freedom of enquiry and of expressing the opinion prudently (c. 218), to be free from any kind of coercion in choosing a state of life (c. 219), to good reputation (c. 220), to self-defence (c.221), to be judged according to the prescripts of the law applied with equity (c. 221), not to be punished with canonical penalties except according to the norm of law (c. 221), to marry in the Church (c.1058), and to Christian burial (c. 1176, §1). CIC c. 223§1 reminds that "in exercising their rights, the Christian faithful, ...

⁴For a detailed treatise on these rights, cf. James A. Coriden, *The Rights of Catholics in the Church*, New York: Paulist Press, 2007.

⁵Coriden, *The Rights of Catholics in the Church*, 8-10.

⁶Coriden, *The Rights of Catholics in the Church*, 9.

must take into account the common good of the Church, the rights of others and their duties toward others," and in CIC 223 §2, we are reminded that "in view of the common good," ecclesiastical authority can regulate (*moderari potest*) the exercise of rights which are proper to the Christian faithful.

The duties of all Christian faithful include the duty to maintain communion with the Church (c. 209), to lead a holy life (c.210), to work "so that the divine message of salvation more and more reaches all people in every age and in every land" (c. 211), to "follow with Christian obedience those things which the sacred Pastors, inasmuch as they represent Christ, declare as teachers of the faith or establish as rulers of the Church" (c. 212, § 1), to "assist with the needs of the Church so that the Church has what is necessary for divine worship, for the works of the apostolate and of charity, and for the decent support of ministers" (c. 222, §1), and to promote social justice and to assist the poor from their own resources (c.222, §2).

3.2. Rights and Duties of Christian Faithful according to CCEO

The Code of Canons of the Eastern Churches (CCEO) promulgated in 1990 by Saint John Paul II is the common code of all the Eastern Catholic *sui iuris* Churches and is divided into thirty titles and its first title is "The Rights and Obligations of All the Christian Faithful" (cc. 7-26). This section is almost identical with CIC cc. 208-223, except for the slight change present in CCEO c. 17, which states that "the Christian faithful have the right to worship God according to the prescriptions of their own Church *sui iuris* (cf. CIC c. 214), and for the stipulation in CCEO c. 12, §2 that the Christian faithful "are to fulfill with great diligence their obligations to the universal Church and to their own Church *sui iuris*." It is to be observed that in CCEO too, the section on rights and duties of Christian faithful does not enlist any special right or duty of women in the Church. To put it differently, every right that is recognized by the code for a male Christian faithful is equally present for a woman Christian faithful too in the Eastern Code as it is the case in the Latin Code of 1983.

3.3. Rights and Duties of Lay Persons: CCEO and CIC 1983

Whereas the 1917 *Code of Canon Law* did not present lay persons in any positive and affirmative mode, both CIC 1983 and CCEO present them with a positive outlook. In fact, the Eastern Code has an entire title on "Lay Persons:" Title XI. The opening canon in this title, CCEO c. 399 defines the lay persons thus:

The designation of "lay persons" is applied in this Code to the Christian faithful whose proper and specific quality is secularity and who, living in the world, participate in the mission of the Church, but are not in sacred orders nor ascribed in the religious institute.

With this definition, where a lay person is identified as one who is not in sacred order and not ascribed to a religious institute, the Eastern Code has made a tripartite division of the people of God as clergy, laity and religious. This tripartite division is apparently absent in CIC, where the division of the people of God is bipartite: namely, as clergy and laity:⁷

§1. By divine institution, there are among the Christian faithful in the Church sacred ministers who in law are also called clerics; the other members of the Christian faithful are also called lay persons.

§2. There are members of the Christian faithful from both these groups who, through the profession of the evangelical counsels by means of vows or other sacred bonds recognized and sanctioned by the Church, are consecrated to God in their own special way and contribute to the salvific mission of the Church; although their state does not belong to the hierarchical structure of the Church, it nevertheless belongs to its life and holiness (CIC c. 207).

⁷James Mathew Pampara, "Place and Role of Consecrated Persons in the Church According to *Lumen Gentium* and the Codes of Canon Law," in Saju Chackalackal, ed., *Consecrated Life for a Transformed World*, Bangalore: Dharmaram Publications, 2016, 117-134; Ivan Žužek, "Bipartizione o tripartizione dei *Christifideles* nel CIC e nel CCEO," in James Mathew Pampara, *Understanding the Eastern Code*, Kanonika 8, Rome: Pontifical Oriental Institute, 1997, 328-353.

CCEO cc. 400-409 and CIC cc. 224-231 enumerate the rights and duties specific to the lay persons, and there is no distinction between men and women and hence every right mentioned in these sections are also the rights of women in the Church.

3.3.1. Rights and Duties of Lay Christian Faithful: CIC 1983

CIC c. 225 §1 states that the lay persons "are bound ... to work so that the divine message of salvation is made known and accepted by all persons everywhere in this world." In other words, laity has the obligation to take part in the mission of the Church. The canon continues: "This obligation is even more compelling in those circumstances in which only through them can people hear the gospel and know Christ." Though this canon is presented as an obligation of the lay Christian faithful, indirectly it contains a right of every lay person, whether man or woman, to be a missionary. The second paragraph of the same canon places a unique obligation on the part of the laity; namely, "the duty to imbue and perfect the order of the temporal affairs with the spirit of the gospel" (CIC c. 225, §2). The lay persons who live in marital state have also the duty "to work through marriage and family to build up the people of God" (CIC c. 226, §1). They also have the duty to give Christian education to their children "according to the doctrine handed on by the Church" (c.226, §2). They also have to heed the doctrine set forth by the magisterium of the Church (c. 227).

The rights of lay men and women include the right to educate their own children (c. 226, §2) and the right "to have recognized that freedom which all citizens have in the affairs of the earthly city" (c. 227). CIC c. 228, §1 declares thus:

Lay persons who are found suitable are qualified to be admitted by the sacred Pastors to those ecclesiastical offices and functions which they are able to exercise according to the precepts of the law.

Though the lay persons do not have "the right" in this regard in the strict sense, this canon has enormously enlarged the horizon of men and women in the Church by opening many offices and functions to them. The second paragraph of the same

canon states that "lay persons who excel in necessary knowledge, prudence, and integrity are qualified to assist the Pastors of the Church as experts and advisors, even in councils according to the norm of law" (CIC c. 228, §2). According to CIC c. 229, lay men and women have the right to acquire the knowledge of Christian doctrine (§1), "that fuller knowledge of the sacred sciences which are taught in ecclesiastical universities and faculties or in institutes of sciences by attending classes there are pursuing academic degrees" (§2), and "to receive from legitimate ecclesiastical authority a mandate to teach the sacred sciences, if they have the required qualifications (§3).

According to CIC c. 230, §2, "lay persons can fulfill the function of lector in liturgical actions by temporary designation," though stable designation through liturgical rite to the ministries of lector and acolyte is foreseen only for men (CIC c. 230, §1). CIC c. 230, §3 permits both lay men and women to supply the lack of ministers by doing "certain of their duties, namely, to exercise the ministry of the word, to preside over liturgical prayers, to confer baptism, and to distribute communion..." However, it is to be noted that the homily is reserved only to priests and deacons (CIC c. 767), though a lay person can give a homily or a sermon in a celebration of the Word of God. CIC c. 231 stipulates that lay men and women who hold ecclesiastical offices have the right to "decent remuneration appropriate to their condition so that they are able to provide decently for their own needs and those of their family. They also have a right for their social provision, social security, and health benefits to be duly provided."

According to *the Code of Canon Law*, lay men and women having the right qualification can be appointed as judges in ecclesiastical tribunals (CIC c. 1421, §2), auditors (CIC c. 1428, §2) and assessors (CIC c. 1424). They can also hold office of notary (CIC c. 1437), promoter of justice and defender of bond in such tribunals (CIC c. 1435). According to CIC c. 1112, lay persons can be even delegated to assist a marriage on certain situations and they can administer certain sacramentals too (CIC c. 1168). CIC c. 129, §2 declares that laity can cooperate in the exercise of the

power of governance in the Church. They can take part in diocesan synods (CIC c. 463, §1, 5°, 463, §2), and can be members of diocesan pastoral councils (CIC c. 512, §1). A lay person of either sex can hold the office of diocesan financial officer (CIC c. 494) and the diocesan financial council which shall have "at least three members of the Christian faithful truly expert in financial affairs and civil law, outstanding in integrity, and appointed by bishop" (CIC c. 492) and these experts can be any lay person. According to CIC c. 482, the office of the chancellor of a diocese is not restricted to priests alone and therefore this is another office to which even a lay woman can be appointed. Likewise, the Latin Code foresees the consultation with "laity outstanding in wisdom" regarding the appointment of diocesan or coadjutor bishops (CIC c. 377, §3). Lay men and women can be permitted to preach in a church or oratory (CIC c. 766), and they assist in catechetical formation (CIC cc. 776, 785, §1). CIC c. 517, §2 envisages the possibility of entrusting the pastoral care of a parish even to a non-ordained person when there is a real scarcity of priests. The Code also has provision for consulting the laity before the appointment of a pastor of a parish (CIC c. 524).⁸

3.3.2. Rights and Duties of Lay Persons according to CCEO

The Title XI of the Eastern Code (CCEO cc. 399-409) contains the section on the rights and duties proper to the lay persons. Though most of the rights and duties enlisted here are not much different from those given in CIC 1983, there are some unique features that we find in the Eastern Code in this section. For example, CCEO c. 403, §1, which has no parallel in CIC, reads as follows:

With due regard for the right and obligation to observe everywhere their own rite, lay persons have the right to

⁸For a more detailed study of the rights and duties of women in the Catholic Church, cf. Dominique le Tourneau, "Les Droits et le devoirs fondamentaux de la femme dans l'Église," *Studia Canonica* 49 (2015), 443-482. See also, Philip Ade Hoteyin, *The Role of Women in the Church in the Light of the New Code of Canon Law*, Pars dissertationis ad lauream in Facultate Iuris Canonici, Rome: Pontifical Urban University, 1985.

participate actively in the liturgical celebrations of any Church *sui iuris* whatsoever, according to the prescripts of the liturgical books.

Another injunction of CCEO, which has no parallel in the Latin Code, is found in CCEO c. 405 and it is the following:

Lay persons should study zealously their liturgical, spiritual, theological and disciplinary patrimony, so that mutual good will, esteem and unity of action between the lay members of different Churches *sui iuris* is fostered, and so that the variety of rites does not harm the common good of the society in which they live, but rather may daily contribute to that same good.

This canon can be seen by some as restricting the lay persons. But in fact, by obliging the lay persons to study the four-fold patrimony of different Churches *sui iuris*, in fact, this canon is giving a more active role to the laity in the life of the Church. Another Eastern canon which has no parallel in CIC is CCEO c. 408, §3: "Lay persons are fully subject to ecclesiastical authority with respect to the exercise of ecclesiastical functions."

Regarding the ecclesiastical offices and functions permitted to the lay persons, CCEO makes a clear restriction in the case of the office of the chancellor of an eparchy, which is reserved only to a presbyter or a deacon (CCEO c. 252). Otherwise, like in CIC, the offices of judge (CCEO c. 1087, §2), auditor (CCEO c. 1093), promotor of justice (CCEO c. 1094) and defender of the bond (CCEO c. 1095) are open to lay persons. This is the case with the other offices permitted for the laity in CIC 1983.

4. *Ordinatio Sacerdotalis* and Women Ordination to Priesthood

According to CCEO c. 754 and CIC c. 1024, "only a baptized man is able to receive sacred ordination validly." On 22 May 1994, Pope John Paul II issued an apostolic letter on priestly ordination and women entitled "*Ordinatio Sacerdotalis*" in which he wrote:

Wherefore, in order that all doubt may be removed regarding a matter of importance, a matter which pertains to the Church's divine constitution itself, in virtue of my ministry of confirming the brethren (cf. Lk.22:32) I declare that the Church has no authority whatsoever to confer priestly

ordination on women and that this judgement is to be definitively held by all the Church's faithful.⁹

Congregation for the Doctrine of Faith (CDF) in Vatican, while responding to a *dubium* concerning the inadmissibility of women to Ministerial Priesthood, on 28 October 1995 responded stating that the teaching contained in *Ordinatio Sacerdotalis* that the Church has no authority whatsoever to confer priestly ordination to women as part of the deposit of faith.¹⁰ Though CDF explained that the teaching in this Apostolic Letter is to be considered as infallible, the internal evidence and the style of the letter did not support it and hence it is not considered as an infallible teaching.¹¹ According to CCEO c. 597 and CIC c. 749, "no doctrine is understood to be infallibly defined unless it is clearly established as such." This apostolic letter at no point stated that it is to be considered as an infallible teaching and therefore it is not imperative from the part of the believer to

⁹John Paul II, Apostolic Letter *Ordinatio Sacerdotalis* on Reserving Priestly Ordination to Men Alone, 22 May 1994, AAS 85 (1994), 545-548; English Translation: *Canon Law Digest*, vol. XIII (2009), 533-536. In fact, his apostolic letter *Mulieris Dignitatem*, no. 26, already contained this teaching: "I declare that the Church has no faculty at all to confer priestly ordination to women and that this teaching is to be held definitively by all the faithful of the Church." John Paul II, Apostolic Letter *Mulieris Dignitatem* on the Dignity and Vocation of Women, 15 August 1988, AAS 80 (1988), 1653-1729; <http://w2.vatican.va/content/john-paul-ii/en/apost_letters/1988/documents/hf_jp-ii_apl_19880815_mulieris-dignitatem.html> (28.7. 2016).

¹⁰CDF, "Response to a *dubium* Concerning the Inadmissibility of Women to Ministerial Priesthood," 28 October 1995, AAS 87 (1995), 1114.

¹¹Cf. Francis A. Sullivan, *Creative Fidelity: Weighting and Interpreting Documents of the Magisterium*, Dublin: Gill & Macmillan, 1996, 181-184. In fact, CDF stated regarding *Ordinatio Sacerdotalis* as follows: "This teaching requires definitive assent, since, founded on the written Word of God, and from the beginning constantly preserved and applied in the Tradition of the Church, it has been set forth infallibly by the ordinary and universal Magisterium (cf. Second Vatican Council, Dogmatic Constitution of the Church *Lumen Gentium*, 25, 2)." CDF, "Response to a *dubium*."

consider it as such. However, the Roman Pontiff clearly stated that his teaching on this matter is to be considered as a definitive teaching. This has, in fact, gave rise to a new category in the levels of teaching authority in the Church, the non-infallible definitive teaching of popes or the college of bishops, besides, the infallible and definitive teaching of popes or the college of bishops (ecumenical councils), the non-infallible non-definitive teaching of popes or the college of bishops (CCEO c. 599; CIC c. 752) and the authentic teaching of one's own bishop or of the bishops gathered together in synods or in particular councils (CCEO c. 600; CIC c. 753).

This new category of non-infallible definitive teaching¹² in *Ordinatio Sacerdotalis* created another problem for *CIC* 1983 and *CCEO*, since it did not contain such a category. In fact, the codes, following *LG* 25, defined that the response due to the infallible definitive teaching from the part of the believers is that they "must believe with divine and Catholic faith" (CCEO c. 598, §1, CIC c. 750). Since what should be the response of the believers to a non-infallible but definitive magisterium of the Roman Pontiff was not stipulated in the codes of canon law, John Paul II, on 18 May 1998, through an Apostolic Letter given *Motu Proprio* and entitled *Ad tuendam fidem*, modified CCEO c. 598 and CIC c. 750 and included in them a section stipulating that such teachings "must be firmly accepted and held."¹³ This *Motu Proprio* also added a penalty to those who refuse to accept and hold such teachings by changing CCEO c. 1436 and CIC c. 1371:

In addition to these cases, whoever obstinately rejects a teaching that the Roman Pontiff or the College of Bishops, exercising the authentic Magisterium, have set forth to be held

¹²Cf. Marino Mosconi, *Magistero autentico non infallibile e protezione penale*, Rome: Pontificio Seminario Lombardo, 1996.

¹³John Paul II, Apostolic Letter *Motu Proprio Ad Tuendam Fidem*, 18 May 1998, AAS 90 (1998) 457-461; English Translation: *Canon Law Digest*, vol. XIV (2012), 643-647. Cf. also, Davide Salatori, *L'oggetto del magistero della Chiesa alla luce del m.p. Ad Tuendam Fidem: il can. 750 visto attraverso i Concilî vaticani*, Tesi Gregoriana, Serie Diritto Canonico 51, Rome: Editrice Pontificia Università Gregoriana, 2001, 461.

definitely, or who affirms what they have condemned as erroneous, and does not retract after having been legitimately warned, is to be punished with an appropriate penalty.¹⁴

5. Ordination of Women as Deacons: A Historico-Theological and Canonical Analysis.

Though Saint John Paul II, through *Ordinatio Sacerdotalis* taught in a definitive manner that the Church cannot ordain women to priesthood, he did not evidently close the door for the ordination of women as deacons in the Church. In fact, Cardinal Carlo Maria Martini, the Archbishop of Milan, on 2 June 1994, is reported to have stated at the Eucharistic Congress in Siena that "the pope has said nothing about the ordination of women to diaconate". He added that "our real task is ... to see how ... a path of ecumenical dialogue remains possible ... in which one can show the presence of women in every field."¹⁵ A noted theologian, Bruno Forte, just three days after, urged the Church through his article in the Italian daily *L'Informazione*, to

pinpoint the best possible ways of female ministry to make its own original and irreplaceable contribution to ecclesial unity, expressed and served by ordained ministry. It might not be incongruent her to make appeal to the female diaconate in the ancient church ...¹⁶

In fact already in 1992, the Canon Law Society of America entrusted one of its committees to take up a study of "the canonical implications of ordaining women to the permanent

¹⁴CCEO c. 1436, §2; cf. also, CIC c. 1371, 2°.

¹⁵Peter Hebblethwaite, "A Search for Openings in the Absence of Infallible," *National Catholic Reporter*, June 17, 1994, p. 10, cited in Canon Law Society of America, *The Canonical Implications of Ordaining Women to the Permanent Diaconate*, Report of an Ad Hoc Committee of the Canon Law Society of America, Washington, DC: Canon Law Society of America, 1995, 4.

¹⁶Andrea Tornielli, "Career Women," *30 Days in the Church and in the World* 6/7-8 (1994), 17, cited in Canon Law Society of America, *The Canonical Implications of Ordaining Women to the Permanent Diaconate*, Report of an Ad Hoc Committee of the Canon Law Society of America, Washington, DC: Canon Law Society of America, 1995, 4.

diaconate"¹⁷ based on the Declaration *Inter Insigniores* of 1976,¹⁸ which stated the need to study the ordination of women to the diaconate and came up with a document entitled *The Canonical Implications of Ordaining Women to the Permanent Diaconate* in 1995.¹⁹ Likewise, the International Theological Commission, which functions under CDF, also came up with a document on this topic in 2003 which is entitled "*From the Diakonia of Christ to the Diakonia of the Apostles.*"²⁰ Regarding the deaconesses, this study has concluded with "two important indications":

1. The deaconesses mentioned in the tradition of the ancient church - as evidenced by the rite of institution and the functions they exercised - were not purely and simply equivalent to the deacons;
2. The unity of the sacrament of Holy Orders, in the clear distinction between the ministries of the Bishop and the Priests on the one hand and the Diaconal ministry on the other, is strongly underlined by ecclesial tradition, especially in the teaching of the magisterium.

¹⁷CLSA *Proceedings* 54 (1992) 276-277.

¹⁸CDF, "Declaration *Inter Insigniores* on the Question of the Admission of Women to the Ministerial Priesthood," October 15, 1976, AAS 69 (1977), 98-116.

¹⁹Canon Law Society of America, *The Canonical Implications* 53. Some important works on this topic of ordination of women to diaconate are the following: Cipriano Vagaggini, "L'ordinazione della diaconesse nella tradizione greca e bizantina," *Orientalia Christiana Periodica* 40 (1974) 146-189; Roger Gryson, *The Ministry of Women in the Early Church*, Collegeville: The Liturgical Press, 1976; and Aimé Georges Martimort, *Deaconesses: An Historical Study*, trans., K. D. Whatehead, San Francisco: Ignatius Press, 1986.

²⁰International Theological Commission, "From the Diakonia of Christ to the Diakonia of the Apostles," *Historico-Theological Research Document*, Chicago/Mundelein: Hillenbrand Books, 2003; International Theological Commission, *Texts and Documents*, eds., Michael Sharkey and Thomas Weinandy, vol. II, 1986-2007, San Francisco: Ignatius Press, 2009, 229-317. http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_pro_05072004_diaconate_en.html (4.7.2016).

In the light of these elements which have been set out in the present historico-theological research document, it pertains to the ministry of discernment which the Lord established in his Church to pronounce authoritatively on this question.²¹

Though this conclusion apparently does not close the possibility of the Supreme authority of the Church to make a final decision on this matter, the two conclusions that the commission has arrived at do not give much scope for the Church to take a positive step in this regard. The study conducted by the CLSA subcommittee has in fact come up with a slightly different conclusion: "Canonically, a decision to ordain women to the permanent diaconate is possible."²²

... Historically, women have been ordained as deaconesses. While it would be anachronistic to call "deaconesses" the women whose ministry is recorded in the New Testament, by the third century there clearly were women deacons. What their ministry involved has varied for place to place, and from century to century. Although some debate whether they were indeed "ordained," the evidence points to an ordination parallel to that conferred on men to be deacons. Although this past experience does not require that women be ordained to the permanent diaconate today, it does indicate that this possibility is not foreclosed to the Church.²³

While the study conducted by the Theological Commission carries more weight in settling the question of whether the Catholic Church should revive the institution of women deacons in the Church, the study of a subcommittee of a national canon law conference, albeit the stature of CLSA as the most powerful canon law society in today's world, is of lesser importance. However, the conclusion that 'canonically', and therefore,

²¹International Theological Commission, *From the Diakonia of Christ*, 109; International Theological Commission, *Texts and Documents*, 317.

²²Canon Law Society of America, *The Canonical Implications of Ordaining Women to the Permanent Diaconate*, Report of an Ad Hoc Committee of the Canon Law Society of America, Washington, DC: Canon Law Society of America, 1995, p. 49.

²³Canon Law Society of America, *The Canonical Implications*, 50.

doctrinally and from the point of view of canonical discipline, there is no obstacle in reinstating the institution of deaconess in the Catholic Church is, in fact, a clear statement in favour of those who would like to revive it.

6. Deaconesses in the Draft Canons During the Codification of CCEO.

Prof. George Nedungatt SJ, in his recent book *Renewal of Life and Law: An Indian Contribution*²⁴ describes in detail the failed attempt of the *Coetus IV* of the Pontifical Commission for the Redaction of the Code of Oriental Canon Law, which was headed by him, to insert canons on deaconesses in the Eastern Code. He writes thus regarding it as follows:

Without trespassing on the sensitive theological question about the ordination of women, *Coetus IV* tried to make a canonical provision for the restoration of the ancient institution of the deaconess. Unfortunately, CCEO does not contain the text of the two canons formulated by the *Coetus IV* and approved by the *Coetus Centralis* because they failed to win Vatican approval.²⁵

The two draft canons which were not even published in *Nuntia*, the Vatican journal which reported the major activities of the reform of Eastern canon law, are the following:

Canon 1. Where deaconesses are appointed according to the pristine tradition of all the Eastern Churches, they can perform, without prejudice to law, those functions that are conferred on them as proper to them by the law of the Particular Church, with due regard to can. 2.

Canon 2. If it is so provided in particular law, deaconess is competent:

1° to serve at the ceremony of baptism according to the prescripts of the liturgical books;

²⁴George Nedungatt, *Renewal of Life and Law: An Indian Contribution*, Dharmaram Canonical Series, 10, Bangalore: Dharmaram Publications, 2015, 92-99.

²⁵Nedungatt, *Renewal of Life and Law*, 92.

2° to serve at Mass according to the decision of the local hierarchy;

3° to minister Holy Communion to the sick, according to the pastoral needs, as judged by the same local Hierarchy;

4° to teach catechism;

5° to perform other pastoral charges as determined by the local Hierarchy;

6° in monasteries of nuns or in the houses of other women religious, in the absence of a priest or deacon, also to read the Gospel during the celebration of the liturgy of the hours, to preach, and to minister Holy Communion.²⁶

From these canons, it is evident that those functions enlisted as those of a deaconess are in fact ecclesiastical functions that can be entrusted to any lay man or women and therefore they cannot be considered as radical in nature. However, they would have been radical in ministry and a return to the roots. Nevertheless, they failed to get approval of Vatican at that time. Therefore, it seems that it may not be that easy even today during the pontificate of Pope Francis to have a speedy revival of the much disputed ancient institution of deaconesses in the Catholic Church. We have a commission now! Since the Catholic Church recognizes herself as *Ecclesia semper reformanda*, one cannot foreclose for sure the possibility of reviving such an institution. However, it is to be observed that the Second Vatican Council, in its decree *Orientalium Ecclesiarum*, n. 6, calls not to return to all "ancestral traditions," but only to those traditions from which "they have fallen unduly" (*indebite*).²⁷

²⁶ Nedungatt, *Renewal of Life and Law*, 96-97.

²⁷Cf. George Nedungatt, *Laity and Church Temporalities: Appraisal of a Tradition*, Dharmaram Canonical Series 1, Bangalore: Dharmaram Publications, 2000, 457: "First of all, one has to ascertain the exact meaning of this conciliar directive. This council is not urging an unconditional return to ancestral traditions. The return is conditional: if they have come short. Here the reference to the original Latin text is not only useful but necessary: *si ab iis ob temporum vel personarum adiuncta indebite defecerint, ad avitas traditiones redire satagant*. That is, "if [in the matter of legitimate liturgical rites and discipline] they [the

7. Prohibition of the Ordination of Women to Priesthood: A Human Right Violation?

It may appear to some that the definitive teaching that the Church cannot ordain women to priesthood is a violation of the fundamental right of women in the Church. In fact, it is not the case. It is because no one has a fundamental right to be ordained. CCEO c. 323 and CIC c. 1008 clearly state that clerics are Christian faithful "chosen by the competent ecclesiastical authority":

Clerics, who are also called sacred ministers, are Christian faithful who, chosen by the competent ecclesiastical authority, by means of a gift of the Holy Spirit received in sacred ordination, are deputed to be ministers of the Church, participating in the mission and power of Christ the Pastor (CCEO c. 323, §1).

Since it is not a fundamental right of anyone, reserving it to men alone cannot be considered as a violation of the rights of women in the Church.

8. The Need of Feminine Genius in the Catholic Church

Pope Francis, in his interview with Antonio Spadaro, emphasized the need of the Catholic Church to develop a theology of women:

We have to work harder to develop a profound theology of the women. Only by making this step will it be possible to better reflect on their function within the Church. The

Oriental] have *unduly* (or *improperly*) fallen short of them owing to circumstances of times or persons, they are to do the needful to return to their ancestral traditions." This crucial text has been translated differently in English, and not all versions are equally good or correct. In the commonly used edition by Austin Flannery, O.P., a key word "unduly" (to render the Latin word *indebite*) is missing: "They are to aim always at a more perfect knowledge and practice of their rites, and if they have fallen away due to circumstances of times or persons, they are to strive to return to their ancestral traditions.... Unfortunately, most people who rely on this English version do not realise the loss of the key word "unduly," and so often land in or propose conclusions that have no conciliar support."

feminine genius is needed wherever we make important decisions. The challenge today is this: to think about the specific place of women also in those places where the authority of the Church is exercised for various areas of the Church.²⁸

Pope Francis expressed his desire to have the feminine genius more in the Catholic Church again in his apostolic exhortation *Evangelii Gaudium* no. 103:

The Church acknowledges the indispensable contribution which women make to society through the sensitivity, intuition and other distinctive skill sets which they, more than men, tend to possess. I think, for example, of the special concern which women show to others, which finds a particular, even if not exclusive, expression in motherhood. I readily acknowledge that many women share pastoral responsibilities with priests, helping to guide people, families and groups and offering new contributions to theological reflection. But we need to create still broader opportunities for a more incisive female presence in the Church. Because "the feminine genius is needed in all expressions in the life of society, the presence of women must also be guaranteed in the workplace" and in the various other settings where important decisions are made, both in the Church and in social structures.²⁹

Pope Francis reiterated his desire to see the role of women enhanced in the Catholic Church in another occasion too.³⁰

²⁸Pope Francis in dialogue with Antonio Spadaro, S.J., editor of *Civiltà Cattolica*, "The Heart of a Jesuit Pope: Interview with Pope Francis," *Studies*, number 407, Autumn 2013, 255-278, 270, cited in George Nedungatt, *Renewal of Life and Law*, 101-102, n. 20.

²⁹Pope Francis, Apostolic Exhortation *Evangelii Gaudium*, 24 November 2013, no. 103 <http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html> (28.7.2016).

³⁰Laura Ieraci, "Pope Urges 'More Widespread and Incisive Female Presence' in Church," Vatican Radio, February 7, 2015, cited in Phyllis Zagano, "Ordain Catholic Women as Deacons," n.4. Likewise, while answering a question on the role of women in the Church, Pope Francis

9. Conclusion

This study has shown that in the law books of the Catholic Church, there is a tremendous improvement after the Second Vatican Council regarding the fundamental rights and duties of women. *The Code of Canon Law* of 1983 and the *Code of Canons of the Eastern Churches* in fact give equal rights to both men and women in the Church when the fundamental rights and duties of Christian faithful are considered. Although CIC 1917 did not consider the women religious on par with the men religious, the reform of canon law carried out in the spirit of the Second Vatican Council has abolished all such discriminatory canons and thus there exists a fundamental equality between both sexes

replied: "It is true that women are excluded from decision-making processes in the Church: not excluded, but the presence of women is very weak there, in decision-making processes. We must move forward. For example – truly I see no difficulty – I believe that in the Pontifical Council for Justice and Peace the secretariat is managed by a woman religious. Another was proposed and I appointed her but she preferred not to accept as she had to go elsewhere to do other work in her congregation. We must move forward, because for many aspects of decision-making processes ordination is not necessary. It is not necessary. In the reform of the Apostolic Constitution *Pastor Bonus*, speaking of Dicasteries, when there is no jurisdiction deriving from ordination – that is, pastoral jurisdiction – it is not written that it can be a woman, I don't know about a head of a Dicastery, but... For example, for migrants: a woman could go to the Dicastery for Migrants. And when it is necessary – now that migrants fall under the jurisdiction of a Dicastery, it will be for the Prefect to give this permission. But ordinarily, in the execution of a decision-making process, this can be done. For me the process leading to decisions is very important: not only the execution, but also the development, and therefore that women, whether consecrated or lay, become part of the reflection process and part of the discussion. Because women look at life through their own eyes and we men are not able to look at life in this way. The way of viewing a problem, of seeing anything, is different for a woman compared to a man. They must be complementary, and in consultations it is important that there are women." <https://w2.vatican.va/content/francesco/en/speeches/2016/may/documents/papa-francesco_2016_0512_uisg.html> (5.7. 2016).

in the Church law. Though the Catholic Church continues to teach in a definitive manner that she does not have the competence to ordain women to priesthood since it is not in the Scripture and in her Sacred Tradition, the possibility of ordaining women as deacons is open, although at present CIC and CCEO do not have such provisions. In fact, what the Catholic Church needs today is perhaps not to revive the institution of deaconesses, which may not have much relevance in today's ecclesial life, but to find the ways and means in which the feminine genius is heard and felt in the decision making structures in all levels.

The decision making structures in the Church, starting from the Roman Curia, can have more women functioning in different roles. In fact, there are already many women working in the different dicasteries of Vatican and in many ecclesiastical universities and faculties. Their place and role can be strengthened by appointing them to key decision making positions, especially in the Roman Curia, in the Congregation for the Institutes of Consecrated Life and the Societies of Apostolic Life, and in the two new dicasteries that are formed to deal with family, justice and peace, migrants, integral development, etc. In fact, focusing only on clerical functions and ministries and including some women into the group of clerics will only increase the clericalism prevalent in the Catholic Church. A Catholic Church, were the People of God, irrespective of their status as priests, religious and lay persons, can have a decisive role and say in the affairs of the Church is much more suitable than simply adding a small group of women as deaconesses with a very limited ministerial role from them in the Church. However, the symbolic value of including women into the clerical fold could be enormous in the minds of many and hence before making a final decision in this regard the pros and cons of such a step are to be thoroughly studied and meticulously evaluated. Any action that would highlight the conciliar idea that the Catholic Church is not a mere clerical organization, not a mere hierarchical pyramidal structure, but a community of the People of God, where men and women are having equal rights

and duties, can be conceived as an action in the right direction and hence to be encouraged. In this regard, the reform of canon law that happened after the Second Vatican Council gives the much needed support through its canons of both *CCEO* and *CIC*. Another encouraging step taken after the Second Vatican Council is the inclusion of women saints among the Doctors of the Church. Out of the thirty-six doctors of the Church, there are four women. It was, in fact, only in 1970 for the first time two women saints were declared Doctors of the Church by Pope Paul VI.³¹ This step of including women among the Doctors of the Church points to the existence of ontological equality among men and women in the Catholic Church, though from the point of view of functional equality based on ministries reserved to clerics alone, the doctrine and law of the Catholic Church do not favour the same equality.

³¹Cf. James Mathew Pampara, "Saint Gregory of Narek: The Thirty Sixth Doctor of the Church," *Vinayasadhana: Dharmaram Journal of Psycho-Spiritual Formation* VI (no. 2, July 2015), 63-72.