

# **CANON LAW**

**Dr. Thomas Thengumpallil**



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**ALPHA INSTITUTE OF THEOLOGY AND SCIENCE**

Thalassery, Kerala, India - 670 101

Ph: 0490 2344727, 2343707

Web: [www.alphathalassery.org](http://www.alphathalassery.org), Email: [alphits@gmail.com](mailto:alphits@gmail.com)



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Mr. Renjith KC  
Mrs. Anitha Vijayan  
Mrs. Jeshitha Vijesh
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4. John M. Huels, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, Wilson and Lafleur, Montreal, 2009.
5. Antony Pinheiro, *Marriage in Latin and Oriental Canon Law*, Kalamassery, Jyothir Dharma Publications, 2006.

## Chapter 1

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# Introduction to Canon Law

“**C**anon law” is a term used to denote the rules of the Catholic Church. It is the body of laws and regulations made by or adopted by ecclesiastical authority for the government of the Church and its members. Law is a familiar term which is a measure or norms of conduct. We are induced to act or refrain from acting in accord with the law. Laws are products of reason, and they are directed toward the common good of the society for which they are given. Thomas Aquinas defines Law: “law is an ordinance of reason for the common good, made by that person who has care for the community and promulgated to that community”.

Pope Paul VI, while addressing an International Conference of Canonists talked about the role of law in human and Christian life:

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“The sum total of juridical relations is inseparably linked to the excellence and dignity of the human person. Such is the finality willed by the Creator. For law is not anything else but the secure defence that lawfully and authoritatively orders and promotes the common good, while at the same time guaranteeing and protecting against all interference the inviolable autonomy of the individual. It is within the scope or terms of that autonomy that each human being can effectively and responsibly achieve the perfection of his personality.... If we further consider man as a Christian, as a member of the People of God in the life of the Church, we see that the function of law is not foreign to the mystery of salvation, nor does it stop short on the threshold. For whatever concerns the human person finds its place in the divine plan of salvation. Consequently, the economy of salvation embraces - together with the human person and precisely because of it - the whole heritage of law, for this latter is bound up inextricably with justice and with the human person.”

In his talk the Pope clarified the following basic notions of law.

- In the life of man as a member of human society, law exists and has got an important function.
- Law is inseparably linked to the excellence and dignity of human person.
- Law orders and promotes the common good and guarantees and protects the inviolable autonomy of the individual. It gives protection against all interference on the autonomy of individual.
- Law is for the common good at the same time a guarantee of the individual rights.
- This function of law is not foreign to the mystery of salvation. For whatever concerns the human person finds its place in the divine plan of salvation.
- Consequently, the economy of salvation embraces - together with the human person - the whole heritage of law.

- So precisely because the human person is concerned in the divine plan of salvation, the law, which seeks the common good at the same time, guarantees the individual rights, finds its role in the life of the People of God.

## **Church and Law**

Church, although based on divine revelation, is also a human institution. As human communities, Church requires rules. This earthly community is incomplete and imperfect. It grows and expands in the history. It moves towards the heavenly community. In its growth and movement towards perfection, it needs good values and order. These values and order support the life of the community. Here comes the relevance of laws in the community. In order to make the people to follow the values, the society needs certain laws.

The task of law is to determine and assign the various roles of the people and to coordinate them for the common good. The Catholic Church, being a large and ancient community of faith, through the centuries has accrued a lot of rules. We can summarize the necessity of laws in the Church in the following points:

- a. Church is a mystical body constituted of human beings. Since it is established in the form of social and visible unit it needs laws. So that its hierarchical and organic structure remain visible.
- b. That its exercise of the functions, divinely entrusted to human beings particularly of the exercise of sacred power and the administration of sacraments, is properly ordered.
- c. That the mutual relationship of Christ's faithful are reconciled in justice, based on charity and with the rights of each, safe guarded and defined (Law is a vehicle of charity).
- d. The common initiatives which are undertaken so that Christian life may be evermore perfectly carried out, are supported, strengthened and promoted by canon laws.

The task of canon law is to determine and assign the various roles of people and co-ordinate it for the common good. The law is

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not an end in itself. But it is a specific instrument that realizes justice in social relations.

### **Canon Law**

“Canon” comes from the Greek word *kanon*, meaning “reed, rod, or ruler”. It describes the measure or ruler used by a carpenter or designer. It was a standard by which things were measured. It came to mean a rule of conduct (cf. Gal. 6/16; Phil. 3/16). Figuratively it is a “rule,” of the art or of a trade, a model, a type, a definitive list or catalogue. It meant the accepted standard or art or professional practice. For example, *Mausikos Kanon* meant an instrument that gives proper pitch to a singer; *Kanon Alexandrinus* meant the list of the best Greek classical authors. In Christian usage, ‘Canon’ was a rule or standard. It meant the standard by which things were measured. It also came to mean a rule of conduct. It is used in this sense in the New Testament: eg. Gal. 6:16; Phil. 3:16.

By the middle of the third century the word ‘Canon’ had come to refer to those doctrines recognized as orthodox by the Christian Church. It was also used to designate collectively the definitive list of books accepted as Sacred Scripture. The term ‘Canon’ is also used to denote the catalog or register of saints. The term ‘Canon’ is again applied to the Roman Catholic Mass that opens with the Preface, or Prayer of Thanksgiving and closes just before the recitation of the Lord’s Prayer. In the Latin Church, ‘Canon’ is also an ecclesiastical title given to the clergy attached to a cathedral church or to group of priests living under a semi-monastic rule, such as the Augustinians.

Regarding, the application of the term ‘canon’ to rules and laws of the Church, it can be seen that the use of the plural form to denote Church precepts originated about the year 300. In the early Church no one spoke of the “laws of the Church”. The authoritative rulings of the apostles that made up part of the apostolic tradition, the

directives or provisions of the Councils and of pastors in “fulfilling the law of Christ” (Gal. 6:2), came to be called ‘canons’, that is ‘rule’ of conduct or ‘pattern or standard’ of Christian behavior.

Both Greek and Latin had other words for law: *nomos* in Greek and *lex* in Latin. But the Church chose to name its rules ‘canons’ because it recognized that its rules were different from the laws of the Roman Empire. Although civil laws are also behavioral rules, the word canon was, from the outset, used exclusively for church laws. When Justinian spoke about the disciplinary measures of Eastern Councils, he also used the word *canon* in opposition to the word *nomos*, the civil law.

### **Nature and Scope**

Nature of canon law is truly human because Church is a human community and it has got a divine affinity because it is an integral part of the Church, which is the sacrament of Christ. It leads people to Christ. Laws are results of the reflection of human beings over revealed data. They reach certain laws by this reflection. Canon Law is rooted in the God given laws, namely, divine natural laws and divine positive laws.

The natural law is the rule of conduct which is prescribed to us by the Creator in the constitution of the nature with which He has endowed us. In other words natural law is written in human conscience and is a part of the human nature. Like all the rest of creation, man is destined by God to an end, and receives from Him a direction towards this end. In virtue of his intelligence and free will, man is master of his conduct. Unlike the things of the mere material world he can vary his action, act, or abstain from action, as he pleases. Yet he is not a lawless being in an ordered universe. In the very constitution of his nature, he too has a law laid down for him, reflecting that ordination and direction of all things, which is the eternal law. The rule, then, which God has prescribed for our conduct, is found in our nature itself. eg. Don’t say lie; don’t kill, etc.

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Divine positive law is that which is enacted by God and made known to man through revelation. Positive laws can be made by other human authorities who have the authority to care for the society. Every nation can make civil law for their citizens. The Church makes ecclesiastical laws for its members. Institutions can make institutional laws for its subjects. All these are positive laws.

Regarding the scope of canon law, it can be stated that it is related with external forum of the Church and the public life of the Church. Canon law has to deal with church order and discipline, and not with dogma and doctrine of faith. While learning canon law one should recognize that it contains guidelines for behavior or actions not beliefs. It presents norms of conduct, not the content of faith. For official Church teaching one should consult the official documents and not canon law. Canon law prescribes who can teach officially in the Church and in what manner they teach.

It is the duty of theology to give interpretations of God's revelation and Church's teachings. While, Canon law is concerned with the pattern of practice within the community of faithful. They are distinct but closely related disciplines. Canon law has its basis in theology. At the same time, it also gives certain legal interpretation to the dogmas and doctrines and puts them into canonical language.

### **Sources of Canon Law**

The ultimate source of canon law is God, Whose will is manifested either by the very nature of things (natural Divine law), or by Revelation (positive Divine law). Both are contained in the Scriptures and in Tradition. However, the Church's rules were shaped by its internal needs, the surrounding cultures, and the pressures of changed circumstances. Various sources can be found in the formation of the present legal system of the Catholic Church.

**1. Holy Scripture-** Holy Scriptures especially the New Testament is regarded as the primary source of canon law. Pope John Paul II, in his apostolic Constitution promulgating the Latin

code, speaks of the Biblical foundation of the Canon Law: “It is necessary to remind ourselves of that distant heritage of law contained in the books of the Old and New Testaments. It is from this, as from its first source, that the whole juridical and legislative tradition of the church derives.”

**2. Apostolic Fathers-** The Apostolic writings were the predominant sources for the first three centuries: The Acts of the Apostles and the letters of Paul give us occasional information on the attitude of the Christian communities and the qualities expected of the ministers of the church - bishops, priests, deacons. In addition to the New Testament, the writings of the Apostolic Fathers (the second generation of Christian writers) and the pseudo-apostolic writings (documents attributed to but not written by the Apostles) contain the oldest descriptions of the customs existing in the East from the 2nd century. The pseudo-apostolic writings contain disciplinary rules that arose and were accepted in one or more local church communities. They are true legal norms of the post-apostolic era, completely in line with the law/teachings of the apostles. As they are wrongly attributed to an apostle, they are referred to as pseudo-apostolic. Such Collections are: i) The Didache or Teaching of the Twelve Apostles; ii) The Apostolic Tradition; iii) Didaskalia [Teaching] of the Apostles; iv) The Apostolic canons or Church Order and v) The Apostolic Constitutions. These works give series of prescriptions on sacraments, fasting, the organization of the Christian community and its ministers, the obligations of ministers and the faithful, and the election and consecration of bishops, priests and deacons, etc.

**3. Councils-** The periodic gatherings of the leaders of the local Churches called synods or councils often deliberated and settled norms of Church discipline, Ecumenical Councils from Nicaea I to Second Vatican are major sources of ecclesiastical regulations. The first seven ecumenical councils gave basic norms on every sphere of

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ecclesiastical life and thus they have prime importance in the formation of canon law. Many local councils of the early centuries also contributed significantly to the Church legislation.

**4. Popes-** The letters and responses sent by the Bishop of Rome were received with particular respect and gradually the decrees and decretals of the popes had been acquired force of law in the life of the Church.

**5. Civil Law-** The Roman Law has great influence on canon law. After the conversion of the emperor Constantine Christianity became the official religion of the Roman Empire. Emperors like Theodosius (348-450) and Justinian (483-565) issued laws regulating internal matters of the Church. The enactments of Roman emperors and later kings on matters which affect religion have been accepted as authoritative by the Church in those days.

**6. Canonical collections-** Enactments of local and ecumenical councils were collected into compilations from the fourth century onwards. Certain authors collected the existing laws of their time and compiled in to one and those collections become either formal or material source of law. Eg. Gratian, Corpus Iuris Canonici, Corpus Iuris Civilis (Collections of Civil law), Collections of Nomo Canons (the eastern collection). These are not promulgated law as a code but later authors collected and their collection became later the source book and referred.

**7. Rules of Religious orders-** Rules or constitutions evolved within the religious communities influenced other religious communities and eventually the common rules on religious life. Laws on monastic life and religious life made for particular community were adopted for the whole church especially the rule of the Benedict, the Franciscan, Dominican, Carmelite and Augustinian order etc. They become the source of law for the whole church in the course of time.

## The Codification of Canon Law

The Second Vatican Council was convoked by Pope John XXIII to address the role of the Catholic Church in the modern world, for which there was need for a general renewal of the Church. One aspect of such renewal was the Church's canonical discipline, both Latin and Eastern. At present the whole Catholic legislation is arranged in three canonical texts. 1) Code of Canon Law (1983)- the canon law exclusively for the Latin Church; 2) Code of Canons of The Eastern Churches (1990) - the canon law for the Eastern Churches in the Catholic communion; 3) *Pastor Bonus*- norms for the governance of the Roman Curia. These three canonical collections were promulgated by Pope John Paul II.

Already by the time of the seventh ecumenical council of Nicea II (787), the Church possessed a common fund of 765 canons made by the ecumenical and local councils and the Fathers of the Church, and approved by the first canon of Nicea II. Though these canons were put together in canonical collections, they were not organized in a systematic manner.

Centuries of legislative activity of any society, whether ecclesiastical or civil, naturally results in a large body of laws, which, if left unorganized, can become difficult to access and contain elements which are outdated or even contradictory. The consequences of such a situation are uncertainty about the law in force, arbitrariness in governance and a diffused sense of insecurity. Therefore, parallel to legislative activity, there must be an endeavour to organize the body of laws, make it accessible and assist the practitioners and experts in its comprehension and interpretation.

One way of arranging laws in an orderly manner is codification. The word code is derived from the Latin *codex*, which originally referred to blocks of wood covered with wax (later to be replaced by parchment or papyrus) and used for writing. In the language of law today, by code is understood a body of laws arranged

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systematically according to a uniform set of principles. Such a code eliminates in the first place all contradictory and obsolete legislation and usually adds newly-promulgated laws. A code can comprehend all fields of legislation for a given society or be restricted to one field, such as civil, commercial, criminal or maritime law.

Within the secular sphere, interest in the codification of legislation arose during the latter part of the eighteenth century. European secular authorities adopted the philosophical principle of the ‘Enlightenment’ (the philosophical thinking of that time) that society could be organized according to reason and that the legal system was also to be comprehensive, rational and systematic, i.e., a code. A codification of legislation was not simply the collection of laws, but a reformulation of the laws according to definite principles conforming to the mentality and the needs of the times.

### **Code of Canons for the Latin Church**

Until first Vatican council papal decrees guides the activities and different aspects of the church. In the first Vatican council there was a plan to discussion on the revision of canon law. The first proposal was to have a unified code for all the churches. But, later it was decided to have two different codes for the Latin Church and the Oriental Churches.

Pope Pius X, on 19 March 1904 announced the establishment of a commission of cardinals who would gather all of the current laws of the Latin Church into a single, authoritative collection. This was a monumental task and one that took years to complete. Pietro Gasparri, the general secretary of the commission, did much of the work. Nevertheless, the process involved both scientific research and pastoral consultation with bishops and religious superiors throughout the world. On Pentecost Sunday, 27 May 1917, Pope Benedict XV (the successor of Pope Pius X) promulgated the resulting *Codex Iuris Canonici*, the first Code of Canon Law for the Latin Church. This code is popularly called as “1917 Code of Canon Law”.

When Pope John XXIII announced his intention to convoke the Second Vatican Council, he also announced his intention to establish a Pontifical Commission to revise the Code of Canon Law. He waited to appoint the first members of the Pontifical Commission to revise the Code of Canon Law until 28 March 1963, well after the completion of the Council's first session. He did this to ensure that the newly revised Code of Canon Law would be a direct result of the Council. Pope John XXIII died in June of 1963 and his successor, Pope Paul VI took up the challenge of both the Council and the new Code. After twenty years scholarly work the new code was ready and Pope John Paul II promulgated the New Code of Canon Law on the feast of the conversion of St. Paul, 25 January 1983 - 24 years to the day that Pope John XXIII had announced that the revision process would begin. On 27 November 1983, the first Sunday of Advent, the new Code of Canon Law went into effect, and the first Code of Canon Law, promulgated 66 years earlier, was abrogated (ceased to be binding).

This Code differs quite clearly from the 1917 Code in its structure and ecclesiological perspective upon which its structure is based. The 1917 Code was a clear juridic expression of Vatican Council I, which had preceded its drafting, and the 1983 Code is likewise a clear juridic expression of Vatican Council II, the Council which had immediately preceded it. In Pope Paul VI's terminology, the new Code reflects the "new way of thinking" of the Council. This code contains 1752 canons which are organized in 7 distinct books.

I. General Norms	canons 1-200
II. The People of God	canons 201-746
III. The Teaching Office of the Church	canons 747-833
IV. The Office of Sanctifying in the Church	canons 834-1253
V. The Temporal Goods of the Church	canons 1254-1310
VI. Sanctions in the Church	canons 1311-1399
VII. Processes	canons 1400-1752

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The main contents and highlights of each of these Books are as follows:

### *Book I – General Norms*

This Book treats of basic juridic principles common to all the canons of the Code, and it gives definitions and general norms applicable throughout the law. This Book defines the limits of the Code, defines and discusses Ecclesiastical Laws, the role and limit of Custom, General Decrees and Instructions, Individual Administrative Acts, Statutes and Rules of Order, Physical and Juridic Persons, Juridic Acts, the Power of Governance, Ecclesiastical Offices, Prescription, and the Computation of Time.

### *Book II – The People of God*

This is the longest Book of the current Code and takes its title from Chapter 2 of the conciliar document, *Lumen Gentium*. It is divided into 3 major Parts: (1) the Christian Faithful (canons 204-329) – concerned with the role of all the baptized in the Church. It contains the rights and obligations common to all members of the Church as well as those, which pertain to the laity and clergy specifically. It also looks at Personal Prelatures and Associations of the Christian Faithful. (2) The Hierarchical Constitution of the Church (canons 330-572) – concerned with the identification and role of authority within the Church. This section treats the Supreme Authority in the Church (the Roman Pontiff, the College of Bishops, the Synod of Bishops, the Cardinals of the Church, the Roman Curia, and Legates of the Roman Pontiff), as well as Particular Churches and their Groupings (Dioceses, Ecclesiastical Provinces and Regions, Diocesan Consultative Bodies and Diocesan Personnel). (3) Institutes of Consecrated Life and Societies of Apostolic Life (canons 573-746) – concerned with norms governing the various ways of living out a public consecration of life (as a member of a Religious Institute, a Secular Institute, a member of a Society of Apostolic Life, a Hermit, or a member of the Order of Virgins).

*Book III – The Teaching Office of the Church*

This Book examines the Church's teaching mission, especially as accomplished in the Ministry of the Divine Word (preaching and catechesis), the Missionary Activity of the Church, in Catholic Education, through use of the Instruments of Social Communication (especially, books), and by the Profession of Faith.

*Book IV – The Office of Sanctifying in the Church*

This Book first examines each of the 7 Sacraments of the Church, beginning with the 3 Sacraments of Initiation and ending with the 2 vocational Sacraments, Holy Orders and Marriage. The Book then treats Other Acts of Divine Worship (Sacramentals, the Liturgy of the Hours, Funeral Rites and the Veneration of the Saints, Sacred Images and Relics), as well as Sacred Times and Places (Churches, oratories, chapels, shrines, altars, cemeteries, and days of feast and penance).

*Book V – The Temporal Goods of the Church*

This is the shortest Book of the new Code and it examines primarily the Acquisition of Ecclesiastical Goods, the Administration of those Goods, Contracts and Acts of Alienation, and Pious Wills and Foundations.

*Book VI – Sanctions in the Church*

This Book first treats Offenses and Penalties in General, Those who are subject to Penal Actions, Specific Penalties and other Punishments (including censures, expiatory penalties, penal remedies and penances), the Application of Penalties, and the Cessation of Penalties.

*Book VII – Processes*

This Book treats of Trials in General (including discussion of the Competent Forum, Various Grades and Kinds of Tribunals, the Discipline to be observed in Tribunals, the Parties in a Case, Actions and Exceptions), the Contentious Trial, Certain Special Procedures

(including Matrimonial Procedures, Cases for Declaring Nullity of Sacred Ordination, and Methods of avoiding a Trial), Penal Procedure, and the Process to be used in Administrative Recourse and in the Removal and Transfer of Pastors.

### **Codification of the Code of Canons of the Eastern Churches**

Since the Latin Church and the Oriental Churches are substantially different in matters of law two different legislation became necessary. During the preliminary phase of the First Vatican Council, the written opinions submitted by Eastern Catholic patriarchs and bishops expressed the urgent need for a body of laws which would govern all the Eastern Catholic Churches. But, the desire for a comprehensive code was to remain unfulfilled for quite some time. After the promulgation of CIC-1917, the Eastern Catholic hierarchies soon expressed the desire for a similar codification of the legislation of their Churches.

On 29 November 1929 Pope Pius XI created the Commission of Cardinals for the Preparatory Studies of the Eastern Codification under the presidency of Cardinal Pietro Gasparri. This Commission prepared eight drafts (schemata), which were distributed to various hierarchs, dicasteries and universities for their opinions. In 1935 Pope Pius XI established the *Pontificia Commissio Codicis Orientalis Redigendo* (PCCOR: Pontifical Commission for the Redaction of Eastern Canon Law), which was entrusted with the task of revising the schemata taking into consideration the comments submitted by the various consultative bodies. After more than twelve years of work, in March 1948, PCCOR presented to Pope Pius XII (1939-1958) a complete draft of the *Codex Iuris Canonici Orientalis* (CICO= Code of Canon Law of the Orientals) comprised of 2,666 canons in nearly final form. Because some Churches in the Middle East felt an immediate need for parts of the new legislation, four portions of the draft were promulgated by the pope in the form of *motu proprio* (*Motu Proprio* literally means, “on one’s own initiative”):

The four portions of the Schema that were promulgated by Pope Pius XII and constituted the incomplete, pre-conciliar Eastern Code, *Codex Iuris Canonici Orientalis* (CICO: Code of Eastern Canon Law). Following are the four MP:

- 1) *Crebrae Allatae* (CA): 131 canons on marriage, promulgated on 22 February 1949 and acquired force of law on 2 May 1949,
- 2) *Sollicitudinem Nostram* (SN): 576 canons on procedure, promulgated on 6 January 1950 and acquired force of law on 6 January 1951,
- 3) *Postquam Apostolicis Litteris* (PAL): 325 canons on religious, temporal goods and the definition of terms, promulgated on 9 February 1952 and acquired force of law on 21 November 1952,
- 4) *Cleri Sanctitati* (CS): 558 canons on rites and persons, promulgated on 2 June 1957 and acquired legal force on 25 March 1958.

Pope John XXIII after announcing the convocation of the Second Vatican Council, postponed the already planned promulgation of the canons on the sacraments and suspended the entire project until after the council.

After the Second Vatican Council, on 10 June 1972, Pope Paul VI established the Pontifical Commission for the Revision of the Code of Eastern Canon Law (PCCICOR). As president of PCCICOR was appointed Cardinal Joseph Parecattil of the Syro-Malabar Church, who served in the office until his death in 1987. Ivan Zuzek, S.J. served first as pro-secretary of PCCICOR till 1977 and then till the end as secretary.

PCCICOR was given the mandate to revise both the promulgated and the unpromulgated texts of the *Codex Iuris Canonici Orientalis*, according to the genuine traditions of the Eastern Churches and the directives of the Second Vatican Council. This last point needs to be stressed: in its preparation of a draft of the

future code, PCCICOR was not free to modify the directives given by the Second Vatican Council. The patriarchs and heads of the other Eastern Catholic Churches were requested to offer suggestions regarding the codification project and qualified persons who could serve as consultants. The first plenary meeting of PCCICOR took place 18-23 March 1974, during which Pope Paul VI gave an allocution that was to provide direction for the codification project. A set of Guidelines was also approved, which articulated the fundamental principles that were to guide the revision process.

### **The Guidelines**

The Guidelines for the Revision of the Code of Oriental Canon Law was modeled after the Principles of the Revision of the Code of Canon Law of the Latin Church and was a point of reference during the whole work of codification. Here is a short summary.

**1) A single code for the Oriental Churches:** The various Eastern Churches have an ancient common fund of canonical discipline. This could be a common basis for a single code applicable to all these Churches. The differences, which are not negligible, could be codified as the particular law proper to each of these Churches.

**2) Oriental character of the code:** The code should draw its inspiration from genuine Eastern sources and be based on the Eastern canonical tradition. Where these sources lack proper law, recourse may be had to other sources of ecclesiastical law, to render the code capable of responding to present day needs. The code should take into account the particular conditions of Eastern Catholics residing outside the original territory of their Churches.

**3) Ecumenical character of the code:** In accord with the principles adopted at the Second Vatican Council, the promotion of the unity of Churches must be of primary concern in the elaboration of the code. The code must take into account the fact that the Orthodox Churches are in “almost full” communion with the Catholic

Church and are rightly regarded as “Sister Churches” which enjoy “the right to govern themselves according to their own disciplines.

**4) Juridical nature of the code:** The Eastern code must possess a juridical character and not be a mere handbook of dogmatic and moral statements of truths. Juridical character involves defining the rights and duties of individuals and other components of the Church.

**5) Pastoral character of the code:** The code must exhibit a pastoral character with a concern not only for justice, but also for equity and charity. Bishops and others entrusted with the care of souls must be given reasonable discretionary power to adapt the canonical provisions to their particular needs.

**6) The principle of subsidiarity:** This principle states that what individuals and lower institutions can do shall not be reserved to a superior authority.

**7) Rites and Particular Churches:** “The notion of Rite should be re-examined and a new term agreed upon to designate the various Particular Churches of the East and of the West.” The principle of the equality of these Churches (OE 3) should be applied in the code, articulating its juridical effects.

**8) The Laity:** Inspired by the fundamental equality in dignity of all the baptized, and with due regard for the hierarchical structure of the Church, the lay people are to be allowed freedom of action in areas not reserved to the exercise of the power of orders whether liturgy, administration, tribunals, or preaching the gospel. Lawful freedom of expression of opinion and initiative of action must be guaranteed.

**9) The Processes:** It is desirable that the same procedural norms are applicable in the whole Catholic Church. Each Eastern Catholic Church is to be competent to establish its own tribunals to deal with cases in all three instances up to the final sentence, unless reserved

to the Holy See. Legal protection of rights should apply to all, so that there is no room for arbitrariness in Church administration.

**10) Penal laws:** All automatic penalties (*poenae latae sententiae*) are to be eliminated in the Eastern code. Greater emphasis is to be given to the canonical admonition prior to the imposition of a penalty. A canonical penalty should not be considered only in terms of a deprivation of a good but, in accord with Eastern tradition, the imposition of positive acts (penances) should also be considered.

### **Title, Structure and Contents**

The revised Schema was published under the title *Codex Iuris Carconici Orientalis* (The Code of Oriental Canon Law) in 1985. This title seemed to suggest that the code of the Latin Church, the *Codex Iuris Canonici* (CIC: The Code of Canon Law), was the standard code in the Catholic Church and the *Codex Iuris Canonici Orientalis* (CICO) was but its appendage, being some particular or special legislation. This would be contrary to the principle of the equality of the Churches of the West and of the East, affirmed by the Council. Hence it was felt that there was need for a different title, and *Codex Canonum Ecclesiarum Orientalium* was finally accepted during the second plenary assembly.

The *Codex Canonum Ecclesiarum Orientalium* was promulgated by Pope John Paul II with the apostolic constitution *Sacri Canones* on 18 October 1990 and acquired the force of law on 1 October 1991. In the solemn presentation of the *Codex Canonum Ecclesiarum Orientalium* to the Eighth Ordinary Synod of Bishops on 25 October 1990, Pope John Paul II indicated that this code was a component of the *Corpus iuris canonici* of the Catholic Church, along with the 1983 *Codex Iuris Canonici* and the 1988 apostolic constitution *Pastor Bonus* containing norms on the dicasteries of the Roman Curia in the service of the Roman Pontiff in his ministry to the universal Church.

While CIC contains 1752 canons, CCEO has only 1546. This reduction by 206 canons is due to several factors. This relative brevity is due chiefly to the fact that CCEO constitutes only the common legislation of the Eastern Catholic Churches, leaving many details to particular law, applying the principle of subsidiarity. Secondly, CCEO does not contain the corresponding sections of CIC on the Synod of Bishops, Cardinals, Roman Curia, and Papal Legates (cc. 342-367, Except 361); instead mentions them all in one single canon 46, which adapts CIC c. 334 and refers to the norms the Roman Pontiff has made for them. Thirdly CCEO has the benefit of hindsight (foresight) and attentive to the law of rigorous economy and conciseness proper to the legal language, leaves out all that can be harmlessly omitted. On the other hand CCEO has canon for which there is no counterpart in CIC (cc. 55-176).

The whole Code contains 1546 canons. It is divided into 30 titles. Then the titles are again divided into chapters, articles and canons.

	cc. 1-6	Preliminary canons
Title I	cc. 1-26	The rights and obligations of the Christian faithful
Title II	cc. 27-41	Churches <i>sui iuris</i> and Rites
Title III	cc. 42-54	Supreme Authority of the Church
Title IV	cc. 55-150	Patriarchal Churches
Title V	cc. 151-154	Major Archiepiscopal Churches
Title VI	cc. 155-176	Metropolitan Churches and other Churches <i>sui iuris</i>
Title VII	cc. 177-310	Eparchies and Bishops
Title VIII	cc. 311-321	Exarchies and Exarches
Title IX	cc. 322	Assemblies of Hierarchs of different Churches
Title X	cc. 323-398	Clerics

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Title XI	cc. 399-409	Laypeople
Title XII	cc. 410-571	Monks, Religious and such others
Title XIII	cc. 573-583	Associations of the Christian Faithful
Title XIV	cc. 584-594	Evangelizations of peoples
Title XV	cc. 595-666	Ecclesial Teaching ( <i>Magisterium</i> )
Title XVI	cc. 667-895	Divine Worship and especially the Sacraments
Title XVII	cc. 896-901	Receiving baptized non-Catholics in the Catholic Church
Title XVIII	cc. 902-908	Ecumenism
Title XIX	cc. 909-935	Persons and Juridical Acts
Title XX	cc. 935-978	Ecclesiastical Offices
Title XXI	cc. 979-995	Power of Governance
Title XXII	cc. 996-1006	Recourses against Administrative Decrees
Title XXIII	cc. 1007-1054	The Temporal Goods of the Church
Title XXIV	cc. 1055-1184	Trials in General
Title XXV	cc. 1185-1356	The Contentious Trial
Title XXVI	cc. 1357-1400	Certain Special Processes
Title XXVII	cc. 1401-1467	Penal sanctions in the Church
Title XXVIII	cc. 1468-1487	The procedure for imposing Penalties
Title XXIX	cc. 1488-1539	Laws, Customs and Administrative Acts
Title XXX	cc. 1540-1546	Prescription and computation of time

A comparative study of both Latin and Eastern codes will help one to get a comprehensive understanding of the Catholic Church law. The Code of Canons of the Eastern Churches (*Codex Canonum*

*Ecclesiarum Orientalium*) is abbreviated as CCEO and The Code of Canon Law (*Codex Iuris Canonici*) is abbreviated as CIC.

### **New Legislations**

After the promulgation of the Eastern Code, the Roman Pontiff has published three post-Code legislations: 1) *Dignitas Connubii*-this is an instruction published in 2005 by the Pontifical Council for Legislative Texts giving detailed norms on the functioning of diocesan and inter-diocesan tribunals while handling cases of marriage nullity; 2) *Mitis et Misericors Iesus*- a *motu proprio* published by Pope Francis in September 2015 making reforms to the marriage nullity procedural law of CCEO; 3) *Mitis Iudex Dominus Iesus* - It is another *motu proprio* issued by the Pope Francis in September 2015 on the reform of canonical procedures for the declaration of marriage nullity in CIC. This is a major reform of the Code after its promulgation. The last two documents introduced important changes in the procedural law like abolition of mandatory double confirmation of marriage nullity sentences.

## Chapter 2

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# Churches *Sui Iuris* and Membership in the Church

The Second Vatican Council declared that the Catholic Church is a communion of particular Churches (OE 2-3). It has recognized the identity and equality of the Eastern Churches in the Catholic communion. There are twenty-three churches in the Catholic communion- one western Church (Latin Church) and twenty two Eastern Churches. These Churches are ‘Western’ or ‘Eastern’ with reference either to their historical origins in the western or eastern half of the Roman Empire, or situated in the east of the Eastern Roman Empire. In the Catholic Communion the Latin Church is the only Church comes under the category of ‘western’; and is governed by CIC. The other twenty two Churches fall under the broad category of

‘eastern’ and are governed by CCEO. CCEO c. 1 specifies: “the canons of this Code affect all and solely the Eastern Catholic Churches, unless, with regard to relations with the Latin Church, it is expressly stated otherwise”. Just as the canons of CIC concerns the Latin Church, the Canons of CCEO concerns the Eastern Catholic Churches.

### **Churches *Sui Iuris* and Rites**

The Second Vatican Council calls different churches in the Catholic communion as “particular Churches or rite”. CIC calls them “ritual Churches *sui iuris*” and CCEO calls them simply “Churches *sui iuris*”. The qualification *sui iuris* (which means “of one’s own laws” or autonomous) refers to a Church’s legal status in as much as it is recognized to have the capacity or right to govern itself according to its own law. A rough translation of “*Ecclesia Sui Iuris*” used in the code will be “autonomous”. The term *sui iuris* is an innovation of the CCEO, and it denotes the relative autonomy of the Oriental Catholic Churches. This canonical term, pregnant with many juridical nuances, indicates the God-given mission of the Oriental Catholic Churches to keep up their patrimonial autonomous nature. And the autonomy of these churches is relative in the sense that it is under the supreme authority of the Roman Pontiff.

In the past, the Churches *sui iuris* were called “rites”- the Latin rite, the Ukrainian rite, the Syro-Malabar rite, etc. This use of the term is still found in various canons of the Latin code, which also uses the term “ritual church *sui iuris*”. A rite is a whole tradition of a group of Christian people, including its liturgy, its laws and customs, its theological heritage and its spirituality; a Church *sui iuris* is a juridically distinct community of the faithful with its own hierarchy which, in fact, may share its rite with others, e.g., the Byzantine rite that is common to fourteen Churches *sui iuris*. CCEO gives a clear distinction between the terms ‘Church *sui iuris*’, ‘Rite’ and ‘tradition’.

## **Church *sui iuris***

In CCEO a Church *sui iuris* is defined as a “a community of the Christian faithful, which is together by a hierarchy according to the norm of law and which is expressly or tacitly recognized as *sui iuris* by the supreme authority of the Church” (c. 27). Rite does not enter into the definition of a Church *sui iuris*, which has four constitutive elements:

1. A community of Christian faithful: not simply a group, which in sociological terms can be a casual gathering;
2. Hierarchy: one hierarch or more, joining the said community together in the visible unity of faith through the ministry of the word, the sacraments and governance,
3. Norms of law (*ius*): not merely charismatic groups or “basic communities,” however spiritual and fruitful and zealous they might be;
4. Recognition by the supreme Church, which presupposes the foregoing three elements. A Church *sui iuris* does not exist in Catholic canon law unless it has been recognized as such by the supreme authority of the Church (c. 27). This recognition is had in the erection of the hierarchy of such a Church by the same authority but also in other juridical acts which may be either “express” or “tacit”.

## **Rite**

Since the XVI century three related concepts, namely, Church, tradition, and rite, used to be employed interchangeably and confused in the Western Church. CCEO has finally distinguished between them and cleared up the long-running confusion. Church *sui iuris* is defined in CCEO c. 27 and rites is defined in c. 28.

CCEO can. 28, §1: **Rite** is a liturgical, spiritual, theological, spiritual, and disciplinary heritage, which is differentiated by the

culture and the circumstances of the history of peoples and which is expressed by each Church *sui iuris* in its own manner of living the faith

§2: The rites dealt with in this code, unless it is established otherwise, are those which have their origin in the Alexandrian, Antiochene, Armenian, Chaldean, and Constantinopolitan **tradition.**

Positively, “rite” is a “heritage” that belongs to and often distinguishes Churches *sui iuris*. About this heritage c. 28 makes three assertions. First, it is composed of four constitutive elements, namely liturgy, theology, spirituality, and discipline. Secondly this heritage is differentiated by the culture and the historical vicissitudes of peoples. Thirdly, this heritage is expressed in the manner of living the faith by the Churches *sui iuris*. Rites do not exist are “the heritage of the Church of Christ” (CCEO c. 39). In other words, rite is something that belongs to and distinguishes a community of persons (Church). As things are of and for persons, so are rites of and for Churches. This canonical concept of rite is to be distinguished from the liturgical concept of rite. The latter concept denotes certain actions or gestures coupled with prayers that make up a unite in worship. In the former concept, liturgy is but one of the four constitutive elements of rite.

CCEO has listed the five Eastern traditions, from which the various Eastern rites have their origin: Constantinopolitan (Byzantine), Alexandrian, Antiochian, Armenian, and Chaldean. Including the Roman tradition there are six traditions in the Catholic Church.

The twenty-two Eastern Catholic Churches are: the Coptic Church and Ethiopian Church (which observe the Alexandrian rite); the Syro-Malankara, Maronite, and Syrian Churches (Antiochian rite); the Albanian, Belarussian, Bulgarian, Greek, Hungarian, Italo-Albanian, Krinevci, Macedonian, Melkite, Romanian, Russian, Ruthenian, Slovak, Ukrainian (Byzantine rite); the Chaldean and

Syro-Malabar Churches (Chaldean rite); and the Armenian Church (the Armenian rite).

### **The Faithful**

The faithful (*christifideles*) are those who, incorporated by baptism in Christ, are constituted as the people of God and consequently made participants in the priestly, prophetic, and governing roles of Christ. In accord with their proper consideration, they are called to exercise the mission that God entrusted the Church with fulfilling (CIC c. 204, § 1; CCEO c. 7 § 1). The members of the Church are called in the code “*christifideles*”- the faithful of Christ. All who are baptized, both Catholic and non-catholic, are members of Christ’s Church.

‘The Church, constituted and ordered as a society in this world, subsists in the Catholic Church, governed by the successor of Peter and the bishops in communion with him (CIC c. 204, § 2; CCEO c. 7 § 2). The baptized who are in full communion with the Catholic Church on this earth are those who are united with Christ in his visible body by the bonds of profession of faith, the sacraments, and ecclesiastical governance (CIC c. 205: CCEO c. 8).

Not all the baptized are members of the Catholic Church. Catholics, also called Roman Catholics, are those who are united in its visible structure by the bonds of the Catholic faith and sacraments and in ecclesiastical governance under the authority of the bishop of Rome and the bishops in communion with him. The members of the non-Catholic Eastern Churches and the Protestant ecclesial communities are members of Christ’s Church but are not in full communion with the Catholic Church. Catholics themselves can become separated from full communion with the Catholic Church by apostasy, heresy, or schism. However, they always remain Catholics and can return to the Church at any time through the prescribed means.

## Membership in a Church *sui iuris*

Every Catholic is a member of one of the twenty three *sui iuris* Churches. They acquire the membership through various means and they cannot change this membership easily.

### 1. By baptism

CCEO 29 - §1: A child who has not yet completed fourteen years of age is ascribed by virtue of baptism to the Church *sui iuris* to which his or her Catholic father is ascribed; or the Church *sui iuris* of the mother if only the mother is Catholic or if both parents by agreement freely request it, with due regard for particular law established by the Apostolic See. If both parents belong to a particular *Sui Iuris* Church, their child becomes a member in it by receiving baptism. If one parent belongs to the Latin Church and the other to an Eastern Catholic Church, they may decide by common agreement to have their child baptized in the Latin or Eastern Church. If they are unable to agree, the child should become a member of the Church *sui iuris* to which the father belongs. (cf. CIC c. 111 §1.)

Under the former law, the children had to be baptized in the Church *sui iuris* of the father. Under the revised legislation, parents of different Catholic Churches may choose the Church *sui iuris* of either for the baptism of their children. If they are unable to agree, the children are baptized in the Church *sui iuris* of the father. The code of the Eastern Catholic Churches favors baptism in the Church *sui iuris* of the father. However, the child may be baptized in the church of the mother if the father is not Catholic or if both parents agree to it and freely request it (CCEO, can. 29, §1.)

If children under fourteen (a) are born of an unwed mother, they become a member in the Church to which the mother belongs. (b) If they are born of unknown parents, they become a member of the Church of those who are legitimately entrusted with their care. (c) If they are adopted, they become a member of the Church of the father or, when the father is not Catholic or when both agree to the

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mother's Church, the Church of the mother. (d) If they are born of non-baptized parents, they become a member of the Church of the person who is in charge of their upbringing in the Catholic faith (CCEO, c. 29 § 2).

Although these rules are found only in the Eastern code, they can be taken as supplementary law for the Latin Church, with the difference that, in the Latin Church, a child may become a member of the Church *sui iuris* of either parents.

It is not liturgical rite of baptism that determines one's membership in a Church *sui iuris*, but the Church to which the parents belong. For example, If Eastern Catholic parents have no parish of their own, and the child is baptized by a Latin priest, the child is still a member of their Eastern Church. Baptism is the beginning of one's membership in a Church. The precise Church is determined by the rules regarding parents or those who take their place, not by the place or liturgy of baptism.

Anyone to be baptized who is at least fourteen may freely choose to be baptized in the Latin Church or in another Church *sui iuris*. In such a case, the person belongs to the Church he or she has chosen. (CCEO c. 30).

In summary, the following rules are applicable for the enrollment of a child *under fourteen* in a Church *sui iuris*:

- i. If both parents are from the same Church *sui iuris*, the child must be baptized in that Church.
- ii. If the father is from the Latin Church and the mother is from the Eastern Church, the Child may be baptized in either Church.
- iii. If the father is from the Eastern Church and the mother is from the Latin Church, the Child should be baptized in the Eastern Church, unless both agree to have the Child baptized in the Latin Church. (Several children of the same parents may all be baptized in the same Church or in the different churches of their parents.)

When the father is to be ascribed to the Latin Church, this fact should be recorded in the baptismal register.

- iv. If the parents cannot agree on the Church, the child is ascribed to the Church of the father.
- v. A child born of an unwed mother is ascribed to the mother's Church *sui iuris*.
- vi. Children whose parents are unknown are ascribed to the Church *sui iuris* of their guardian.
- vii. If neither parent is baptized, the Church *sui iuris* of the one in charge of that child's Catholic upbringing determines the church of ascription. Those who lack the use of reason may not be baptized without the permission of a parent or guardian, except in danger of death (CIC c. 868).
- viii. If neither parent is Catholic, but one or both of them is a baptized non-catholic and their child is to be baptized a Catholic, it is permissible, by custom, to choose to be ascribed in any church *sui iuris*; however, an Catholic counterpart Church is preferable.

## **2. By transfer**

After baptism, one can become a member of another Church *sui iuris* if: (a) he or she obtains the permission of the Apostolic See; (b) a wife is free to transfer to the Church of the husband at the celebration of or during the marriage; when the marriage has ended, she can freely return to the original Church *sui iuris* (CCEO c. 33); (c) a child under fourteen of those mentioned in of the previous cases or, in a mixed marriage, is a child under fourteen of the Catholic party who has legitimately transferred to another Church *sui iuris*; but when the children have completed their fourteenth year they may choose to return to the original Church *sui iuris* (CCEO c. 34).

According to the Latin Code, in a marriage of a Latin Catholic man and an Eastern Catholic woman, either spouse may freely transfer to the Church of the other simply by making a declaration,

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whether orally or in writing. The oral declaration should be made before, or a written declaration sent to, the pastor of the Church to which one is transferring. He should then notify the pastor of baptism so that the transfer can be recorded in the person's baptismal register (CIC c. 535, §2). The transfer may take place at the time of marriage or anytime during the marriage.

However, in the Eastern law, the wife may transfer to the Church of the husband, but the husband may not transfer to the Church of the wife without the consent of the competent ecclesiastical authority (CCEO, can. 33; cf. c. 32). The Eastern Code requires that the transfer be declared before the local hierarch or the pastor of the Church to which one is transferring, or before a priest delegated by either of them, and before two witnesses (CCEO, can. 36). Hence, in marriages between Latin Catholics and Eastern Catholics, a Latin Catholic man can transfer to the Church of his wife by a declaration, but the Eastern Catholic man cannot transfer his membership to the Church of his wife through a mere declaration.

In a marriage where one spouse has transferred, when the marriage ends due to death, declaration of invalidity, dissolution, or permanent separation, the spouse who transferred may freely return to his or her original Church. This new transfer should also be declared before the pastor or other minister of the parish to which one is returning and notification sent to the parish of baptism for recording in the baptismal register.

When anyone transfers to another Church *sui iuris*, their children under fourteen automatically transfer with them. The transfer must be noted in the baptismal register of each of them. When the children turn fourteen, or anytime afterwards, they are free to transfer back to their original Church, again with notification to the parish of baptism for proper recording.

If both parents are Catholic and only one parent transfers, the consent of both parents is needed for the children under fourteen to

transfer (CCEO, can. 34). Although this is not in the Latin law, it may be taken as suppletory law for the Latin Church.

In a mixed marriage between a Catholic and a non-catholic, if the Catholic transfers to another Church *sui iuris* with the permission of the Apostolic See, the Children under fourteen also transfer. For Example, the father is Syrian Orthodox and the mother is Latin Catholic, and she wishes to transfer to the Syro-Malankara Catholic Church to share in the ecclesial tradition of her husband. She may transfer with the permission of the Apostolic See. Permission would not be needed for the transfer of her children under fourteen.

If a Latin Catholic wishes to transfer to an Eastern Catholic Church *sui iuris* that has an eparchy within the boundaries of the Latin diocese, he or she may transfer with the written permission of the bishops of both dioceses on the basis of the presumed permission of the Apostolic See (CCEO, can. 32, §2). The parallel canon *CIC c. 112*§ 1 does not provide for such a possibility. Whenever anyone wishes to transfer to another Church *sui iuris*, they need only the permission of the bishops of both dioceses, provided the territories of the two dioceses are overlapping and the persons transferring reside in that territory. Both dioceses must be in the same country.

The custom, no matter how longstanding, of receiving the Sacraments in the rite of another church *sui iuris*, does not cause membership in that Church (CCEO, can. 38).

It sometimes happens that Eastern Catholics are raised in a Latin Catholic parish and are registered there, having gone to the parish school, made first communion, attended Mass weekly, etc. However, this does not cause a change in their membership in their own Eastern Church. This fact has important consequences. In the case of confirmation, the Eastern Catholics have likely already been confirmed as infants and may not be confirmed again. In the case of marriage, they may not validly marry in the Latin parish unless the minister has delegation from the Eastern hierarch, unless they are

marrying a Latin Catholic. If there is no Eastern hierarch in the country, the Latin Ordinary usually can grant the faculty.

### **3. *By reception into full communion***

Baptized non-Catholics coming into full communion with the Catholic Church should retain their own rite and practice it everywhere in the world and should observe it to the extent of their capability. They should be enrolled in the Church *sui iuris* of that same rite without prejudice to the right of petitioning the Apostolic See in special cases of persons, communities, or regions (CCEO, can. 35).

Although this law of the Eastern code is not found in the Latin code, it is the practice of the entire Church. When non-catholic Christians are received into the full communion of the Catholic Church, they become members of the Church *sui iuris* indicated by their baptism. Thus, Protestants become members of the Latin Church; a Greek Orthodox becomes a member of the Greek Catholic Church; a Syrian Orthodox becomes a member of the Syrian Catholic Church, etc. Exceptions constitute a transfer, requiring the permission of the Apostolic See or of the two Catholic bishops whose jurisdictions overlap.

A Latin pastor may receive an Eastern Christian into full communion if the proper Eastern Catholic Church *sui iuris* is not accessible. Members of Jacobite and Orthodox Churches in Kerala, when they come to the Catholic communion, should join the Syro-Malankara Church. In registering the reception, however, it must be noted that the person is a member of the comparable Catholic Church *Sui iuris*. For example, if Syrian Orthodox woman wishes to become a Catholic, she should be encouraged to ascribe in a Catholic Church that observes the Antiochian rite liturgy. If there is none, she may be received by the Latin or another Eastern pastor, but he should note in the register that she is a Syrian Catholic.

## Chapter 3

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# The Supreme Authority of the Church

**J**esus gave the authority to teach, govern and sanctify to St. Peter and the college of Apostles. As the successors of the Apostles, Pope and the college of bishops, whose head is the pope, can govern, teach and sanctify the Church in accordance with the authority given by Christ. The supreme authority in the Church rests on the pope who is the successor of St. Peter who was the head of the college of Apostles. The same supreme authority is exercised when the bishops gather in an ecumenical council under the leadership of the pope or when they act collegially for the good of the Church while they remain in their own dioceses. Just as by the Lord's decision Saint Peter and the other Apostles constitute one college, so in a like manner the Roman Pontiff, the successor of

Peter, and the bishops, successors of Apostles, are joined together (CCEO c. 42).

### **The Roman Pontiff**

The code of Canon Law, both CIC and CCEO, refers to the pope as “Roman Pontiff”. The etymology of the Latin word ‘pontifex’ (pontiff) means “bridge-builder”. This name came into the ecclesiastical usage from the Roman political background. It was a title used by the Roman emperors. The commonly known title ‘pope’ comes from the Greek word *papas* which means father. Many other titles are attributed to the pope: Bishop of Rome, Vicar of Christ, pastor of the entire Church on earth, head of the college of bishops, patriarch of the West, Primate of Italy, Metropolitan of the province of Rome, and so on. In addition he is the head of the independent nation, Vatican. It is to be noted that When the Code uses the term “Apostolic See” or “Holy See”, this applies to the Roman Pontiff and also to all offices or other institutes of Roman Curia (CCEO c. 48). The term, Holy See”, is very rarely used in the Code; it is generally used to designate the Roman Pontiff and his agencies in their dealings with the international community.

The nature and the extend of the power of the pope in virtue of his office and role as Bishop of Rome is described in both CIC c. 331 and CCEO c. 43: “The bishop of the Church of Rome, in whom resides the office (*munus*) given in special way by the Lord to Peter, first of the Apostles and to be transmitted to his successors, is head of the college of bishops, the Vicar of Christ and Pastor of the entire Church on earth; therefore, in virtue of his office he enjoys supreme, full, immediate and universal ordinary power in the Church which he can always freely exercise.” The power of the pope has the following qualities (CCEO cc. 43, 45)

1. Supreme- subordinate to no other authority in the Church.
2. Ordinary- because it is attached to his office.

3. Full- because he has the power to teach, govern and sanctify in matters concerning faith and morals; and this power is legislative, juridical and administrative.
4. Immediate- in the sense that he can exercise his power over persons and ecclesiastical institutions without any intermediary.
5. Universal- because it extends over the entire Church, dioceses or eparchies, provinces, and their groupings, as well as over all other pastors and faithful of the Churches *sui iuris*.
6. Freely exercised- in the sense that it is exercised independently of any ecclesiastical power or civil authority.

The pope as the head of the entire Catholic communion exercises his authority not only over the Latin Church but also over the Eastern Catholic Churches. The Roman Pontiff precisely because of his role, has power not only over the universal Church, he also possesses the fullness of ordinary power over all the eparchies and all groupings of eparchies (eparchy is the term used in CCEO to denote diocese). However, the eparchial bishop has proper, ordinary and immediate power over his eparchy.

Nevertheless, the pope is not an absolute monarch. He is always united with all the bishops and the universal Church. The collegial dimension of the pontifical authority is established in the Canon Law. However, the three duties of the Episcopal office, governing, teaching and sanctifying are exercised by the Roman Pontiff in a unique manner. He governs, besides the diocese of Rome, the entire Church by issuing laws and interpreting authentically the meaning of divine law; by being the supreme judge, either in person or through delegates; and by employing his executive power to settle administrative questions, especially through his offices, the Roman Curia. He functions as the teacher with supreme authority in questions of faith and morals. Decisions which have been given by him in virtue of his office are infallible for the entire Church (CCEO c. 597 § 1). His sanctifying mission is exercised when he as a bishop celebrates

the divine mysteries, and oversees, promotes and protects the divine worship in the Church.

### **Election of the Pope**

The See of Rome becomes vacant through the death or the resignation of the pope, whereas other eparchial sees can become vacant also through transfer or deprivation of the office of the bishop (CCEO c. 219). The custom has been for the pope to serve for life, but he can resign the office if he chooses to do so. Only two known cases of papal resignation in the history of the Church: one is of Pope Celestine V, who resigned in 1294 and of Benedict XVI who resigned in 2013. Papal resignation will not be valid unless it is free, and is duly made known (with a document or before two witnesses), but its acceptance by the cardinals or the Church is no condition for its validity. The Pope cannot be removed from office. When the See is vacant, or is impeded so that the exercise of the primacy is prevented, there must be no innovations in the government of the universal Church, which does not pass to the College of Cardinals or to the College of Bishops. In fact all must abide by the provisions laid down for such a contingency (c. 47).

There is no election to the papacy as such, but to the office of the Bishop of Rome, to which the primacy in the Church is historically linked. The election of the Bishop of Rome is governed by the apostolic constitution *Universi Dominici Gregis* of Pope John Paul II, dated 22 February 1996. The electors are all cardinals under the age of 80 at the vacancy of the see (n. 33). Since 1179 the election of the Bishop of Rome became the exclusive privilege of the Cardinals. The conclave for the election is to begin between fifteen and twenty days after the death or resignation of the pope. If the person elected accepts and is already a bishop he immediately obtains the fullness of papal powers; if he is not already a bishop he must be ordained bishop at once after which he obtains the full authority of his pastoral office. Theoretically, any baptized male Catholic, irrespective of age or rite, can be elected pope, but since

1378 the person elected has always been a cardinal of the Roman Church. In the first millennium there were several popes of Eastern origin. Since the end of that millennium the newly-elected pope has also taken a new name.

### **College of Bishops and Ecumenical Council (CCEO cc. 49-54)**

The supreme power in the Church belongs to the College of Bishops with the Roman Pontiff as its head. By divine ordinance, the college can operate only together with its head (c. 49). The College exercises its power (1) through an ecumenical council, and (2) through the united action of the bishops dispersed in the entire world, which action has been initiated or has been freely accepted by the Roman Pontiff, resulting thereby in a true collegial act (c. 50).

**Ecumenical Council-** The college of bishops exercises power over the entire Church in a solemn manner in an ecumenical council (c. 50 §1).

1. The pope alone can summon such a council, chair it himself or through appointed delegates, suspend and conclude it.
2. Only bishops are entitled and obliged to take part in the deliberations of the council though also non-bishops may be invited with decisive vote (hierarchs Who are not bishops) or only with consultative vote (experts such as theologians) (c. 52).
3. It is for the pope to establish the order of business and the agenda, to which the members of the council may add their own topics with his permission (c. 51)
4. In case of a vacancy in the papacy, the council is automatically suspended, until the new pope decides to resume or terminate it (c. 53).
5. The decisions of such a council receive legal force only after the Pope has approved them, and then have been promulgated at his order (c. 54 §1). The same rules apply when the college of bishops should take collegial action in another matter, initiated or freely accepted by the Roman Pontiff (c. 54 §2).

## **Organs helping the Roman Pontiff in Governing the Church**

There are different synods and councils, various persons and different offices to help the Pope to discharge his responsibility as the shepherd of the entire Catholic Church.

### **1. Synod of Bishops**

An ecumenical council is a large affair and extremely expensive, and therefore something that can be contemplated only rarely. In order to have the advice and assistance of the bishops of the entire world more often than in an ecumenical council, Pope Paul VI instituted in 1965 the Synod of Bishops as a permanent feature of Church governance. One can recall some historical precedents, such as the periodical assemblies of bishops from the surroundings of Rome during the first centuries, and the synods of the patriarchs of Constantinople of the first millennium, which was composed of the bishops who by chance were present in the capital.

Though CCEO does not have a canon on this topic CIC c. 342 describes what is the Synod of Bishops: “The synod of Bishops is a group of Bishops selected from different parts of the world, who meet together at specified times to promote the close relationship between the Roman Pontiff and the Bishops. These Bishops, by their counsel, assist the Roman Pontiff in the defence and development of faith and morals and in the preservation and strengthening of ecclesiastical discipline. They also consider questions concerning the mission of the Church in the world.”

1. The Synod of Bishops is composed of bishops from all parts of the globe and is convoked at least every three years.
2. There are three forms of the Synod of Bishops: (1) *general (ordinary) meeting*: to discuss questions of interest to the entire Church; (2) *extraordinary meeting*: when there is a problem that needs immediate attention, and (3) *special meeting*: when the deliberations concern the needs of only some particular

regions, e.g., Europe, or a particular church, e.g., the Syro-Malabar Church.

3. The task of the Synod is to give consultation to the Pope. It must accept the agenda and order of conducting business as placed before the members, and they have ordinarily no decisive vote.
4. The membership is truly representatives of the entire Church. Every conference of bishops elects representatives according to the number of bishops in the nation. From the Eastern Churches, all the patriarchs, major archbishops, autonomous metropolitans, and metropolitans of patriarchal and archiepiscopal churches outside of the territory of their church participate as members.

There is a permanent secretariat in Rome to make the agenda and make preparations for the convoking of the Synod. Usually after synod its decisions are published by the pope in the form of Post Synodal Apostolic Exhortation.

## **2. College of Cardinals**

The college of cardinals developed after the first millennium from the assembly of the principal priests of the parishes of Rome. At first serving as advisors to the popes, they soon were charged with carrying out commissions in his name inside and outside of Rome, and later reserved to themselves the election of the new pope, excluding the other clergy of Rome. Total number of the Cardinals is not fixed, but it is fixed that the number of cardinals under the age of eighty who has the active voice in the election of the pope should be 120.

It is an institution that used to assist the pope in the government of the Church of Rome. In 1059 Pope Nicholas II recognized the exclusive right of the cardinals to elect the pope. There are three orders in the college: Cardinal Bishops, Cardinal Priests and Cardinal Deacons. According to an ordinance of Pope John XXIII, all cardinals are to be bishops, but their division into three orders remains

(CIC c. 350). The Eastern patriarchs and major archbishops appointed cardinals are Cardinal Bishops but retain their own patriarchal or major archiepiscopal sees as their proper titles, whereas the other Cardinal Bishops are assigned for title one of the seven suburbicarian Churches around Rome, while the Cardinal Priests (mostly diocesan bishops) obtain a titular church in Rome, and the Cardinal Deacons (mostly officials of the Roman Curia) a diaconia. The norms governing cardinals in CIC cc. 349-359 apply to the Eastern Church cardinals as well.

### **3. Roman Curia**

In exercising supreme, full, and immediate power in the universal Church, the Roman pontiff makes use of the departments of the Roman Curia which, therefore, perform their duties in his name and with his authority for the good of the churches and in the service of the sacred pastors. (*Christus Dominus*, 9). The name “curia” is derived from Latin word *curare* which means to take care of, and in Roman times the curia was the building where the senate met. In the middle ages the papal court came to be called as *Curia Romana*.

Roman Curia is governed by *Pastor Bonus*, Apostolic Constitution published by Pope John Paul II on 28 June 1988. This document has clarified the competence and duties of each dicasteries of the Roman Curia. Pope Benedict VI has made certain rearrangements in the competence of some of the congregations and made new dicastery called Pontifical Council for New Evangelization. Pope Francis also made some reformation and made recently a new dicastery called Congregation for Laity, Family and Life. Nine congregations (now ten), three tribunals, 12 pontifical councils, and nearly three dozen other offices, agencies, commissions, and committees are associated with the Roman Curia, along with the Secretariat of State and the Secretariat for the Economy. Following are the major congregations, tribunal and councils of Roman Curia.

### **a. Secretariat of State**

Headed by a cardinal secretary, it consists of two sections: 1. The Section for General Affairs handles general ecclesiastical affairs such as communications, publications, statistics, and major business. 2. The Section for Relations with States handles all matters with civil governments, including concordats and diplomatic relations.

### **b. The Congregations**

The congregations are composed of cardinals and bishops appointed by the pope. The ordinary meetings consist only of the members living in Rome. In addition, each congregation holds plenary sessions usually once a year to treat major issues at which all members are to be present. A cardinal prefect presides over each congregation. There will be a secretary and undersecretaries in each Congregation to handle the daily business.

#### **1. Congregation for the Doctrine of the Faith**

It safeguards faith and morals for the universal Church. It reviews documents issued by other dicasteries that touch on faith and morals. It tries and punishes crimes against the faith, more serious crimes against morals, and more serious cases involving the celebration of the sacraments. It processes privilege of the faith cases for marital dissolution. Child abuse case against priests are handled by this congregation. It works with the Pontifical Biblical Commission and the International Theological Commission.

#### **2. Congregation for the Eastern Churches**

Its official members are the patriarchs and major archbishops of the Eastern Catholic churches and the president of the Council for Promoting Christian Unity. It has competence over matters pertaining to the persons, discipline, and rites of the Eastern Catholic churches.

#### **3. Congregation for Divine Worship and the Discipline of the Sacraments**

It is responsible for the moderation and promotion of the liturgy of the Latin church, especially the sacraments. It prepares liturgical

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texts in the Latin editions and reviews the vernacular translations of them. It approves particular calendars and feasts. Previously it handled cases of dissolution of marriage due to non-consummation and nullity of ordination which are now handled by Roman Rota.

### 4. Congregation for the Causes of the Saints

It handles cases of beatification and canonization and the authentication of relics.

### 5. Congregation for Bishops

It has competence over the establishment, division, union, of suppression of dioceses and other ecclesiastical circumferences; matters pertaining to military ordinariates and personal prelatures; the selection of bishops and matters pertaining to bishops. It works with the Pontifical Commission for Latin America.

### 6. Congregation for the Evangelization of Peoples

It is competent for matters pertaining to missions and missionaries. It has the same competence in mission territories as the Congregation for Bishops has for the other dioceses and conferences of bishops like appointment of bishops in mission territories.

### 7. Congregation for the Clergy

It handles matters affecting secular presbyters and deacons; catechetics; clerical life, discipline, rights and duties; the distribution of clergy; preaching and the apostolate; the administration of temporal goods. Its competence includes matters pertaining to presbyteral councils, colleges of consulters, chapters of canons, pastoral councils, parishes, churches, sanctuaries, clerical associations, ecclesiastical archives, Mass stipends, pious wills and pious foundations.

### 8. Congregation for Institutes of Consecrated Life and Societies of Apostolic Life

It has competence over religious and secular institutes and societies of apostolic life of pontifical right, including their

establishment, government, approval of constitutions, suppression, merging. It is also competent to handle matters pertaining to hermits and virgins, secular (third) orders, and related associations of laity that might someday become institutes of consecrated life.

#### 9. Congregation for Catholic Education (for seminaries and educational institutions)

It has competence over seminaries, Catholic Universities, and other institutions of higher studies and Catholic schools.

#### 10. Congregation for laity, family, and life

Pope Francis on 6 June 2016 formed this new congregation combining functions that are now handled by the Pontifical Council for the Laity, the Pontifical Council for the Family, and the Pontifical Academy for Life, and other offices. The dicastery, which the Pope has approved on an experimental basis, will officially come into being on 1 September 2016, at which point the Pontifical Council for the Laity and the Pontifical Council for the Family will be suppressed.

### **c. Tribunals**

#### 1. Apostolic Penitentiary

It handles indulgences and matters of the internal forum such as absolutions from reserved censures, dispensations, commutations, sanctions, condonations, and other favors.

#### 2. Supreme Tribunal of the *Apostolic Signatura*

It hears appeals from sentences of the Roman Rota. It judges conflicts of competence between departments of the Holy See. It is the highest court for administrative recourse. It supervises tribunals and erects inter-diocesan tribunals.

#### 3. Roman Rota

This is a judicial court, mainly handles marriage nullity cases from around the world on appeal, either in second or third instance. It may also try cases in first instance.

**d. Pontifical Councils**

1. Pontifical Council for the Laity

It handles matters affecting the laity and approves or recognizes international lay associations.

2. Pontifical Council for Promoting Christian Unity

It promotes ecumenism and dialogue with other Christians. It also has a special section for the Jewish religion.

3. Pontifical Council for the Family

It handles matters related to the family, marriage, parenthood, etc.

4. Pontifical Council for Justice and Peace

It promotes efforts for justice and peace in the world.

5. Pontifical Council “Cor Unum”

It coordinates efforts for relief and charitable assistance.

6. Pontifical Council for the Pastoral Care of Migrants and Itinerary People

It fosters care for migrants, immigrants, refugees, travelers by air and sea, circus employees.

7. Pontifical Council for Pastoral Assistance to Health Care Workers

It handles matters related to the sick and those who care for them and explains Church teachings on the spiritual and moral dimensions of illness.

8. Pontifical Council for Legislative Texts

It makes authentic interpretations of universal law; assists other dicasteries with the legal form of documents; reviews general decrees of episcopal conferences and synods. It can also give authentic interpretations of the Code of Canons of the Eastern Churches.

9. Pontifical Council for Interreligious Dialogue

It promotes dialogue with members of non-Christian religions; a special section deals with Islam.

#### 10. Pontifical Council for Culture

It promotes the relationship of the Holy See with human culture, especially institutes of science and learning; sponsors dialogue with atheists and those who profess no religion; has periodic contacts with the Pontifical Commission, for Preserving the Church's Patrimony of Art and History. It has two sections: (1) Faith and Culture and (2) Dialogue with Cultures.

#### 11. Pontifical Council for Social Communications

It promotes a Christian presence in the media, including the press, the cinema, radio, and television; oversees the Catholic media.

### **Legates of the Roman Pontiff**

Since Vatican is a nation and Pope is its head he can send representatives to other nations. Pontifical Legates (CIC cc. 362-366) are papal envoys, occasional or permanent, either accredited to particular Churches in different nations or regions or accredited to states and public authorities. The competence of these envoys is indicated by their titles, as follows. 1) The Nuncio and Pro-Nuncio have the rank of ambassador; the Nuncio is the Dean of the Diplomatic Corps of the nation to which he is accredited. 2) The Inter nuncio has the rank of minister plenipotentiary and envoy. Legates in this category are also the papal representatives to the Church of the nation to which they are envoys. Nuncios and internuncios are endowed with special faculties. 3) The Pontifical Delegate is the papal representative for the Catholics of that nation; he has no diplomatic status in the nation where he is sent. His role, powers, and duties are determined in CIC cc. 362-367 and the special terms of his appointment, if any. 4) The *Legatus a Latere* is the envoy of the pope for a special event in a nation, such as a Eucharistic Congress, the celebration of an anniversary or some other important event (CIC c. 358). 5) Special Envoys (or

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Observers) represent the pope in international organizations or at conferences and congresses.

Following CIC canons speak of the legates of the Roman Pontiff.

Can. 362 The Roman Pontiff has the innate and independent right to appoint, send, transfer, and recall his own legates either to particular churches in various nations or regions or to states and public authorities. The norms of international law are to be observed in what pertains to the mission and recall of legates appointed to states.

Can. 363 §1. To the legates of the Roman Pontiff is entrusted the office of representing the Roman Pontiff in a stable manner to particular churches or also to the states and public authorities to which they are sent.

§2. Those who are designated as delegates or observers in a pontifical mission at international councils or at conferences and meetings also represent the Apostolic See.

Can. 364 The principal function of a pontifical legate is daily to make stronger and more effective the bonds of unity which exist between the Apostolic See and particular churches.

Can. 365 §1. It is also the special function of a pontifical legate who at the same time acts as a legate to states according to the norms of international law:

1. to promote and foster relations between the Apostolic See and the authorities of the state;
2. to deal with questions which pertain to relations between Church and state and in a special way to deal with the drafting and implementation of concordats and other agreements of this type.

# Patriarchal and Major Archiepiscopal Churches

**T**he Eastern Churches in the Catholic communion are not equal in their juridical status. Their basic difference is in the sphere of autonomy of administration. Accordingly CCEO specifies four categories of Churches: 1) Patriarchal Churches, 2) Major Archiepiscopal Churches, 3) Metropolitan Churches, 4) Other Churches Sui Iuris.

### 1. Patriarchal Churches

A patriarchal church is a full-grown form of an Eastern Catholic church. It is ‘a community of the Christian faithful joined together by a Patriarchal hierarchy. The Patriarch together with the synod of bishops has the legislative, judicial and administrative powers within jurisdictional territory of the patriarchal church, without prejudice to those powers reserved in the common law to the Roman pontiff’ (CCEO 55-

150). There are six Churches among the catholic oriental churches having patriarchal status: a) Coptic Catholic Church, b) Maronite Church, c) Syrian Catholic Church, d) Armenian Catholic Church, e) Chaldean Catholic Church, f) Melkite Greek Catholic Church.

As successors of the Apostles, bishops have the fullness of ministerial priesthood and pastoral authority, which has evolved assuming various forms and grades. In the early centuries, the bishops who enjoyed a certain prestige or superiority were called patriarch as a sign of respect rather than consideration of jurisdiction. From the metropolitan system of Church government evolved the patriarchal system, so that by the sixth century, the title of patriarch was reserved to the bishops of the Sees of Rome, Constantinople, Alexandria, Antioch, and Jerusalem. CCEO c. 55 recognizes this ancient custom of patriarchal institution. “According to the most ancient tradition of the Church, already recognized by the first ecumenical councils, the patriarchal institution has flourished in the Church. Therefore, special honor is to be accorded to the patriarchs of the Eastern Churches, who each presides over his respective patriarchal Church as its father and head.” Patriarch is the father and head of the patriarchal Church.

An Eastern Catholic patriarch is a bishop who has power over the laity, religious, clergy, bishops, and metropolitans of his patriarchal Church according to the norms of law (common and particular) approved by the supreme authority (CCEO c. 56). The creation or restoration, modification or suppression of Patriarchal Churches is reserved to the Roman Pontiff or an ecumenical Council (c. 57 § 1; see also OE 11). In ancient times, the erection of Patriarchal Churches was enacted through the solemn recognition by ecumenical councils of the supra-metropolitan authority exercised by certain bishops and confirmed by imperial legislation. The restoration of patriarchates has been executed by the Roman Pontiffs in more recent times. Modification can take the forms of territorial changes (c. 146 § 2), or the authority of the patriarch and the synod of Bishops can be reduced or expanded in a specific matter. In cases of necessity, the

supreme authority can suppress an Eastern Catholic Patriarchal Church.

Each patriarchate has a title (e.g. of Antioch, Jerusalem, etc), which can be modified only with the approval of Roman Pontiff or an ecumenical council. Patriarchs ought to have a permanent see for the residence of the patriarch and his administration (57 § 3). The patriarchates have their territorial boundaries, namely, the regions where the “rite proper to that Church is observed and the patriarch has a legitimately acquired right to erect provinces, eparchies and exarchies” (CCEO c. 146 § 1). For example, the proper territory of Syro-Malabar Church is limited to the boundaries of four metropolitan provinces, namely, Changnacherry, Ernakulam, Thrissur and Thalassery. If the Church has got eparchies outside the proper territory they come under the direct jurisdiction of the Roman Pontiff. All laws enacted by the synod of bishops and promulgated by the Patriarch are binding inside the patriarchal territory only; whereas liturgical laws enacted by the patriarchal synod are binding everywhere (CCEO c. 150§ 1-3) .

An Eastern Catholic patriarch enjoys precedence over all bishops of any Church even in their own eparchies / dioceses or Churches (c. 58). Patriarchs of the Eastern Catholic Churches, although some are more recently established than others, are equal in virtue of their patriarchal rank (c. 59 § 1; O E 8).

### **Election of Patriarch/Major Archbishop**

The ordinary procedure for the designation of a patriarch is by an election of the Synod of Bishops (CCEO c. 63). Since a patriarch is a bishop, the requirements for a candidate to the episcopate (cf. CCEO c. 180) are also applicable (CCEO c. 64). Particular law of the Church sui iuris can also specify other requirements for a candidate to be qualified to be patriarch.

When the patriarchal see becomes vacant, either by death or by the resignation of the patriarch, an administrator of the Patriarchal

Church is to be designated. “Unless particular law determines otherwise, during a vacancy of the patriarchal see, the administrator of the patriarchal Church is the senior bishop according to episcopal ordination among the bishops of the patriarchal curia or, if there are not any, among the bishops who are members of the permanent synod” (CCEO c. 127). The administrator of the Patriarchal Church is to notify the Roman pontiff and all the bishops of the Patriarchal Church of the vacancy, to execute any norms of common or particular law and instructions of the Roman Pontiff, and to convoke the bishops to a synod for the election of the patriarch (CCEO c. 128).

The synod of election is ordinarily to be celebrated in the patriarchal residence, but can be convened elsewhere with the consent of the permanent synod (CCEO c. 65 § 1). The synod is to be convoked within one month (possibly extended to two months if particular law permits) of the vacancy of the see (CCEO c. 65 § 2).

All members of the synod of Bishops who are to be convoked to the synod have an active vote in the patriarchal election (CCEO c. 66 § 1). Every bishop is entitled to only one vote; voting by proxy or letter is prohibited (CCEO cc. 105 and 950). If a member of the synod is present in the building in which the election is taking place, his vote is to be obtained by the scrutineers (CCEO c. 949 § 2). If a bishop who lacks voting rights does indeed vote, the vote is null, but the election is valid unless it was a deceive vote (CCEO c. 953 § 2).

Only members of the Synod, the secretary and scrutineers can be present in the room for the election (CCEO c. 66 § 2). Interference either before or during the election is prohibited (CCEO c. 66 § 3). Neither the presence of extraneous persons or interference would per se invalidate the election, but if the freedom of the electors was impeded, the election would be null (CCEO cc. 952 and 954 § 1, 1°).

The right of a bishop to be summoned to the electoral synod is accompanied by the serious obligation to participate in the synod

(CCEO c. 68 § 1), with the exception of resigned bishops who have the right to be summoned to the synod, but are not obliged to attend (CCEO c. 104 § 1). A bishop who considers himself unable to attend can submit his reasons in writing to the synod; the bishops present in the designated location at the first session will decide upon the legitimacy of the reasons (CCEO c. 68 § 2). If the reasons are deemed legitimate, the bishop is not to be included in the calculation of the quorum. The quorum required for a valid election is two-thirds of the total number of bishops who are obliged to be present (c. 69).

The election of the president of the synod is to be conducted during the first session of the synod (CCEO c. 70). (Before the election, the administrator of the Patriarchal Church presides). Among the duties of the presiding officer is to intimate the person of his election (CCEO c. 73) and to announce the election (CCEO c. 956 § 2). To assist in the election, two scrutineers and a secretary are to be appointed from among the members of the synod; particular law can provide that these positions also be filled by priests or deacons (CCEO c. 71 § 1). All who are present are bound by the serious obligation to maintain secrecy regarding all matters concerning the election both during and after the synod (CCEO c. 71 § 2).

A two-thirds majority is ordinarily required for someone to be elected patriarch; particular law can reduce the requirement to an absolute majority, the number of candidates is to be reduced to the two with the largest number of votes. If the number of candidates cannot be reduced to two because of a tie vote, the name of the one who is senior, first according to presbyteral ordination, and then age, is to be a candidate (CCEO c. 183 §§ 3-4).

If the bishops are unable to elect a patriarch within fifteen days after the opening of the synod, the matter devolves to the Roman Pontiff who can arrange for the designation of the patriarch in the manner he deems appropriate (CCEO c. 72 § 2).

If the one who is elected as patriarch is at least a legitimately proclaimed bishop (CCEO c. 73) or has received the assent of the Roman Pontiff to be put on the approved list of Episcopal candidate (cf. CCEO c. 184), he is to be intimated immediately of his election. If the one elected is not on that list, the synod is while the president submits the name of the one elected to the Apostolic See for consideration (c. 185 § 1). Absolute secrecy, even towards the one elected, is to be maintained by anyone knowledge of the results.

The one who is elected is given two days of useful time (cf. CCEO c. 1544 § 2) to accept or decline the election (CCEO c. 74). Through acceptance of the election, the person acquires the right to Episcopal ordination (if he is not yet a bishop) and patriarchal enthronement. To decline the election will result in the absolute loss of these rights, but the person could be re-elected (CCEO c. 957 § 3).

If the one elected is an ordained bishop, he is to be enthroned as patriarch according to the prescriptions of liturgical books; if the one elected is not a bishop, Episcopal ordination is to be conferred on him before enthronement (CCEO c. 75), by which he obtains the office (CCEO c. 77 § 1).

The synod bishops is to notify the Roman pontiff and the patriarchs of the other Eastern Churches of the patriarchal election and enthronement; the synod is further to attest to the Roman Pontiff that the patriarch made a profession of faith and the oath of fidelity (CCEO c. 76 § 1). It would be advantageous from an ecumenical perspective if the other Eastern patriarchs were notified following the first millennium custom. The newly elected patriarch is to request ecclesiastical communion from the Roman Pontiff (CCEO c. 76 § 2); and until he receives it, he is not convoked a synod or ordain bishop (CCEO c. 77 § 2).

### **Patriarchal Power**

Patriarchal power is ordinary (joined with his office), proper (exercised in his own right and not vicariously on behalf of the Roman

Pontiff or the bishops of his Church), and personal (bound to the person of the patriarch and incapable of being delegated in its entirety) (CCEO c. 78 § 1). The power of the patriarch is exercised validly only inside the territorial boundaries of the Patriarchal Church, unless common or particular law approved by the Roman Pontiff establishes otherwise (CCEO c. 78 § 2).

The Patriarchal Church *ipso iure* is a juridic person (c. 921 § 2) and is represented by the patriarch in all its juridic affairs (c. 79) both in the ecclesiastical sphere and in the civil sphere in the manner determined by the civil law and the agreements entered into either by the Patriarchal Church or the Apostolic See (cf. CCEO c. 98).

The patriarch fulfills the function of a metropolitan in places where metropolitan provinces are not established (CCEO c. 80, 1°), during a vacancy of the metropolitan see, and in those matters in which the metropolitan has been negligent (c. 80, 2° - 4°). However, none of the Eastern Catholic Patriarchal Churches has a true metropolitan structure as have instead the two Major Archiepiscopal Churches, the Ukrainian Church and Syro-Malabar Church.

The patriarch can issue “decrees” that urge the application of law and elaboration of law. He can issue “authentic interpretations” of synodal legislation until the next meeting of the synod of bishops. He also can issue “instructions” that explain doctrine, foster piety, correct abuses, promote piety, and generally foster the spiritual welfare of the people. He may also issue encyclicals regarding his Church and rite (CCEO c. 82 §§ 1-2).

At the time determined by particular law, the patriarch may conduct pastoral visitation of a church, community or an eparchy (CCEO c. 83 § 1).

With the consent of the synod of bishops and after consultation with the Apostolic See, the patriarch can for a serious reason establish

or suppress eparchies or provinces and modify the boundaries or hierarchal status of the same in the patriarchal territory (c. 85 § 1).

With the consent of the Synod of Bishops, the patriarch can:

(1) At the request of the eparchial bishop, appoint an auxiliary bishop in conformity with the other requirements of law (CCEO c. 85 § 2, Cf. CC. 181 § 1; 182-187 and 212 §1);

(2) For a serious reason, appoint a coadjutor bishop in conformity with the requirements of law (CCEO c. 85 § 2, 1<sup>o</sup>; cf. cc. 181 § 1; 182-187 and 212 § 2) with the right of succession and whose rights and obligations are defined by common law (c. 213 § 1). After consultation with the permanent synod, the patriarch can assign special powers to the coadjutor bishop; if the patriarch wishes to endow the coadjutor bishop with all the rights and obligations of an eparchial bishop (whereby he is effectively appointing an eparchial bishop), he must have the consent of the Synod of Bishops (CCEO c. 213 § 2).

(3) For a serious reason, transfer a metropolitan, eparchial or titular bishop if the bishop concerned consents to it (c. 85 § 2, 2<sup>o</sup>). If not, the case is to be referred to the Synod of Bishops for resolution which can defer it to the Roman Pontiff.

With the consent of the permanent synod, the patriarch can erect, modify and suppress exarchies (cf. c. 311 § 1) in the patriarchal territory (c. 85 § 3).

After consultation with the permanent synod, the patriarch can appoint an exarch (who need not be an ordained bishop) to an exarchy inside the patriarchal territory (0. 314 § 1). If the exarch is to be a bishop, the procedure for the election and approval of Episcopal candidates is to be observed (cc. 181 § 1 and 182-187).

The patriarch is to notify the Apostolic See of all these acts even if prior consultation is not required; the patriarch is to provide the

Apostolic See with the information about the decisions taken (CCEO c. 85 § 4).

### **Synod of Bishops of the Patriarchal Church (CCEO cc. 102-113)**

In the Eastern Catholic Churches, Synodal governance is the ordinary form of governance among the patriarchal and Major Archiepiscopal Churches. Jointly with the Patriarch, the synod of Bishops constitutes the highest authority in the Patriarchal Church (Vatican II, *Orientalium Ecclesiarum* 9). Although there is some degree of overlapping, the competency is generally circumscribed as follows: The patriarch enjoys executive authority and the Synod of Bishops enjoys legislative and judicial authority in the Patriarchal Church (CCEO c. 110). Of course, the Synod of Bishops can exercise authority only together with its head, the patriarch.

The synod of bishops of a Patriarchal Church is comprised of all and only the ordained bishops of the respective Church (CCEO c. 102 § 1); others can be invited to attend in the capacity of experts or guests. Certain bishops are excluded: a bishop who is incapacitated to the extent that he is incapable of a human act (CCEO c. 953 § 1 n 1°); a bishop who has been reduced from the episcopate to an inferior rank or who has been deposed (CCEO c. 1433); a bishop who has publicly rejected the Catholic faith, publicly defected from communion with the Catholic Church or who is under the penalty of major excommunication (CCEO cc. 953 § 1 n 3° and 1434).

Eparchial bishops constituted inside the territory of the Patriarchal Church enjoy a deliberative vote in all matters in the Synod of Bishops. With the exception of elections, particular law can restrict the deliberative vote of other bishops in other matters (CCEO c. 102 § 2).

The Synod of Bishops must always act in conjunction with the patriarch who has the exclusive right to convoke the synod and

preside over it (CCEO c. 103); the bishops alone cannot do so even acting unanimously. The only exception to this is the case of a vacant or impeded patriarchal see (wherein the administrator is to convoke the synod (CCEO c. 65§ 1).

Powers of governance in the Patriarchal Church are generally allocated as follows: the patriarch is endowed with executive authority; the Synod of Bishops is endowed with legislative authority and constitutes the superior judicial power of the Patriarchal Church. In this manner, a balance of power is established between the individual authority of the patriarch and the collegial authority of the patriarchal territory (cf. CCEO c. 150 §§ 2-3).

The synod of Bishops is the superior judicial instance within the territorial boundaries of the Patriarchal Church (cc. 110 § 2). A tribunal of three bishops, elected for a five year term by the Synod of Bishops, is to be constituted. One of these bishops serves as general moderator for the administration of justice by all tribunals within the territorial limits of the Patriarchal Church (c. 1062).

The tribunal of the Synod of Bishops is competent to judge non-criminal cases involving bishops and eparchies (c. 1062 § 3). Criminal cases involving patriarchs and bishops are reserved to the Roman Pontiff as in any other cases he deems to reserve to himself (c. 1060 § 1 n 4<sup>o</sup>). There is no further appeal against decisions passed by this tribunal except appeal to the Roman Pontiff (c. 1062 § 4).

The Synod of Bishops also acts as an electoral body (c. 110 § 3) for the Patriarchal Church by electing the patriarch (CCEO cc. 63-77), bishops (CCEO cc. 180-189) and candidates for episcopal office outside the territorial boundaries of the Patriarchal Church (CCEO c. 149). Further, the Synod of Bishops is responsible for the constitution of other bodies such as the general moderator for the administration of justice and patriarchal tribunal (CCEO c. 1062 § 2) and the elected members of the permanent synod (CCEO c. 115 § 2).

The synod of Bishops is ordinarily not competent to carry out administrative acts; however, the patriarch can authorize the synod to perform a certain administrative act or common law can reserve an act to the Synod of Bishops (CCEO c. 110 § 4).

While the Patriarch is competent to promulgate the enactments of the Synod of Bishops, the Synod of Bishops is to determine the manner and time of the promulgation of laws and decisions (CCEO c. 111 § 1). An enactment contrary to the will of the patriarch could be a dead letter if he refuses to promulgate it, since a law comes into existence through promulgation (c. 1488). All synodal acts are to be communicated as soon as possible to the Roman Pontiff. The patriarch alone has the sole authority to promulgate a law or publish a decision according to the time and manner determined by the synod (CCEO c. 112 § 1).

### **Patriarchal Curia**

The patriarch is to establish a patriarchal curia to assist him in the governance of the Patriarchal Church (CCEO c. 114 § 1). Curia consists of the permanent synod, curial bishops, finance officer, chancellor, and the ordinary tribunal.

The permanent synod is comprised of the patriarch and four bishops (CCEO c. 115 § 1). One of the bishops is to be appointed by the patriarch and the other three are elected by the synod of bishops for a term of five years (CCEO c. 115 § 2).

A finance officer is to be appointed in the curia distinct from the finance officer of the patriarch's eparchy. He is responsible for the administration of the temporal goods of the patriarchal church.

Patriarch is to appoint a chancellor for the patriarchal curia who is responsible for the patriarchal chancery and archives (CCEO c. 121 § 1).

## **2. Major Archiepiscopal Churches**

Major archiepiscopal churches are the oriental churches, governed by the major archbishops being assisted by synod of

bishops. These churches also have almost the same rights and obligations of Patriarchal Churches. The Major Archbishop presides over his Church in the same way as a patriarch, but he lacks the patriarchal dignity. Unlike the patriarch, the election of the Major Archbishop by the synod must be confirmed by the pope. A major archbishop is the metropolitan of a see determined or recognized by the Supreme authority of the Church, who presides over an entire Eastern Church *sui iuris* that is not distinguished with the patriarchal title. What is stated in common law concerning patriarchal Churches or patriarchs is understood to be applicable to major archiepiscopal churches or major archbishops, unless the common law expressly provides otherwise or it is evident from the nature of the matter” (CCEO.151, 152). There are currently four Eastern Catholic Major Archiepiscopal Churches: a) Syro-Malabar Church, b) Syro-Malankara Catholic Church, c) Romanian Catholic Church, d) Ukrainian Catholic Church.

A Major Archiepiscopal Church is quite similar in hierarchical constitution to a Patriarchal Church and enjoys almost the same degree of autonomy. Like the Patriarchal Church, a Major Archiepiscopal Church includes a Synod of Bishops in its governmental structure. Unlike a patriarch who has to ask for ecclesiastical communion after enthronement from the Roman Pontiff, the one elected as major archbishop must obtain a confirmation in order to assume office (c. 153 §).

The title archbishop originated in the East. In the early Church it designated a bishop who enjoyed a certain prestige or superiority over other bishops in the region. Canons 4 and 5 of the Council of Nicea I (325) spoke of the role of the archbishop or metropolitan in the province. Canon 6 of the same council also indicated that another ecclesial structure, the patriarchal office, had already begun to evolve. The bishops of certain sees (e.g., Alexandria, Antioch, and Rome), who will be called later variously as archbishops or patriarchs, exercised authority not only over the bishops of their own civil

provinces, but also over the metropolitans of the other provinces of the civil diocese. The title of archbishop also applied to bishops, who, although lacking suffragans, enjoyed great honor because of their personal qualities or the importance of their see. Some others were merely titular archbishops.

### **Major Archbishop and Major Archiepiscopal Churches (cc. 151-152)**

In CCEO, a major archbishop is defined as “a metropolitan of a see determined or recognized by the supreme authority of the Church, who presides over an entire Eastern Church *sui iuris* that is not distinguished with the patriarchal title” (c. 151). Except for the last phrase, what precedes would apply both to the Patriarchal Churches and to Archiepiscopal Churches alike. On a close examination, however, it will be found that the definition would apply also to a metropolitan who presides over a Metropolitan Church *sui iuris* (cf. c. 155). It is from their competence rather than from such definitions that a patriarch, a major archbishop, or the metropolitan of a Church *sui iuris* can properly be identified and distinguished: unlike the last, the first two have power even over metropolitans.

Only an act of designation or acknowledgement on the part of the *supreme authority* can confer the status of major archiepiscopate on a metropolitan see and determine any specific rights or obligations attached to this office.

The major archiepiscopal status brings with it all the rights and obligations of a Patriarchal Church, unless expressly indicated to the contrary by common law or the supreme authority. The rights, obligations and prerogatives of the major archbishop had to be sought from the corresponding canons on Patriarch. What is established by common law with reference to Patriarchal Churches and Patriarchs is also applicable to Major Archiepiscopal Churches and major archbishops, unless it is expressly provided otherwise or it is evident from the nature of the matter (c. 152).

## **Major Archiepiscopal Elections (c. 153)**

The electoral body for the election of a major archbishop is the Synod of Bishops of the Major Archiepiscopal Church. The procedure for the election is identical to that for the election of the patriarch (c. 153 § 1) right from the beginning through the notification of the person who is elected, at which point the procedures diverge. In the election of the major archbishop, the synod of bishops of the Major Archiepiscopal Church must send a synodal letter to the Roman Pontiff that the election was conducted canonically; so too, the one elected must send a personally signed petition to the Roman Pontiff for a confirmation of the election (c. 153 § 2). At this point of the procedure, the one elected is only a candidate for the major archiepiscopate and does not yet hold that office.

If the one elected is an ordained bishop and receives the confirmation from the Roman Pontiff, in the presence of the synod of Bishops of the major archiepiscopal church, he is to make the profession of faith and promise to carry out faithfully his office. Afterwards, his election is to be proclaimed and he is to be enthroned at which time he obtains full rights to his office. If the one elected is not an ordained bishop, and his election is confirmed by the Roman Pontiff, Episcopal ordination must be conferred before he can be validly enthroned, since only one endowed with Episcopal character can occupy this office (c. 153 § 3). If the confirmation of the election of the major archbishop is denied, a new election is to be conducted in the time period determined by the Roman Pontiff (c. 153 § 4).

### **Synod of Bishops and the Power of the Major Archbishop**

As it is already mentioned, in all matters regarding the power of the Major Archbishop and functioning of the Synod and other things, rules on the patriarchal Churches are applied to the Major Archiepiscopal Churches too. CCEO c. 152 specifies: “what is stated in common law concerning patriarchal Churches or patriarch is understood to be applicable to major archiepiscopal Churches or

major Archbishops, unless the common law expressly provides otherwise or it is evident from the nature of the matter”. Hence, the functioning of the synod of bishops, organs helping the major archbishop, etc. canons on the Patriarchal Churches are to be applied.

### 3. Metropolitan Churches *Sui Iuris*

The *sui iuris* church, which is governed by a metropolitan, is called a metropolitan church *sui iuris*. A Metropolitan Church *sui iuris* is presided over by the Metropolitan of a determined see who has been appointed by the Roman Pontiff and is assisted by a council of hierarchs according to the norm of law” (CCEO. 155§1). The Catholic metropolitan churches are the following: a) Ethiopian Catholic Church, b) Ruthenian Catholic Church, c) Slovak Greek Catholic Church, d) Eritrean Catholic Church, e) Hungarian Greek Catholic Church.

Metropolitan Churches *sui iuris* are immediately subject to the Roman Pontiff unlike those Metropolitan Churches that are actually provinces of some Patriarchal or Major Archiepiscopal Church. As its name implies, a Metropolitan Church *sui iuris* is presided over by a metropolitan; he is appointed by the Roman Pontiff and assisted by a Council of Hierarchs. The office of the metropolitan is attached to a determined see (c. 155 § 1).

A Metropolitan Church *sui iuris* can come into being or be suppressed only through an act of the supreme authority. Likewise, only the supreme authority can modify the status (either a reduction or an elevation) of a Metropolitan Church *sui iuris* and define its territorial boundaries (c. 155 § 2).

Within three months of his Episcopal ordination or, if already an ordained bishop, from his enthronement, the metropolitan is bound to request from the Roman Pontiff the palium, a symbol of metropolitan power and of the full communion of the metropolitan Church *sui iuris* with the Roman Pontiff (CCEO c. 156 § 1). Pallium

is a vestment consisting today of a three inches wide white sash of lamb wool, decorated by black crosses, worn around the neck, with the ends hanging down ten inches in front and back. Metropolitans within a patriarchate or major archiepiscopates do not receive now the pallium.

**Authority [CCEO cc. 159 163]**

The autonomous metropolitan's power of governance is *ordinary* (connected with his office), *proper* (exercised in his own name), but *personal*, which means that he cannot constitute a vicar for his entire Church nor give to any person delegation for all cases. In addition, it is *territorial*, i.e., the jurisdiction of the metropolitan and the bishops cannot be exercised outside the territory of the Church. He represents the Church in all juridic matters (c. 157). The metropolitan has the same rights and obligations as other eparchial bishops in his own eparchy from which he takes his title (c. 158).

**Rights and Duties**

The metropolitan of an autonomous Church has a number of rights:

1. He ordains and enthrones the bishops (who were appointed by the Roman Pontiff).
2. He convokes, prepares, presides, transfers, postpones, suspends or dissolves the council of hierarchs.
3. He erects a metropolitan tribunal, a court of appeal.
4. He oversees that faith and discipline are observed.
5. He conducts canonical visitations in eparchies if the bishops were negligent.
6. He appoints an administrator of an eparchy if he was not properly elected (CCEO c. 221, 4).
7. He appoints or confirms officials instead of a bishop who neglected to do it.

8. He communicates acts of the Roman Pontiff to his Church and supervises their execution (c. 159).
9. He will hear his bishops, and they will seek his counsel, in all extraordinary matters (c. 160).
10. He is to be commemorated by all bishops, clerics and religious in all liturgical services (c. 161).
11. He commemorates the Roman Pontiffs in all liturgical celebrations and sees to it that this is done by his entire Church (c. 162).
12. He visits frequently the Roman Pontiff, and officially every fifth year, preferably in company of all his bishops (c. 163).

### **Council of Hierarchs [cc. 164 171]**

The Metropolitan Church does not have a synod of bishops as is the case with the patriarchal / major archiepiscopal Church, but a council of hierarchs. All bishops of this Church belong to the council of hierarchs, but only eparchial and coadjutor bishops have a deliberative (decisive) vote, while other bishops have it only if this has been so decided. Otherwise, their votes are only consultative (c. 164). All bishops are obliged to attend meetings of the council, and cannot send a proxy (c. 165). Any session of the hierarchs is canonical if a majority of bishops who are obliged to be present are actually there. Matters are decided by an absolute majority of those who have a deliberative vote and who are present (c. 166).

The council can legislate on matters expressly assigned to it in law and whenever the common law speaks of the particular law of an autonomous Church. The metropolitan will then notify the Roman Pontiff, and, after confirmation, he will promulgate the laws and publish the decisions of the hierarchs (c.167§§1-3).

Administrative Function (c. 167 §4)- The council of hierarchs is to give the consent to the metropolitan for administrative acts which common law commits to the superior administrative authority of such a Church.

#### **4. Other Churches *Sui Iuris***

Other than the above-mentioned three forms of *sui iuris* churches there are some other *sui iuris* ecclesiastical communities. It is “a Church *sui iuris* which is neither patriarchal nor major archiepiscopal nor Metropolitan, and is entrusted to a hierarch who presides over it in accordance with the norm of common law and the particular law established by the Roman Pontiff” (CCEO c. 174). The following churches are of this juridical status: a) Albanian Greek Catholic Church, b) Belarusian Greek Catholic Church, c) Bulgarian Greek Catholic Church, d) Byzantine Catholic Church of Croatia and Serbia, e) Greek Byzantine Catholic Church, f) Italo-Albanian Catholic Church, g) Macedonian Greek Catholic Church, h) Russian Catholic Church.

These Churches are governed by a hierarch, usually a bishop, appointed by the Roman Pontiff (CCEO c. 174). The hierarch exercises the rights and obligations specified for the metropolitan of the metropolitan Churches *sui iuris*, but acts as a delegate of the Roman Pontiff.

## Chapter 5

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# The Eparchy and the Bishop

“**D**iocese” is the word used in the Latin Code, and “eparchy” is the word used in the Oriental Code to denote a portion of the people of God headed by a bishop. The administrative structure of the Roman Empire is imitated by the Church in its grouping of the faithful. In 297 AD Emperor Diocletian re-arranged the divisions of the Roman Empire. He divided the empire into dioceses and they were further divided into provinces which were called eparchies. Later, in order to indicate the ecclesiastical area of the local Church entrusted to the bishop, the Western Church adopted the term “Diocese” and the Eastern Churches accepted the term “Eparchy”. Thus we have the term diocese in the Latin code and the term eparchy in the Oriental Code. CIC c. 369 and CCEO c. 177 defined what is

a diocese or an eparchy. The rest of the canons in this section speak of the eparchial bishop.

### **The Eparchy or the Diocese**

CCEO c. 177 - §1: “An eparchy is a portion of the people of God which is entrusted for pastoral care to a bishop with the cooperation of the presbyterate so that, adhering to its pastor and gathered by him in the Holy Spirit through the Gospel and the Eucharist, it constitutes a particular Church in which the one, holy, catholic and apostolic Church of Christ is truly present and operative.”

This canon defines the eparchy as a “portion of the people of God,” that is, a group of the faithful. These faithful are not considered only as a set of persons bound together by certain common interests, nor even as an association of faithful united by the bonds of Charity. Common interests and reciprocal charity do not suffice for the constitution of an eparchy; there is something more: the action of the bishop. By an act of the competent ecclesiastical authority these faithful are entrusted to the pastoral care of a bishop, assisted by his presbytery; and, the realization of the eparchy requires the adherence of the faithful to their bishop, who unites them and constitutes them as community, as Church.

The bishop does not assemble the people in his own name, but in the name of Christ, through Gospel and Eucharist, and the faithful gathered by him are bound together in the Holy Spirit. The eparchial community thus becomes a Church. It is not merely an image of the universal Church, but it is in truth the holy, catholic and apostolic Church of Christ realized in a particular place. It is in and out of such particular Churches that the one and only Catholic Church exists.

Hence an eparchy has the following characteristics:

- A portion of the people of God
- An image of the Universal Church

- Its pastoral care is entrusted to a bishop for him to shepherd it with the cooperation of priests and deacons (presbyterium).
- As a general rule eparchies are territorial and include all the faithful living in the territory.

The erection, modification and suppression of eparchies within the boundaries of the patriarchal and major archiepiscopal Churches are done by the patriarch or the major archbishop with the consent of the synod of bishops. In other case it is done by the Apostolic See (CCEO c. 177 § 2).

## **Bishops**

Bishops are the heads of the eparchies. By legitimate Episcopal ordination they participate in the fullness of the sacrament of orders and are constituted as ministers of the Lord, successors of the Apostles and pastors of the Church. They do it in communion with the pope and other members of the college of bishops.

The bishop governs his Church in the first person, as the Vicar and envoy of Christ (LG 23), not as the vicar of the pope or patriarch. For this reason, he has full power. But he is subject to the limitations imposed by the supreme authority of the Church in view of the common good (c. 178). Within the limits of his eparchy the authority of the bishop is proper (proper to his office), ordinary (attached to his office), and immediate (in the sense that he can exercise his power over persons and ecclesiastical institutions in his eparchy without any intermediary) (CCEO c. 178).

Finally, not all bishops govern an eparchy in their own name. Bishops who have only the title of an eparchy and exercise or have exercised some other of the various offices are called “titular bishops” (c. 179).

## **The Election of Bishops (cc. 180 – 189)**

The nomination of a bishop has always been considered an act of the greatest importance. In the Latin Church, the bishops are

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appointed by the Apostolic See. In the Oriental Churches, in case of the patriarchal and major archiepiscopal Churches within their territorial boundaries, the bishops are elected by the synod of bishops with the ascent of the Roman Pontiff. However, the bishops outside the proper territory of the Oriental Churches are appointed by the Apostolic See.

The requirements for the suitability of a candidate to the episcopate are listed in CCEO c. 180. These are six in number. The person should be:

1. Outstanding in solid faith, good morals, piety, zeal for souls and prudence;
2. Enjoy a good reputation;
3. not be bound by a matrimonial bond;
4. be at least thirty-five years old;
5. ordained a presbyter for at least five years;
6. hold a doctorate or licentiate or at least have expertise in some sacred science.

Bishops who are to exercise their office within the borders of the territory of their own Patriarchal or Major Archiepiscopal Church are elected by the synod of Bishops of their own Church. In exceptional circumstances, the Roman Pontiff may nominate them himself (OE 9; c. 181).

Canon 182 treats of candidature. Candidates are proposed to the patriarch (or major archbishop) only by the bishops who are members of the Synod of Bishops of the respective Church *sui iuris*. After gathering sufficient information as needed to ascertain the suitability of the proposed candidates, the Synod draws up a list of candidates, proceeding by secret vote. Unless there is some other determination of Law, they vote on each name: those that obtain a majority vote are included in the list. CCEO c. 182: Unless particular law approved by the Roman Pontiff states otherwise, the synod of

bishops of the patriarchal Church is to examine the names of the candidates and compile a list of the candidates by secret ballot, which is to be transmitted through the patriarch to the Apostolic See to obtain the assent of the Roman Pontiff. The assent of the Roman Pontiff once given for an individual candidate is valid until it has been explicitly revoked, in which case the name of the candidate is to be removed from the list.

The election of the bishop is to take place according to CCEO c. 183 and the norms of cc. 947-956 on election. The bishops assembled in the Synod give their votes to the presbyter whom they judge the most suitable “in the presence of the Lord”; the bishops are not bound to the previously prepared list of candidates.

In the voting an absolute majority of votes of the electors present is required; but if this is not achieved in the first round of three balloting, on the fourth balloting only the two names that received the most votes in the third balloting have passive voice, and of these two, the one is elected who attains the majority of votes, even if only a relative one, of the electors present. The one elected may be informed and asked for his consent only if he has already obtained Pontifical assent; otherwise, the Patriarch or major archbishop must first ask and obtain the assent of the Roman Pontiff (cc. 184 and 185).

Other bishops are designated directly by the Roman Pontiff (c. 182 § 2). But for the office of bishops outside the territory of a Patriarchal or Major-Archiepiscopal Church, the respective synods have the right to present a list of three candidates to the Roman Pontiff (c. 149). Similarly, the Council of Hierarchs of a Metropolitan Church *sui iuris* has the right of proposing a list of three candidates for its own bishops (CCEO c, 168).

Canon 188 fixes the term for ordination (three months) and for taking possession occurs “by the enthronement itself”. Therefore, if a bishop is newly ordained and the ordination takes place within the

boundaries of his eparchy, the taking of possession occurs at the end of the ordination itself, normally in the cathedral Church.

### **Rights and Duties of Eparchial Bishops (CCEO cc. 190-211)**

The eparchial bishop, as has already been mentioned, has three functions or offices: that of teaching, of sanctifying and of governing. These are treated amply in the Second Vatican Council documents, especially, *Lumen Gentium* and *Christus Dominus*.

Given that the eparchial bishop represents his eparchy in all legal affairs (c. 90), the code distinguishes his power of governance as legislative, executive and judicial (c. 191 § 1).

The eparchial bishop exercises the legislative power personally; that is, he cannot delegate it. And as for judicial power, he is the first administrator of justice in his eparchy. If disputes arise amongst his faithful (clerics, religious, laypeople), or offences are committed, the eparchial Bishop is responsible for the application of the laws, and he may act either personally or through judicial vicars and judges, but he as well as these others has to follow the laws in force (cc. 1055-1400), which determine competences and procedures.

Finally, the eparchial bishop exercises the executive power aided by the eparchial curia, which he is to have at his see (c. 243 § 1).

### **Coadjutor and Auxiliary Bishops (cc. 212-218)**

Pastoral reasons may suggest to the eparchial bishop to ask the Apostolic See, or the patriarch or the major archbishop for an auxiliary bishop. For these same reasons, or for personal reasons, the same authorities may appoint a coadjutor bishop, with right of succession and special powers (CCEO c. 212; cf. CIC c. 403 § 3) or one or several auxiliary bishops.

If their nomination falls within the competence of the patriarch or major archbishop (c. 85 § 2 n 1<sup>o</sup>) and it is to be done as in the case of the bishop. The coadjutor bishop must be appointed *protoprocurator* (first vicar general). If there are several auxiliary bishops,

one of them is made *protosyncellus* and the other *syncelli* (vicar general) (CCEO c. 215). The eparchial bishop is to consult with them in questions of major importance.

### **Eparchial Curia (cc. 252-261)**

In every diocese/eparchy a curia is to be established in order to assist the bishop (CCEO c. 243 § 1). The members of the curia are appointed by the bishop to assist him and to act on his behalf. Hence, the curia derives its existence from the bishop. The curial members share the administrative and judicial powers of the eparchial bishop. In other words, the bishop and the curia form one body.

The portion of the diocesan curia is dealt with in CIC, Book No. II, Chapter II (cc. 469-494). CCEO presents the topic in Title No. VII, Art. II. Canons 243 - 263. The Oriental code specially mentions certain officials of the curia in its c. 243 whereas the Latin code does not specify the names of the officials of the curia but only generally mentions that the curia is composed of those institutes and persons who assist the bishop in governing the diocese.

According to the Oriental code, the eparchial curia comprises the following officials: Protosyncellus, Syncelli, Judicial Vicar, Eparchial Finance Officer, the council for economic affairs, Chancellor, Eparchial Judges, Promoter of Justices, defender of the bond, notaries and other persons assigned by the eparchial bishop. However, the list need not be considered restricted to the above persons. Other officials or councils can be included in the curia. The bishop has broad discretion in determining the structure and composition of the curia. The presbyteral council, the college consulters, and the pastoral council also co-operate closely with the eparchial curia and the curia is having the responsibility for implementing the programs decided by these councils.

The appointments to and removal from any office of the eparchial curia are reserved to the bishop (CCEO c. 244 § 1). It refers not only to the offices mentioned in CCEO canon 243, but also to any

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office attached to the curia. It does not mean that the bishop can arbitrarily appoint members to the curia. Here he has to follow the norms prescribed in the Canon law. For example, the bishop has to consult the members of the college of consulters and members of the finance council before appointing the finance officer. Again the bishop can appoint a judicial vicar only a priest who has either a doctorate or a licentiate in canon law.

CCEO c. 244 §2: “All who are admitted to an office in the eparchial curia must: 1. make a promise to carry out the office faithfully in the manner determined by the law or by the eparchial bishop; 2. observe secrecy within the limits and according to the manner determined by the law or by the eparchial bishop.”

The curia acts always in the name of the bishop, under the authority of the bishop, for the good of the diocese, and in the service of pastors. The curia derives its existence from the bishop. The members of the curia acts on the basis of the power of the bishop. It does not operate by its own power or its own initiatives. Hence, the functions they perform and the power they exercise are vicarious in nature. Though it means vicarious power it does not mean that they function at the whims and fancies of the bishop. Once the curia is established, the bishop has to respect the functional autonomy of the office.

### **Members of the Curia**

We have already seen that the Latin code gives only a general mention of the curial persons saying that the curia is composed of institutes and persons assisting the bishop in the administration of the diocese (CIC c. 469) whereas the oriental code specifically mentions who are all the essential members of the curia in canon 243§2. They are the following:

**1. Protosyncellus (Vicar General) :** In the East the custom evolved that the bishops were taken from among the monks and those bishops would continue to maintain their monastic life by taking a companion with them. This companion who shared a cell or

apartment with the bishop would naturally have great influence in the local Church because of his proximity to the bishop. He represented the bishop in ecclesiastical affairs.

In the Latin Church the figure of Vicar general was introduced, according to some historians, to replace the figure of the Archdeacon or originally another companion of the bishop. When the Eastern Catholic Churches came into contact with the juridic figure of the vicar general, the syncellus was endowed with the same responsibility. The office of the Protosyncellus/Vicar general is an obligatory office in the diocesan curia. The protosyncellus is freely appointed by the bishop. He can be appointed either for a determine time or for an indeterminate time.

The power of the Protosyncellus/Vicar general is ordinary and vicarious. It is exercised in his own name but on behalf of the bishop. He is endowed with all powers of governance of the bishop. However the Vicar general does not enjoy any legislative and judicial authority. The judicial authority is exercised by the Judicial Vicar, who should not be the same person as the protosyncellus unless the lack of clergy or the number of cases would indicate that the same person could be appointed protosyncellus and judicial vicar.

With regard to the number of Vicar General, CCEO says that there can be only one Protosyncellus but more than one syncellus in an eparchy (CCEO c. 245) whereas CIC canon 475 says that ordinarily one Vicar General, but in special circumstances perhaps more than one Vicar General or Episcopal Vicar can be appointed. If there are more than one auxiliary bishop, one is to be appointed protosyncellus and the others are to be appointed to the office of syncellus (CCEO c. 215§2). The function of the Syncellus is identical with that of the protosyncellus with the exception that his authority is restricted. The letter of appointment should indicate the specific scope of the authority of the syncellus.

Both CCEO and CIC provide that members of a particular *sui iuris* Church can be entrusted to the pastoral care of the hierarch of

another *sui iuris* Church and that a syncellus can be appointed to cater to their needs. Although the faithful are entrusted to the hierarchy of another Church *sui iuris*, they do not change enrollment in their Church *sui iuris* because of that arrangement (CCEO c. 38).

In the appointment of a protosyncellus or syncellus, certain qualifications and disqualifications of persons are to be taken into account. He must be validly ordained priest, celibate, at least thirty years old, possess a doctorate or licentiate in sacred sciences, should have sound doctrine, integrity, prudence, experience in handling issues etc (CCEO c. 979). A person related by blood to the eparchial bishop up to fourth degree is a disqualification to be appointed.

Upon the vacancy of the eparchial see, the proto Syncellus and the Syncelli immediately cease from office unless they are ordained bishops or constituted in an eparchy within the territorial boundaries of Patriarchal/Major Archiepiscopal Churches until the administrator takes charge.

**2. Judicial Vicar:** We have already seen that the power of governance is divided into 1. Legislative; 2. Executive; and 3. Judicial. Hence in each diocese the bishop holds ordinary judicial power. The judicial power of the bishops and the power to adjudicate cases are part of the divine law in the Church. The Bishop exercises it either personally or through the Judicial Vicar. It is the duty of the bishop to appoint a Judicial Vicar who must be priest and who has either a doctorate or a licentiate in Canon law. The qualifications to be appointed an eparchial judge are the same as those of the Judicial Vicar and adjutant judicial vicar except that no age requirement is given for the eparchial judge. Judicial Vicar and Adjutant Judicial Vicars must be priests of unimpaired reputation, known for prudence and zeal for justice and not less than thirty years of age.

**3. Finance Officer and Finance Council:** The Institution of finance officer or *economus* arose when the Church attained a public status in the Roman Empire and its right to own property was

recognized by the civil government. Canon 26 of the Council of Chalcedon (451<sup>4</sup>) required each bishop to appoint an *economus* who was to administer the temporalities of the eparchy under the supervision of the bishop. The institution also conforms to the apostolic tradition in so far as it relieves the eparchial bishop of temporal responsibility and affords him the freedom to fulfill his spiritual and pastoral responsibilities (cf. Acts 6 : 2). Finance Officer and finance council are the two bodies that assist the diocesan bishop in the administration of the temporal goods of the diocese. Bishop appoints the finance officer. He may freely make the choice, but is bound to consult the college of consulters and finance council. If the bishop neglects this, the appointment will be unlawful (CCEO c. 269 § 2).

**4. The Chancellor:** The bishop is obliged to appoint a chancellor to serve in the curia (CCEO c. 252 § 1). The canon determines that the principal responsibilities of the chancellor: the collection, arrangement and preservation of the acts of the curia. In order to be appointed to the office of chancellor, one must be either a priest or a deacon (CCEO c. 253 § 2). The Latin code in canon 482§1 makes no mention of priest or deacon. Therefore, in the Latin Church even a lay person of either gender is qualified to be chancellor. If it is deemed necessary, a vice-chancellor can be appointed whose responsibilities are to assist the chancellor. Preservation of the eparchial archives is his duty. Since the curia is responsible for a wide range of administrative and pastoral functions in the eparchy (CCEO c. 243) the amount of correspondence and records can be quite extensive. No definition is given for the phrase “acts of the curia”; hence a determination must be made regarding what material must be put in the eparchial archives. Any documents that have a juridic effect must be retained. Both chancellor and vice chancellor, if any, are *ipso iure*, notaries and no special appointment is needed for this. CIC canon 482§3 speaks about the chancellor as the secretary of the curia. But CCEO does not speak about it.

**5. Judges:** It is prerogative of the bishop to appoint judges to the tribunal. The judge need not be a priest (CCEO c. 1087). Nothing is also mentioned about the minimum age of the judges in the code as in the case of the judicial Vicar. The bishop is also free to appoint anybody as judges who are clerics. This means that he can appoint even deacons who have the required qualifications. The Oriental Code prescribes that lay judges also can be appointed in the tribunal. In the Patriarchal Church, the patriarch after having consulted the permanent synod can permit bishops of his Church to appoint other members of the Christian faithful as judges. Likewise, the metropolitan, having consulted two eparchial bishops senior by Episcopal ordination, can permit the eparchial bishops to appoint non-clerical judges in the eparchial tribunal.

**6. Defender of the Bond:** The bishop is to appoint a defender of the bond in the tribunal for cases concerning the nullity of sacred ordination and nullity or dissolution of a marriage. His role is to argue in favour the bond. He could be appointed either for particular cases or for all cases (CCEO c. 11002/2). The defender of the bond can be a lay person, religious or cleric. To be appointed as defender of the bond the person should have a doctorate of licentiate in canon law (CCEO c. 1099/2). The defender of the bond prepares the questions to be submitted to the judge for the examination of the parties and witnesses in handling cases. He cannot directly examine the parties or witnesses. When the evidence stage is over he writes his observation and presents it to the court. The judge has to study and evaluate it. If the case is settled without the involvement of the defender of the bond, the case becomes irremediably null and void.

**7. Promotor of Justice :** Promotor of Justice is appointed in an eparchy for contentions cases that can endanger public good and for penal cases. He is bound to safeguard public good.

**8. Notaries:** It is the notary who records all the correspondence of the curia and the tribunal. Tribunal notary is the close assistant to the judge and the parties and witnesses, Notary helps the judge by

writing down correctly and accurately what the parties and witnesses have said during the judicial examinations. The signature of the notary is for the authenticity of the tribunal documents. Notaries who are not priests are disqualified to deal in cases involving the reputation of a cleric. Such cases include the removal or transfer of a pastor, laicization process of a priest or deacon, and the imposition of a penalty on a cleric.

**9. Eparchial Assembly (CCEO cc. 235-242):** Eparchial assembly is the meeting of the close collaborator and representatives of priests, religious and lay persons of the eparchy in order to study more important problems in the eparchy. When circumstances recommend it eparchial bishop convokes it after consultation with the presbyteral council. The assembly has only consultative right and hence it cannot make any laws or decrees. Eparchial bishop is the sole legislator and if he wishes he can give legal force to the decisions of the eparchial assembly through his decree.

**10. The Presbyteral Council and the College of Eparchial Consulters (cc. 264-271):** The bishop governs the eparchy with the cooperation of the presbiterium (college of priests working in an eparchy). One way in which the presbyters participate in the government of the eparchy is through the presbyteral council. It represents the presbyters of the eparchy. It consists of members elected by the *presbyterium*, *ex officio* members and nominated members. The duty of the presbyteral council is to advise the eparchial bishops with regard to the needs of pastoral activity and the good of the eparchy (CCEO c. 264). The eparchial bishop is to hear the presbyteral council in important matters and in some cases he has to consult it and in some rare cases he needs the consent of it.

In addition, the eparchial bishop must establish a college of eparchial consulters, choosing the members from among those in the Presbyteral Council (CCEO c. 271). The college of eparchial consulters is to be constituted for a five-year period but upon the

expiration of the term they continue in the exercise of their functions until a new college is established. The members of the college of eparchial consultors must be not less than six nor more than twelve in number; if, for any reason whatever, within the determined five-year period there is no minimum number of members of the college, the eparchial bishop is to restore the college by appointment of new members, otherwise the college cannot act validly. The members of the college of eparchial consultors are freely appointed by the eparchial bishop from those who, at the time of their appointment, are members of the presbyteral council. The college of eparchial consultors has as a rule a consultative role, but there are cases, exhaustively defined by law, in which the college has a deliberative vote (e. g. c. 1036 § 1 n 2). In the case of the vacancy of an Episcopal see outside the territorial boundaries of the Patriarchal Church or Major Archiepiscopal Church, the college of consultors assumes immediate control of the eparchy which has become vacant, unless there is at least an auxiliary bishop. However, the college must within eight days proceed with the election of an administrator of an impeded see, if no priest has already been designated by the eparchial bishop.

**11. The Pastoral Council:** Vatican II invited all eparchial bishops to involve all the vital forces of the eparchy in the programming of the apostolate and in the mission of the Church (CD 27). Pope Paul VI in executing this conciliar directive established the pastoral council (ES I, 16-17). According to the norms of CCEO cc. 272-275, the institution of the Pastoral council is left to the free judgment of the eparchial bishop. The Pastoral council has only a consultative voice and is composed of clerics, religious and especially laypeople; it has the task of studying problems of pastoral work and proposing practical solutions. The pastoral council is convoked and presided over by the eparchial bishop, to whom also belongs the power to publish its conclusion officially; and it ceases the moment the Episcopal see becomes vacant.

**12. The Protopresbyter (Forane Vicar) (cc. 276-278):** The eparchy or a diocese is usually divided into eparchial districts and these divisions are called in CCEO as presbyterates and in CIC as foranes. The protopresbyter is a presbyter placed in charge of an eparchial district, where he performs in the name of the eparchial bishop certain tasks determined by law. The district is established by the eparchial bishop after he has consulted the presbyteral council. The protopresbyter is nominated for a period of time determined by particular law. Along with his duties of coordination of pastoral work he has also the duty of looking after the decorum of divine worship and the spiritual, culture, and even material needs of his clergy. He has the right to give certain dispensations given by the particular law, like dispensation from marriage bans.

## Chapter 6

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# Clergy, Lay Persons and Members of Religious Institutes

Canon law envisages three categories of persons in the Church, namely, Clerics, Lay Persons and those who are in religious state (CCEO c. 399). Chapters X, XI and XII of the Eastern Code are dedicated to these three groups of Christian faithful. The rights and obligations proper to persons in the Church should correspond to their respective theological or ecclesiological status. Thus the two Codes have determined the rights and duties of clerics (CCEO cc. 367-393; CIC cc. 273-289), of religious (CCEO cc. 410-572; CIC cc. 573-746) and of the lay persons (CCEO cc. 399-409; CIC cc. 224-231).

### 1. Clerics

The word cleric comes from the Greek word ‘klerikose’, which means ‘a lot’, ‘a portion’, etc. In

Acts 2/26 we see persons are chosen for ecclesiastical ministry through lots. Clerics, who are also called sacred ministers, are Christian faithful who, chosen by the competent ecclesiastical authority, are deputed through a gift of the Holy Spirit received in sacred ordination to be ministers of the Church participating in the mission and power of Christ, the Pastor (CCEO c. 323 §1).

Clerics are distinguished from other faithful by sacred ordination. Those who have received the sacrament of order become clerics. On the basis of the different grades of sacred order received, clerics are distinguished as deacons, priests and bishops (C. 325). Bishops possess the fullness of the sacrament of order and the highest degree of priesthood. Hence they can administer all sacraments and they preside over eparchies. Priests also participate in the priesthood of Christ. They can administer all sacraments except sacred ordination. In Latin Church sacrament of confirmation is reserved to the bishop. Those who have received minor orders, which are not sacraments, are called ‘minor clerics’ (c. 327). Their functions are specified by particular law of each Church *Sui Iuris*. The minor orders in the Syro-Malabar Church are *karoyusa* and *heupadiaknusa*.

Formation of clerics is an important obligation of the Church. Seminaries are erected for this purpose. Sacred ordination is given to the candidates only when they have acquired sufficient formation in philosophy, theology and pastoral ministry.

Every cleric must be ascribed either to an eparchy, a religious institute or an association that has the right to ascribe clerics (c. 357). The ascription takes place at the time of diaconal ordination. Clerics can transfer from one eparchy to another after receiving necessary documents from both bishops (c. 359).

Clerics have the obligation to preach the kingdom of God and manifest the love of God through his words and deeds (c. 367). They should pay attention to their own spiritual growth. They are

bound to show reverence to the Roman Pontiff, the patriarch/major archbishop and the eparchial bishop. Clerical celibacy is obligatory in Latin law (CIC c. 277 § 1); while in Oriental law deacons and priests can be celibate or married (CCEO c. 374).

Sacred ordination, once validly received, never becomes null. However, a cleric loses the clerical state: 1) by a judicial sentence or an administrative decree that declares the invalidity of the sacred ordination; 2) by legitimately imposed penalty of deposition; 3) by a rescript of the patriarch/major archbishop or the Apostolic See (CCEO c. 394). The effect of the loss of clerical state is that the person loses all the rights proper to the clerics and exempted from the obligations of clerical state. However, dispensation from the obligation of celibacy can be granted only by the Roman Pontiff (CCEO c. 396). Such clerics cannot exercise the power of order validly, except to hear confessions in danger of death situations.

## 2. Lay Persons

Under the title “The Obligations and Rights of the Lay Members of Christ’s faithful” the Latin Code has grouped together eight canons (CIC cc. 224231). Corresponding to them in the Eastern Code there are eleven canons (CCEO cc. 399-409) placed under the simple title *De Laicis*, (“Lay People” or “Lay Persons”). Each Code follows the structural logic proper to it in dealing with the three states of Christ’s faithful in the Church: laity, clergy and religious, in this order in the Latin Code; and clergy, laity, and religious, in this order in the Eastern Code.

The Eastern Code gives a positive definition of the laity, and the Latin Code is content with a negative definition of the laypeople as non-clerics: “By divine institution, among Christ’s faithful there are in the Church sacred ministers, who in law are also called clerics; others are called lay people” (CIC c. 207 § 1). And sacred ministers or clerics are those who have received the sacrament of order (c. 1008) in any one of its three degrees, episcopate, presbyterate, and

diaconate (c. 1009 § 1). Therefore, all non-clerics are, by elimination, laypeople.

The Eastern Code, instead, defines the laity following the Second Vatican Council documents, especially LG 31, as follows. “The designation “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 state” (CCEO c. 399).

According to this canon, secularity is the proper characteristic of the laity but is not their exclusive trait. This is implicit in the definition of the laity itself, which after mentioning secularity as the characteristic of the laity mentions also clerics and religious if only to exclude them. In fact the secular clergy and some “lay” (non clerical) religious keep something of secularity, though not as a characteristic. This is most evident in the case of married priests whether Catholic or Orthodox. In short, secularity and spirituality are not mutually opposed and exclusive. The laity share in the salvific mission of the Church as is affirmed by the Council (LG 31) and is recognised in both the Codes (CCEO, cc. 399, 401; CIC 0. 225).

Canon 401 of CCEO affirms further: “It is for lay persons, to seek the kingdom of God in the first place by dealing with temporal matters and regulating them according to God’s plan, as part of their own vocation. And therefore in their private, family, and politico-social life it is for them to bear witness to Christ and to manifest him to others, to stand up for just legislation in society, and radiating faith, hope and charity, to act like leaven for the sanctification of the world.”

This canon enunciates both a right and a duty of the laity. To regulate temporal matters as a means of seeking the kingdom of God is not only a duty of the laity but a lay right. This is the force of “being lay” in the present canon. In the Latin Code on the other hand there is only question of the laity’s “obligation to permeate and

perfect the temporal sphere with the spirit of the gospel” (CIC c. 225 § 2). This is a significant difference between the two Codes, which are often said to be identical.

“To seek the kingdom of God” comes in the first place. The vocation of the laity is not to engage in temporal matters but to seek the kingdom of God (LG 31 § 2) by engaging in temporal matters. Hence the “proper vocation” of the laity is not to be identified with temporal involvement, which is only a means for the realization of their own vocation. It is in this sense that in the conciliar theology of the laity “secularity” is said to be the specific element of the lay vocation. Secularity is not therefore a mere sociological description but a theological qualification. Hence the Council affirms, “secularity is proper and specific to the laity” (LG 31).

### **Rights and Obligations of Lay persons**

Most of the lay rights and obligations articulated in the Codes are mentioned in the documents of the Second Vatican Council. The rights and obligations of the laypeople are of two kinds: those that are common to all the Christian faithful, and those that are specific to the laypeople. The former are codified in the two Codes almost in identical terms (CIC cc. 208-223; CCEO cc. 7-26) and constitute a veritable charter of human and Christian rights and obligations. This charter of rights and duties is headed in the Eastern Code by the Obligation to preserve, profess and fructify faith (CCEO c. 10). Then follow other obligations to preserve communion with the universal and particular Church, to lead a life of holiness, to obey Pastors; the right of expressing one’s own needs and views, to receive spiritual assistance, to worship in one’s own rite and to pursue a spirituality of one’s choice, the right of association and assembly, the right to apostolate, to Christian education, and to self-expression, to freedom in the choice of a state of life; the right to one’s good reputation, to privacy, to legal defence of one’s rights, to due process, to freedom from canonical penalties except in accordance with law; obligation to provide for the needs of the Church (“worship,

apostolate, charitable works, support of ministers”), to promote social justice and to help the poor, to mind the common good etc.

Not all these are specifically and exclusively lay rights and obligations in as much as some of them are common to all Christian faithful. They are mostly coming from *Lumen Gentium*, chapter four on the laity.

In addition to these rights and obligations common to all Christian faithful both Codes specify certain rights and duties belong only to the lay people. Lay people preserve in the Church all their civil rights and freedoms. In their exercise, however, lay people are to be guided by the spirit of the gospel (CCEO c. 402; CIC c. 227). While retaining their own rite they have the right to take part in the liturgical services of other Churches *sui iuris* (c. 403 § 1). According to c. 403 § 2 (CIC c. 230 § 3) lay people may supply for the lack of sacred ministers in determined areas, as per norms, for example, to preach (c. 610 § 4; CIC c. 766), preside over the Liturgy of the Word (c. 607), baptize (c. 677 § 2), distribute Holy Communion (c. 709 § 2). Laypersons are not to be content with the minimum catechetical formation they received, but have the right and the duty to a higher formation (CCEO c. 404 § 1, CIC c. 230 § 1). They have the right to attend courses and obtain degrees from ecclesiastical universities and faculties (404 § 2). If qualified, they are eligible to teach theology and other such sacred disciplines (404 § 3). Laypeople are to acquire a better knowledge of their ritual heritage avoiding all ritual rivalry (c. 405). There is no corresponding canon in the Latin Code. The laity have the right and duty to spread the good news of salvation, particularly where only through them this can be achieved (c. 406. CIC 0. 225 § 1). Married laity are reminded of their conjugal obligation to build up the People of God through their marriage and family (CCEO c. 407). In the Latin Church, laypeople may be delegated by the diocesan bishop to assist at marriage, not in the Eastern Churches.

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“Laypeople who excel in the necessary knowledge, experience and good standing are eligible to be heard as experts and consultants by ecclesiastical authorities, whether individually or as members of various councils and assemblies, whether parochial, eparchial or patriarchal” (CCEO c. 408 §1; cf. CIC c. 228 § 2). In most of these councils and assemblies the members have only a consultative voice. Laypeople are also eligible for all ecclesiastical offices for which the reception of the sacrament of order is not a precondition and which are not excluded by common law or the particular law of their own Church *sui iuris* (CCEO c. 408 § 2; CIC c. 228 § 1). Eligibility does not mean a personal right but aptitude: hence no particular law may exclude the laity as a category from filling these posts.

According to common law laypeople may be appointed to the following ecclesiastical offices. In the diocesan curia of the Latin Church laity may be appointed as the chancellor or vice chancellor (CIC c. 482) but not in the eparchial curia of an Eastern Church, where they have to be a presbyter or deacon (CCEO c. 252). Similarly, in the diocesan curia of the Latin Church the notary may be appointed from among the laity (CIC c. 483), but in the eparchial curia of an Eastern Church, the notary must be a presbyter in cases that could involve the reputation of a cleric (CCEO c. 253 § 2).

Filling the following offices laypeople exercise or participate in the exercise of judicial power: judge of an eparchial tribunal (c. 1087 § 2; CIC c. 1421 § 2), advocate (c. 1139; c. CIC c. 1481), assessor in a single judge trial (c. 1089; CIC c. 1424), auditor of an eparchial tribunal (c. 1093 §§ 1-2; CIC c. 1424 § 2), promoter of justice and defender of bond (c. 1099 § 2; CIC c. 1435), notary (c. 1101; CIC 1437). It is to be noted that a lay judge exercises true judicial power of governance by virtue of his or her office, not by delegated power.

“In the matter of the exercise of an ecclesiastical office, laypeople are fully subject to ecclesiastical authority” (408 § 3). This is per se

so obvious that in the Latin Code there is no corresponding clause. Yet CCEO deemed it fit to make the matter explicit beyond all doubt. The autonomy of the temporal sphere does not mean independence of the laypeople in the exercise of an ecclesiastical office they are holding, whether for example, as ambassador or as sacristan. Hence, laypeople in charge of the temporalities of a parish (like *kaikkars*) have to exercise their office in full submission to the eparchial or diocesan bishop.

Moreover, according to CCEO c. 409 § 1, “Lay people who are appointed permanently or temporarily to some special service of the Church are obliged to acquire a suitable formation which is required to fulfill their function duly; they are obliged to discharge it conscientiously, diligently and with dedication” (CIC c. 231 § 1) And according to CCEO c. 409 § 2, “They have the right to a just remuneration suited to their condition by which they can, with due regard for the prescriptions of civil law, provide decently for their own needs and those of their family. They have likewise the right that provisions be made for insurance, social security and health welfare in their own regard and that of their family” (CIC c. 231 § 2). This is but the faithful application of the social doctrine of the Church.

The two Codes of the Catholic Church mark clear progress in the matter of the legislation on the laity over the previous pre-Vatican law. That law, which contained no positive definition of the laity, had disposed of the laity with just three canons: 1) that the laity had the right to receive spiritual goods from the clerics (CS c. 527); 2) on Catholic Action, that the laity had to defend the social doctrine of the Church (CS c. 528); that the laity were forbidden to wear the ecclesiastical habit or dress (CS c. 529). For the old law laity was no issue. In the wake of the Second Vatican Council the new law has come a long way.

### **3. Members of Religious Institutes**

Religious state or consecrated life is a way of life assumed by certain members of the Church in order to lead a life more closely

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following Christ. To consecrate something means to set it aside or devote it to a holy purpose. When a man or woman decides to accept Christ's invitation to leave everything and follow Him in a more radical way, they make vows to live like Jesus in poverty, chastity, and obedience. They promise Christ that they will live the rest of their lives dedicated exclusively to Him. These vows help them to live simply, to be more open with God, and to depend totally on Him.

A definition of the religious state is given in CCEO c. 410 – “The religious state is a stable mode of common life in an institute approved by the Church, in which the Christian faithful, by closer following Christ, the teacher and exemplar of holiness, under the action of the Holy Spirit, totally dedicate themselves by a new and special title through public vows of obedience, chastity and poverty, observed according to the norms of the statutes under a lawful superior, they renounce the world and totally dedicate themselves to the acquisition of perfect charity in service to the Kingdom of God for the building up of the Church and the salvation of the world as a sign of the foretelling of heavenly glory.”

The religious is a member of an institute approved by the Church, in which he/she pronounces public vows. The competent authority to erect or recognize a religious institute is either Roman Pontiff or the patriarch/major archbishop or eparchial bishop. With reference to the ecclesiastical authority that erects or canonically recognizes it, a religious institute is either of pontifical right, or of patriarchal right, or eparchial right.

The vows are the three evangelical councils and they are practiced according to specific statutes of that institute, under superiors. A vow is a public sacred promise or commitment made to God with the approval of the Church. The vows of poverty, chastity, and obedience are also known as evangelical counsels; they may be taken usually for one, year, depending upon the decision of the community and the individual. These promises are

renewable for up to nine years. As soon as three years after making temporary vows, a person can make a perpetual profession, i.e. promise to live the vows for the whole life. By perpetual profession, a member definitively assumes religious state. Following are the three vows:

- *Poverty*: Poverty is a call to share all goods in common, live a simple life, and depend totally on God.
- *Chastity*: Chastity is a call to love and serve God and all God's people, rather than to love one person exclusively in marriage. A life of chastity is a witness and testimony to God's love.
- *Obedience*: Obedience is a call to live in community and to surrender one's own will to the will of God. In community, religious listen to their superiors and the voice within to discern God's call for their life.

They can become members of different types of institutes of consecrated life. While CIC simply divides the forms of consecrated life into religious and secular institutes, CCEO six forms of consecrated life, namely, monasteries, orders, congregations, societies of common life according to the manner of religious, secular institutes and Societies of apostolic life. Additionally, three individual forms of consecrated life also recognized in CCEO, namely, consecrated virgins, consecrated widows, and ascetics who do not belong to an institute.

## **Monasteries**

Among the religious institutes, the monasteries in the Eastern tradition will always hold a special place. The personal and communal practices of the monks and nuns in the community helped to prepare them for a union with God in eternity. A life of dedication or consecration within the structure of a community, observing the rules and the traditions or particular styles of monasticism reached its highest degree in the early monasteries. The monastic state is

definitively assumed by perpetual profession which includes the three perpetual vows of obedience, chastity and poverty, made according to the norms of the *typikon* (statute) and liturgical books (CCEO c. 462 §1, 2). A monastery is a religious community in which the members tend toward evangelical perfection by the observance of rules and traditions of monastic life. The book of rules according to which the life of the members of the monastery is regulated is called *typikon*.

The eparchial bishop can erect a monastery having consulted the patriarch/major archbishop inside the territory of the Church, and the Apostolic See outside of it. The superior of a monastery governs the community in accord with the powers given to him in the *typikon*. The superior is assisted by the *synaxis* to which all full-professed members belong, out of which a council is formed. Superior is elected by the *synaxis* (CCEO cc. 440-447).

### **Orders, Congregations**

Having established the norms for monks in Chapter One Article II, the Code continues, in Article III, canons 504-553 to describe the characteristics of orders, and congregations. As seen in the monastic tradition, these religious institutes have the same characteristics (c. 410) such as common life in a community, founded by a legitimate ecclesiastical authority and the public profession by vows or by a sacred bond. The members of these religious institutes pursue perfection within the evangelical counsels through the observance of the statutes under the guidance of the legitimate superiors.

Order is a society in which the members, though not monks, make a profession which is equivalent to monastic profession. An order can be established by the Apostolic See or the patriarch/major archbishop (CCEO c. 504 § 1).

A congregation is a society in which the profession of the three vows of obedience, chastity and poverty, is not equivalent to

monastic profession, but have their own force according to law. With reference to the authority on which the congregation depends, it can be of pontifical right, of patriarchal right or of eparchial right (CCEO c. 504 § 2).

CCEO c. 505 §3: An order or a congregation is called clerical when, on account of the object or purpose intended by the founder or in virtue of lawful custom, under the direction of presbyters, it exercises the ministry proper to sacred orders, and is recognized as such by ecclesiastical authority.

### **Other Forms of Consecrated Life**

1. Societies of common life according to the manner of religious: Monasteries, orders and congregations form communities of consecrated life of members who by a juridic act of public vows oblige themselves to practice the evangelical counsels. The members of societies of common life according to the manner of religious live the same kind of life, but do not bound by public vows (CCEO c. 554 § 1). In practice, depending on the society, members may take private vows in a solemn public form promising that they will be members of the society and will live in the community following the evangelical counsel. §2. This society can be of pontifical, patriarchal or eparchial right, and clerical, just as the congregations.

2. Secular Institutes: Secular institutes are communities of consecrated life in which Christians, while living in the world as seculars, tend toward perfect love and toward cooperating in the sanctification of the world. The purpose of a secular institute is for the members to practice the evangelic counsels. The nature of this bond can be expressed in various manners (vows, oath, consecration, promise), and the extension of the obligations is to be expressed in the statutes (CCEO c. 563). The members strive to become the leaven which is to permeate the world with the spirit of the Gospel and will contribute to the strengthening and growth of the body of

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Christ. The members remain in the world, where with their witness of a Christian life, they will cooperate in the task of the Church to propagate the Gospel. They can dwell in the world alone, in the family or in community with other members. Even though members are living as seculars alone, the secular institute can have communal residences for those who so wish and for retired members. Being true seculars, they do not wear any sign distinguishing them from others. Of course, the clerics among them wear the appropriate attire.

3. Societies of Apostolic Life: Members of societies of apostolic life do not pronounce religious vows, but pursue a specific apostolic goal, and lead a common life according to the rule of the society (CCEO c. 572).

## Chapter 7

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# Sacraments

Canon Law and liturgical norms are intimately related. The Church, formed by sacraments, finds in the Liturgy a source of Church Law. The word and the sacraments which form the fundamental elements of Liturgy can be considered as the basis of Canon Law. Theologians assert that it is the sacraments which constitute and structure the Church, and consequently the Liturgy constitutes one of the sources of Church Law.

CCEO c. 3 states, “The code, although it often refers to the prescriptions of liturgical books, does not for the most part legislate on liturgical matters; therefore, these norms are to be diligently observed, unless they are contrary to the canons of the code”. This can imply, on the one hand, that most liturgical norms are found outside the Code in the liturgical texts

and elsewhere and, on the other hand, some liturgical norms are to be found in Code. A number of liturgical norms can be found in the Latin and Oriental Codes.

The canons on sacraments and other acts of divine worship come in CIC Book VI under the title “The sanctifying Office of the Church”. CCEO puts the canons on sacraments and other acts of divine worship under the title 16 “Divine Worship and especially sacraments”.

### **1. Definition of Sacraments**

CIC c. 840 and CCEO c. 667 contain deep theology around the notion of the nature of the sacraments. CIC c. 840 was drafted in the light of Second Vatican Council document on Liturgy n. 59. The following points may be noted from an analysis of these canons:

1. The sacraments are instituted by Christ and entrusted to the Church, that is, to her priestly ministry.
2. The sacraments are actions of Christ and of the Church.
3. They are acts of worship to God.
4. They are signs and means by which faith is expressed and strengthened.
5. They sanctify men.
6. They contribute in the most effective manner in establishing, strengthening and manifesting ecclesial communion.

According to the Eastern Sacramental discipline sacraments are not isolated acts through which a particular grace is granted to single individuals but are considered as aspects of one and the same mystery of the Church in which God shares with humanity the divine life redeeming man from sin and death, and conferring on him the glory of immortality.

Public and private worship: CCEO c. 668 § 1: “Divine worship, if it is done in the name of the Church by a person lawfully appointed

for this and through an act approved by the authority of the Church, is called public; if not, it is called private.”

Approval of the liturgical texts: CCEO c. 657 says: “The approval of liturgical texts, after prior review of the Apostolic See, is reserved in patriarchal/ Major Archiepiscopal Churches to the patriarch/major archbishop with the consent of the synod of bishops of the patriarchal/ major archiepiscopal Church, in metropolitan Churches *sui iuris* to the metropolitan with the consent of the council of hierarchs; in other Churches this right rests exclusively with the Apostolic See, and, within the limits set by it, to bishops and to their legitimately constituted assemblies.

§2. The same authorities are also competent to approve the translations of these books meant for liturgical use, after sending a report to the Apostolic See in the case of patriarchal Churches and metropolitan Churches *sui iuris*.”

## 2. Sharing of the sacraments (*Communicatio in Sacris*)

*Communicatio in sacris* is the sharing in spiritual activities and resources by Catholics with other Christians not in full communion with the Catholic Church. It is distinguished twofold: sharing in non-sacramental liturgical worship, and sharing in sacramental life particularly the Eucharist. The term “other Christians” applies to Eastern Orthodox, Anglicans, and Protestants. To avoid confusion, the general term “Eastern Churches” is used to designate all of those Churches of the various Eastern traditions which are not in full communion with the Church of Rome. Non-Catholic Churches in the West mainly originated from ‘reformation’.

**Theological Principle:** The basic principle of the Catholic discipline of *communicatio in sacris* is formulated by the Second Vatican Council: “Worship in common is not to be considered as a means to be used indiscriminately for the restoration of Christian unity. There are two main principles governing the practice of such common worship: first, the bearing witness to the unity of the Church,

and second, the sharing in the means of grace. Witness to the unity of the Church generally forbids common worship, but the grace to be had from it sometimes commends this practice” (UR 8). “The celebration of a sacrament in a concrete community is the sign of the reality of its unity in faith, worship and community life. As well as being signs, sacraments most specially the Eucharist are sources of the unity of the Christian community and of spiritual life, and are means for building them up. Thus eucharistic communion is inseparably linked to full ecclesial communion and its visible expression” (Ecumenical Directory 129).

The sacraments, which signify and manifest unity, are also means of grace and salvation. This constitutes a valid reason for the Catholic Church to allow in its canonical discipline, by way of exception, sharing in sacramental life, particularly the Eucharist, with Christians of other Churches and Ecclesial Communities, in certain circumstances and under determined conditions.

In applying this mitigated discipline, the Catholic Church also takes into account the degree of communion in ecclesiality and sacramentality of the other Churches or Ecclesial Communities. The degree of communion in the faith with the Eastern Churches is very deep, since “these Churches, though separated, possess true sacraments, above all, by apostolic succession, the priesthood and the Eucharist” (UR 15). They are addressed as “Churches” and their counterparts in the west are called “ecclesial communities” because, they “have not retained the authentic and full reality of the Eucharistic mystery, especially because the sacrament of orders is lacking” (UR 22).

**Canonical Norm:** The specific disciplinary norms that regulate the sharing of sacraments are contained in the two codes- CCEO c. 671 and CIC c. 844- and further clarified by the Ecumenical Directory (nn. 122-136). They may be summarized as follows:

1. It is licit for the Catholic Christian faithful, for whom it is physically or morally impossible to approach a Catholic minister, to receive the sacraments of penance, the Eucharist and the anointing of the

sick from non-Catholic ministers, in whose Churches these sacraments are valid provided that the danger of error or indifferentism is avoided.

2. As for the reception from a minister of another Church or ecclesial community, “on the basis of the Catholic doctrine concerning the sacraments and their validity, a Catholic who finds himself or herself in the circumstances mentioned above (Ecumenical Directory (ED) 130-131) may ask for these sacraments only from a minister in whose Church these sacraments are valid or from one who is known to be validly ordained according to the Catholic teaching on ordination” (ED 132).
3. Catholic priests may lawfully administer the sacraments of penance, Eucharist and the anointing of the sick to Eastern non-Catholic faithful who ask for these sacraments of their own free will and are properly disposed. In these cases, due consideration should be given to the discipline of the Eastern Churches for their own faithful and any suggestion of proselytism should be avoided (ED 125).
4. Catholic priests may administer these sacraments normally to those in danger of death. In other cases, it is strongly recommended that the eparchial/diocesan bishop, take into account any general norms that may have been established by the synod of bishops or the assembly of hierarchs or the Episcopal conference for judging situations of grave and pressing need.
5. The conditions under which a Catholic priest may administer these sacraments to a baptized person are that (1) he or she is unable to have recourse for the sacrament to a minister of his or her own Church or Ecclesial Community, (2) asks for the sacrament freely, (3) manifests Catholic faith in this sacrament and (4) is properly disposed.
6. One must keep in mind that Protestant Ecclesial Communities do not understand the sacraments as the Catholic Church does;

and so, when Protestant faithful ask for these sacraments from a Catholic priest they are possibly moved by God's grace to accept the Catholic sacramental principle. The reasons for the Protestant's request for the sacrament must be prudently considered. Undoubtedly, if in particular life situations serious suffering, exceptional hardships, uncommon circumstances (imprisonment, deportation, wars, and so forth) -these Protestant faithful stand in need of sacraments that are lacking in their own Ecclesial Communities, they could appeal to a Catholic minister. The "serious need," the physical impossibility of approaching their minister, and the free will of the request should be seen as a positive sign of accepting the Catholic sacramental norm.

7. The eparchial bishop can grant the use of a catholic building or cemetery or church to non-catholic christians who lack a place of worship.

### **Indelible Character of Sacraments**

The sacraments of baptism, chrismation (confirmation) and sacred orders cannot be repeated once validly administered (CCEO c. 672 §1) in the Catholic Church or in a non Catholic Church which has preserved episcopal succession and priestly ordination (all Eastern non-Catholic Churches); they are said to imprint an indelible character. When there is a prudent irremovable doubt whether these sacraments were administered at all, or 'whether they were validly conferred, they shall be administered under condition (CCEO c. 672 §2).

### **3. Baptism**

Baptism is the basic sacrament with the actual reception of which a person is made capable of receiving other sacraments. Baptism is administered by washing the person with natural water and with the invocation of the name of the God the Father, Son and Holy Spirit.

Through baptism one is freed from sin, reborn to new life, puts on Christ and is incorporated in the Church (CCEO c. 675).

Minister of baptism is ordinarily a priest. But, the proper pastor of the person to be baptized, or another priest with the permission of the same pastor or the local hierarch, is competent for its administration, which permission, for a serious reason is lawfully presumed. In case of necessity, baptism can be administered by a deacon or, in his absence or if he is impeded, by another cleric, a member of an institute of consecrated life, or by any other Christian faithful; even by the mother or father, if another person is not available who knows how to baptize (CCEO c. 677).

**Child baptism:** Following norms are to be followed while baptizing a child: 1) there is a founded hope that the infant will be educated in the Catholic Church; 2) the parents, or at least one of them, or the person who lawfully takes their place, consent. 3) An abandoned infant or a foundling, unless his baptism is certainly established, should be baptized. 4) Those who lack the use of reason from infancy are to be baptized as infants. 5) An infant either of Catholic parents or even of non-Catholics, who is in a critical situation wherein death is prudently foreseen before he or she reaches the use of reason, is licitly baptized. 6) The infant of non-Catholic Christians is licitly baptized, if the parents, or one of them or the one who legitimately takes their place, request it and if it is physically or morally impossible to approach their own minister.

**Adult baptism:** For a person who is no longer an infant to be baptized, it is required that he or she manifest a desire to receive baptism and be sufficiently instructed in the truths of the faith and be proven in the Christian life; the adult is to be exhorted to have sorrow for personal sins. A person who is no longer an infant and who is in danger of death can be baptized, if he or she has an understanding of the principal truths of the faith and in any way manifests the intention of receiving baptism.

**Sponsors or God-parents:** There should be at least one godparent for the person to be baptized. In adult baptism, the godparent assists in Christian initiation. In infant baptism, the godparent, with the parents, presents the child for baptism and helps the baptized to lead the Christian life in harmony with baptism and to fulfill faithfully the obligations inherent to it (CCEO c. 684). For a person to fulfill validly the role of a sponsor it is necessary that he or she:

1. be initiated with the three sacraments of baptism, chrismation with holy myron and the Eucharist;
2. belong to the Catholic Church, or a non-catholic Eastern Christian with a catholic sponsor;
3. have the intention of carrying out the responsibility of sponsor;
4. be designated by the person to be baptized or the parents or guardians, or, if there are not any, by the minister;
5. not be a father, mother or spouse of the person to be baptized;
6. not be bound by excommunication, even a minor one, suspension, deposition or deprived of the right of acting in the function of a sponsor.
7. To assume licitly the role of sponsor, in addition to what is required, the sponsor should be of at least eighteen years of age in Syro-Malabar Church (PL 132§1) and sixteen in the Latin Church.
8. For a just cause, it is permitted to admit the Christian faithful of another Eastern non-Catholic Church to the function of a sponsor, but always at the same time with a Catholic sponsor.

Baptism is to be recorded in the baptismal register making mention of the minister, the parents, the sponsors, and the date and place of baptism. If it is a case of a child born of an unwed mother, the name of the mother is to be indicated if her maternity is publicly established or if she requests it on her own in writing or before two witnesses; likewise the name of the father is to be indicated if his paternity is

proven with some public document or by his own declaration made before the pastor and two witnesses; in other cases the name of the baptized is to be recorded with no indication made of the name of the father or parents. If it is a case of an adopted child, the names of the adoptive parents are recorded (CCEO c. 689).

#### **4. Chrismation with Holy Myron (Confirmation)**

*Myron* is a Greek word meaning a mixture of olive oil and balsam and other perfumes used for anointing persons during chrismation or confirmation. The Eastern Churches call the sacrament of confirmation by a traditional liturgical and canonical expression “Chrismation with Holy Myron”, that is, anointing with sacred chrism. Holy myron, which is made from the oil of olives or other plants and from aromatics, is blessed only by a bishop, and in certain cases particular law can reserve this power to the patriarch (CCEO c. 693).

According to the tradition of the Eastern Churches, chrismation with holy myron must be administered to children or adults in conjunction with baptism, except in cases of true necessity, in which case, however, care is to be taken to have it administered as soon as possible. If the celebration of chrismation with holy myron is not done together with baptism, the sacred minister is obliged to notify the parish priest of the place where the baptism was administered (CCEO c. 695).

In the Latin Church the sacrament of confirmation is conferred on the faithful at about the age of discretion unless the conference of bishops has determined another age, or there is danger of death, or in the judgment of the sacred minister a serious cause suggests otherwise (CIC c. 891).

**Minister of Chrismation:** Chrismation with holy myron in the Eastern Churches is administered by a presbyter either in conjunction with baptism or separately (CCEO c. 694). Eastern presbyters can validly administer this sacrament to all the Christian faithful of any

Church *sui iuris*, including the Latin Church. They licitly administer it only to the Christian faithful of their own Church *sui iuris*; when administered to the faithful of other Churches, they act licitly in regard to their own subjects, or those whom they licitly baptize in virtue of another title, or those in danger of death always with due regard for the agreement entered between Churches *sui iuris* in this matter (CCEO c. 696, §1-3). When baptizing the faithful of the Latin Church, the minister is not required to confer it jointly with confirmation.

In the Latin Church, the ordinary minister of confirmation is a bishop; a presbyter provided with this faculty in virtue of universal law or the special grant of the competent authority also confers this sacrament validly (CIC c. 882). The Latin minister of confirmation validly administers this sacrament also to faithful of the Eastern Churches, according to the faculties extended to him (CCEO c. 696 § 2).

## **5. Divine Eucharist**

The term “Divine Eucharist” comprises the elements regarding not only the Eucharistic sacrifice and the Holy Communion but also everything that regards the cult and the reservation of the sacred species.

CCEO c. 698: What the Lord Jesus himself did at the Last Supper is perpetuated in the Divine Liturgy by the power of the Holy Spirit through the ministry of the Priest who acts in the person of Christ over the offering of the Church. Christ Jesus gave to his disciples his body, which was to be offered for us on the cross, and his blood, which was to be poured out for us, thus instituting the true and mystical sacrifice. In this sacrifice the bloody sacrifice of the cross is commemorated with thanksgiving, is actuated and shared by the Church through oblation and through communion, in order to signify and realize the unity of the people of God and to build up Christ’s body, namely the Church.

Divine Eucharist is the Completion of Christian Initiation. The Christians considered the Divine Eucharist as the complement of Christian perfection. For this reason, the early Church always gave the Holy Eucharist to the neophyte immediately after he has been anointed with chrism. Even if the neophyte was an infant and as yet without the use of reason, he/she received the Holy Eucharist.

On the question of administering the divine Eucharist to a person who has immediately received the sacraments of baptism and chrismation with holy Myron CCEO prescribes, “The sacramental initiation into the mystery of salvation is completed with the reception of the Divine Eucharist; therefore, after baptism and chrismation with holy Myron the Divine Eucharist is to be administered as soon as possible according the norms of the particular law of each Church *sui iuris*” (c. 697).

**Minister of the Divine Liturgy:** Only bishops and presbyters have the power to celebrate the Divine Liturgy (c. 699§1). In the Church all the faithful together constitute a holy and royal priesthood. However, “the Lord appointed some as ministers who would have the sacred power of Order within the company of the faithful, to offer sacrifice [....].” (PO 2; see LG 28). As regards the minister of the Divine Liturgy, CIC also has the same norm in CCEO. Only a validly ordained priest is the minister of the Divine Liturgy (CIC c. 900§2).

**Concelebration and Individual Celebration:** Concelebration whereby the unity of the priesthood is appropriately manifested has remained in use to this day in the Church both in the East and in the west (SC 57§1). “If it is possible, presbyters are to celebrate the Divine Liturgy together with the presiding bishop or with another presbyter, since thus the unity of the priesthood and of the sacrifice will be properly manifested” (CCEO c. 700§2).

CCEO prescribes that a bishop who concelebrates with presbyters should never be a mere concelebrant rather he should

preside; because “the bishop should be considered as the High priest of his flock from whom the life in Christ of his faithful is in some way derived and upon whom the life in Christ of his faithful is in some way derived and upon whom it in some way depends” (SC 41). However, concelebration is not to be insisted upon at the expense of the welfare of the faithful. The need of the faithful may demand more celebrations. Taking into consideration this need, the Second Vatican Council grants each priest the right to celebrate individually, not, however, simultaneously when a concelebration is taking place in the same church (SC 57§2, 2°). CCEO c. 700§2 gives juridical force to this prescription.

**Inter-Ecclesial (Inter-Ritual) Concelebration:** With regard to concelebration between the bishops and presbyters of different Churches *Sui iuris*, the canon of CCEO reads, “For a just cause and with the permission of the eparchial bishop, Bishops and presbyters of different Churches *sui iuris* may concelebrate, especially to foster love and to manifest the unity of the Churches. All follow the prescriptions of the liturgical books of the principal celebrant, avoiding any liturgical syncretism whatever but all preferably wearing the liturgical vestments and insignia of their own Church *sui iuris* (c. 701).

The question of celebrating the Divine Liturgy by a priest in a rite other than his own is to be distinguished from the case mentioned above in CCEO c. 701. CCEO c. 674§2 obliges every minister to celebrate the sacraments according to the liturgical prescriptions of his own Church *sui iuris*, unless the law establishes otherwise or he himself has obtained a special faculty from the Apostolic See. The Apostolic See grants such a faculty only for grave reasons especially of a pastoral nature. The motive behind such a restriction is expressed in c. 40 § 2 of CCEO, “the clerics and members of institutes of consecrated life are bound to observe faithfully their own rite and to acquire day by day greater knowledge and more perfect practice of it”.

**Inter-Denominational Concelebration:** Concelebration of the Divine Liturgy is an expression of full communion of faith and worship that exist between the Churches of the concelebrants. Such a full communion does not exist between the Catholic Church and non-catholic Churches and the Ecclesial communities. “Celebration of the Eucharist signifies the fullness of the profession of faith and of Ecclesial communion”. Eucharistic concelebration cannot be taken as a means for the full communion. CCEO c. 702 prescribes, “Catholic priests are forbidden to concelebrate the Divine Liturgy with non-Catholics priests or ministers”.

**Role of the Deacon in the Celebration:** The role of the deacon in the Divine Liturgy is much emphasized in the tradition of the Church. According to the tradition deacons are ordained not to render service to presbyters but to bishops. Therefore the canon: “Along with bishops and presbyters deacons have a very close share in the celebration of the Divine Liturgy and have a ministry proper to them according to the prescriptions of the Liturgical books” (c. 699§2).

**Active Participation of the Faithful:** CCEO c. 673 prescribes, “The celebration of the Sacraments, above all the Divine Liturgy as an action of the Church, in as much as it is possible, should be done with active participation of the Christian faithful”. CCEO c. 699§3 states, “By virtue of their baptism and Chrismation with holy myron the other Christian faithful take part in the celebration of the Divine Liturgy and participate actively in the sacrifice of Christ in the manner determined by the liturgical books or particular law; they do so more fully if they receive the Body and Blood of Christ from the same sacrifice”.

**Sacred Gifts:** It has been the constant discipline of the Church that the sacred gifts to be offered in the Divine Liturgy are bread and wine. It was in agreement with the Last supper narratives in the Gospel (Mt 26: 26 – 30; Mk 14: 22- 26; Lk 22: 17-21). CCEO c.

706 prescribes, “The sacred gifts offered in the Divine Liturgy are pure wheat bread recently made, so that there is no danger of corruption, and uncorrupt natural grape wine”.

**Epiclesis:** A basic difference that can be noted in the theological formulation of the canons in CCEO and CIC (c. 698 and c. 897 respectively) on the Divine Eucharist consists in the fact that CCEO gives accent to the pneumatological dimension of the sacrament. CIC c. 897 does not speak of the action of the Holy Spirit in the Eucharistic celebration. CCEO c. 698 states, “what the Lord Jesus himself did at the Last Supper is perpetuated in the Divine Liturgy by the power of the Holy Spirit [...]” CCC 13333 teaches that, “by the words of Christ and the invocation of the Holy Spirit, the bread and wine become Christ’s Body and Blood.” However, the Canon does not specify the moment of the action of the Holy Spirit in the Divine Liturgy. What is to be held in mind is that the manner of manifesting the action of the three divine persons in the supplication depends on the tradition and the liturgical and theological developments of each Church *sui iuris*. All the Eastern liturgical texts of the Divine Liturgy place the ‘Epiclesis’ after the ‘Institution Narrative’.

**Commemoration:** In a patriarchal Church, the Roman Pontiff, the Patriarch (Major Archbishop), the proper provincial metropolitan (if there is) and the proper eparchial bishop are to be commemorated in the Divine Liturgy according to the prescriptions of the liturgical books (CCEO cc. 91, 92§2, 135, 138, 209)

**Homily:** The liturgical homily is the pre-eminent form of the ministry of the Word of God (c. 607). CCEO strongly recommends celebrating the homily should ordinarily be given by the priest celebrant itself (no. 64). C. 614§2 directs, “Parish priests and rectors of Churches have the obligation to take care that a homily is preached during the Divine Liturgy at least on Sundays and holy days of obligation. It is not to be omitted except for a grave reason”. The

adverb ‘at least’ used in the canon is a clear indication that the Code encourages homily also on week days, especially on certain occasions, as mentioned by CIC c. 767§2, like feast days, seasons of Advent and Lent, occasions of grief, etc.

The homily has not only a role of instruction but also a role of proper community building. A parish priest is the proper shepherd of a portion of the people of God entrusted to his care. He builds up this community through the celebration of the Word and the Eucharist together with and for his people. Since he knows his flock (c. 289§3) he can teach and guide them according to their need. So c. 614§3 states that, “parish priests are not allowed to habitually have a substitute to discharge their duty to preach to the people committed to their pastoral care except for a just reason approved by the local hierarch”. According to c. 614§4, the homily is reserved to a priest or, according to the norm of the particular law, also to a deacon.

**Eucharistic Fast:** It is the tradition of both Eastern and Western Churches according to which the faithful prepare themselves through fast and prayers for effectively participating in the Divine Liturgy and receiving the Divine Eucharist.

**Holy Communion:** Christian faithful who have been properly disposed have the right to be admitted to Holy Communion (cc. 16; 381§2). “Christian faithful are strongly recommended to receive the Divine Eucharist on Sundays and holy days of obligation and indeed more frequently, even daily” (c. 881 §3). Those who are punished with a major or minor excommunication are forbidden to receive the Divine Eucharist (cc. 1431§; 1434§1). CCEO c. 712 directs that, “those who are publicly unworthy are to be prevented from receiving the Divine Eucharist”.

**Minister of Holy Communion:** The minister of the Divine Eucharist symbolizes Christ who gives himself. CCEO establishes that it is the responsibility and right of the priest (bishops and presbyters) to distribute the Divine Eucharist. If the particular law of

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a Church *sui iuris* permits, deacons also may distribute. Particular Law of the Syro Malabar Church prescribes in this regard:

Art. 143. Besides priests, deacons also distribute the Divine Eucharist.

Art. 144. In the case of necessity, religious and trained lay persons, approved by the eparchial bishop, can distribute the Divine Eucharist.

- §1. Only a priest has the right to take and receive the Divine Eucharist by himself.
- §2. Whenever there are sufficient number of ordinary ministers, extraordinary ministers shall not be deputed to distribute the Divine Eucharist.
- §3. The following Categories of persons may be commissioned as extraordinary ministers.
  1. Major seminarians who have received at least the order of *Karoyusa*.
  2. Any perpetually professed member of a non-clerical religious institute.
  3. Lay people of good standing, generally acceptable to the parish priest and to the people.
- §4. Members of non-clerical religious institutes and lay people, who are to be extraordinary ministers for the distribution of Divine Eucharist, must be presented by the parish priest and commissioned by the eparchial bishop.
- §5. All extraordinary ministers of Holy Communion should be given special training as decided by the eparchial bishop.
- §6. All extraordinary ministers shall wear a special but simple vestment during the distribution of the Holy Communion approved by the bishop.

§7. The extraordinary ministers shall perform their service according to the direction of the parish priest.

**Holy Communion of the Sick:** CCEO strongly recommends the local hierarchs and parish priests to see it that faithful receive the Divine Eucharist in danger of death (c. 708). It goes without saying that this right and duty falls first of all on the parish priest (c. 290§2). The parochial vicar, since he has the obligation to help the parish priest in the entire parochial ministry, is also bound by this duty (c. 302§1).

**Holy Communion from a non-Catholic Church:** Catholic are generally forbidden to participate in the Divine Eucharist of a non-Catholic Church, because full communion does not exist between the Catholic Church and the non-Catholic Churches. However, there is still very close communion in matters of faith (UR 14). Moreover, “through the celebration of the Eucharist of the Lord in each of these Churches, the Church of God is built up and grows in stature” and “although separated from us (Catholics), these Churches still possess true sacraments, above all – by apostolic succession- the priesthood and the Eucharist [...]” (UR 15). This offers ecclesiological and sacramental grounds for allowing reception of the Divine Eucharist from these Churches.

**Days of Celebration:** C. 704 prescribes, “The Divine Liturgy may be praiseworthy celebrated on all days except those which are excluded according to the prescriptions of the liturgical books of the Church *sui iuris* to which the priest ascribed”. The clause, “those (days) which are excluded according to the prescriptions of the liturgical books of the Church *sui iuris*” refers to the days on which either there is the celebration of the Liturgy of the pre-sanctified or there is no celebration of the Divine Liturgy. Such days are called aliturgical days.

**Frequency of the Celebration:** C. 378 states, “According to the norm of the particular law clerics are to celebrate the Divine

Liturgy frequently, especially on Sundays and holy days of obligation; indeed daily celebration of the Divine Liturgy on all days. C. 473§1, however, obliges daily celebration of the Divine Liturgy in individual monasteries. In short, CCEO strongly recommends daily celebration of the Divine Liturgy, and in the case of individual monasteries the recommendation is turned into an obligation.

**Offerings:** Canon law permits the priests, according to the custom approved by the Church, to receive offerings from the faithful for celebrating Divine Liturgy for their intentions (CCEO c. 715).

## **6. Sacrament of Penance**

In the sacrament of penance, the theophany of divine mercy is accomplished towards sinners. The Christian faithful who have committed sins after baptism are led to this sacrament by the Holy Spirit and are reconciled with the Church through the ministry of the priest who, by virtue of sacramental ordination, has the power to forgive sins.

Sin is, above all, an offence against God, a breach of communion with God, and at the same time an injury inflicted upon the Church, the Body of Christ. Through penitential reconciliation with the Church the sacrament of penance reunites the penitent to Christ the Savior; therefore, “those who approach the sacrament of penance receive from God’s mercy, pardon for the offences committed against Him and, at the same time, they are reconciled with the Church, upon which they inflicted an injury by sin” (LG 11).

The penitent’s acts in the sacrament of penance are: 1) conversion of heart and sorrow for sin; 2) purpose of a new life; 3) confession of sins to a priest; 4) acceptance of a suitable penance. Absolution takes away the sin but it does not remedy all the disorder that the sin has caused. First of all, by reason of justice, the penitent is bound to repair any offence caused to another; moreover, the penitent must repair the internal disarray caused by

the sin, performing in an appropriate manner penitential acts imposed by the confessor.

Finally, the canon underlines the link between the sacrament of penance and the Holy Eucharist, inasmuch as the penitent, reconciled with God and the Church, is disposed and prepared to receive the Holy Eucharist (CCEO c. 718).

Anyone who is aware of serious sin is to receive the sacrament of penance as soon as possible. Frequent reception, especially during the times of fasts and penance is recommended (CCEO c. 719). The ordinary way of confession is through individual and integral confession and absolution.

**General absolution:** Since individual confession is the ordinary way of confession, in certain exceptional situations a general absolution can be given. 1) When there is imminent danger of death and there is no time for the priest or priests to administer the sacrament of penance to the individual penitents; 2) there is a grave necessity, that is, when in light of the number of penitents, a supply of priests is not available to administer the sacrament of penance to the individual penitents within a suitable time so that, through no fault of their own, they are forced for a long time to be deprived of sacramental grace or reception of the Divine Eucharist.

**Minister of penance:** Only a priest is the minister of the sacrament of penance. All bishops by the law itself can administer the sacrament of penance everywhere, unless with regard to liceity, the eparchial bishop denies it in a special case. For presbyters to act validly, they must be previously granted the faculty of administering the sacrament of penance, which is conferred either by the law itself or by a special grant made by a competent authority. A priest who has a validly received faculty can administer the sacrament of penance anywhere to any Christian faithful unless a local hierarch prohibits it in specific cases.

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Only the local hierarch can confer on any presbyter the faculty of administering the sacrament of penance to any Christian faithful. The superiors of institutes of consecrated life who is a priest can confer this faculty upon any presbyter of his own institute (CCEO c. 724).

Any priest can validly and licitly absolve any penitent in danger of death from any sin, even if there is present a priest endowed with the faculty of administering the sacrament of penance (CCEO c. 725). The faculty of administering the sacrament of penance should not be revoked except for a serious reason. If this faculty is revoked by the hierarch who bestowed it, the presbyter loses the same everywhere; however if it is revoked by another competent authority, the presbyter loses it only within the jurisdiction of the one who revoked it (CCEO c. 726).

**Reserved Sins:** Canon law allows the reservation of the absolution of certain sins to a higher authority on account of its gravity. CCEO c. 727: “In some cases, in order to provide for the welfare of souls, the faculty of absolving from sins can be appropriately restricted and reserved to a determined authority; these reservations cannot be done without the consent of the synod of bishops of the patriarchal Church or the council of hierarchs or the Apostolic See.” Absolution from the following sins is reserved to the Apostolic See:

1. direct violation of the sacramental seal;
2. absolution of an accomplice in a sin against chastity.

It is reserved to the eparchial bishop to absolve from the sin of procuring a completed abortion (CCEO c. 728). A confessor cannot absolve validly his accomplice in a sin against the sixth commandment, except in danger of death (C. 730). One 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 (CCEO c. 731).

The reservation of absolution from sin loses all force in case of penitents who are sick or who are engaged and about to celebrate marriage; and whenever in the judgment of the confessor, recourse cannot be made to the competent authority to obtain the faculty to absolve from reserved sins.

## **7. Anointing of the Sick**

This sacrament was formerly called as “extreme unction”, and by the Second Vatican Council this term has changed into “anointing of the sick”. In the Letter of St. James (5: 14-15) we read: “One who is sick is to ask for the presbyter of the Church and they are to pray over the sick person, anointing him or her with oil in the name of the Lord. This prayer made in faith will restore that person to health and, if he or she has committed any sins, they will be forgiven”. Here Church saw an initial form of the sacrament of the anointing of the sick.

CCEO canons 737 to 742 speak of the sacrament of the anointing of the sick. Following elements are emphasized in the first canon: 1) the sacrament is conferred on Christian faithful who are seriously sick; to receive this sacrament the person need not be in danger of death. 2) One who receives the sacrament must be sincerely contrite. 3) The grace received in the sacrament consists in the strengthening of the hope of eternal reward and the forgiveness of sins so that the seriously ill faithful is disposed to correct his or her life and helped to overcome the sickness or endure it with patience. Usually sacrament of penance precedes it.

Although the sacrament of the anointing of the sick is not a necessary means of eternal salvation, the Church recommends it to the Christian faithful each time they are seriously sick for its salutary effects. It is obvious, therefore, that the sacrament can be repeated

if the sick person, after having recovered again falls sick or the danger becomes more serious (CCEO c. 738; CIC c. 1004).

All priests, and only priests, can validly administer the anointing of the sick. The administration of the anointing of the sick belongs to the pastor, parochial vicar and to all other priests for those persons committed to their care in virtue of their office; any priest can licitly administer this sacrament with at least the presumed permission of those mentioned, indeed, in case of necessity he must do so (CCEO c. 739 ).

It is up to the priest who celebrates the sacrament to bless the oil to be used in the administration of the sacrament of anointing of the sick, unless the particular law of the Church *sui iuris* establishes otherwise, that is, that it be blessed by the bishop as in the Latin Church (CCEO c. 741; CIC c. 999).

## **8. Sacred Ordination**

CCEO canons 743 to 775 speak of sacred ordination. The formulation of the canon 743 is inspired by the oriental patristic theology. The sacred ministers are first and foremost Christ's faithful 'who are incorporated as they are into Christ through baptism and are constituted the people of God; and so, participating in their own way in the priestly, prophetic and royal function of Christ, and are called, each according to his condition, to exercise the mission which God has entrusted to the Church to fulfill in the world' (c. 7§1). Those of the faithful who are marked by holy order are appointed in the name of Christ to feed the Church with the word and the grace of God' (LG 11).

**Ministers of Sacred Ordination:** The minister of sacred ordination is only a bishop, who possesses the fullness of priesthood and the height of the sacred ministry. Sacred Ordination is effected by the imposition of hands and with the prayer prescribed in the liturgical text of the Church. It is necessary for validity (C. 744; LG 21, 26).

Only the Roman Pontiff, Patriarch and the Metropolitan (the metropolitan is competent to ordain bishops and his province) can ordain someone bishop. Other bishops can do it with lawful mandate of any one of these authorities. Lack of this mandate does not make the act invalid but unlawful (CCEO C. 745). A bishop should be ordained by three bishops, except in case of extreme necessity. The second and third bishop, if they cannot be bishops of the same Church *sui iuris* as the first ordaining bishop, can be of another Church *sui iuris*. Collegial character of the episcopacy is manifest with the presence of all the bishops at least three in the Episcopal Ordination. It is a sign of communion among the bishops. Even though a bishop is the head of the local community, he forms part of the college of the bishops which is modeled after the college of the Apostles. The communion that existed in the apostolic college is to manifest in the communion among bishop. By the presence and prayers of all the bishops in the region this communion is expressed and the catholicity of the Church is proclaimed.

Diaconate and priestly ordination should be given by the eparchial bishop of the candidate. Another bishop can do it if he gets the dimissorial letter (CCEO C. 747). Dimissorial letter is an act by which the proper bishop authorizes another bishop to ordain his subject. An ordination without the proper dimissorial letter is unlawful but still valid. A bishop who administers an ordination without such a letter is punishable under c. 1459 § 2 which states, “A bishop who administered diaconal or presbyteral ordination to someone against the prescriptions of the canons, is to be punished with a suitable penalty”.

Who is the proper eparchial bishop to give ordination? The bishop of the eparchy in which the candidate has domicile and the bishop of the eparchy which the candidate wants to serve are the proper bishops, and in case of the one who is already ascribed to an eparchy, it the bishop of that eparchy (CCEO c. 748). But if the candidate is

ascribed to a Church *sui iuris* different from that of the ordaining bishop, he needs the permission of the Apostolic See. If a candidate is a member of the patriarchal Church and has a domicile or quasi-domicile within the territorial boundaries of the same Church, the permission of the patriarch is enough. E.g. the permission of the Major Archbishop is enough for a candidate who has domicile in the eparchy of Pala to be ordained by the bishop of Vijayapuram. Such ordination does not bring about transfer from the proper Church *sui iuris*.

**Subject of Sacred Ordination:** Only a baptized man is able to receive sacred ordination validly (CCEO c. 754). This canon excludes women from receiving sacred ordination. CCC states that our Lord Jesus chose men to form the college of the twelve apostles, and the apostles did the same when they chose collaborators to succeed them in their ministry. The college of bishop, with whom the presbyters are united in the priesthood, makes the college of the twelve an ever present and ever active reality until Christ's return. The Church recognizes herself to be bound by this choice made by the Lord Himself. For this reason the ordination of the women is not possible.

**Requirements for Candidates for Sacred Ordination:** Following requirements are necessary for a person to be ordained licitly:

1. chrismation with holy myron;
2. conduct and the physical and psychological qualities should be consistent with the reception of sacred order;
3. the age prescribed by law- The prescribed age for the diaconate is completion of twenty-three years, and for the presbyterate the completion of twenty-four years, with due regard for particular law requiring an older age in a particular Church *sui iuris* (CCEO c. 759).

4. the required knowledge- a deacon may be ordained only after he has successfully completed the fourth year of a curriculum of philosophical-theological studies (CCEO c. 760)
5. reception of the lower orders according to the norm of particular law of each Church sui iuris;
6. observation of the interstices prescribed by particular law.
7. the candidate should not have the following impediments.

**Impediments to Receiving or Exercising Sacred Orders:** CCEO C. 762 speaks of the impediments from receiving sacred ordination. Following persons are impeded from receiving sacred ordination:

1. A person who has mental insanity or other psychic illnesses.
2. A person who has committed apostasy, heresy or schism.
3. A person who has attempted marriage.
4. A person who has committed or cooperated with homicide and abortion.
5. A person who has maliciously mutilated himself or another person and a person who has attempted suicide.
6. Abuse of sacred orders - a person who has performed an act of orders while he did not have that order.
7. A person who holds an office that is forbidden to clerics.
8. A neophyte- Newly baptized person.

**Dispensation from the impediments:** The eparchial bishop or the hierarch of an institute of consecrated life can dispense his subjects from the impediments from receiving or exercising sacred orders except in the following cases: 1° if the deed, upon which the impediment is based, had been taken to the judicial forum; 2° from the impediments mentioned in can. 762, §1, nn. 2-4 (apostasy, heresy, schism, attempted marriage, homicide, abortion). Dispensation from these impediments is reserved to the patriarch for candidates or

clerics who have a domicile or quasi-domicile within the territorial boundaries of the Church over which he presides; otherwise, it is reserved to the Apostolic See. A confessor has the same powers of dispensing in the more urgent occult cases, in which the competent authority cannot be reached and there is a danger of grave harm or infamy, but only to ensure that the penitents can licitly exercise the sacred orders already received, with due regard for the responsibility of approaching that authority as soon as possible.

**The Things that must precede Sacred Ordination:** To admit a candidate to sacred ordination, the following documents are required (CCEO c. 769):

1. A personally signed declaration by which the candidate states that he intends to freely and voluntarily receive the sacred order and accept the obligations attached to it; the certificate of the last sacred ordination; if it is a question of the first sacred ordination, the certificate of baptism, Chrismation and minor orders;
2. If the candidate is married, certificate of marriage and the written consent of the wife for a married candidate;
3. Certificate of completed studies;
4. Testimonial letters of the Rector or the Superior;
5. Testimonial letters of the parish priest after having published in the parish church;
6. Testimonial letters of other eparchial bishops, if they are needed.

## Chapter 8

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# Marriage Law

**M**arriage is a social institution. Civil laws have formulated laws regulating marriages of their citizens. Church as a society has acquired its competence for the marriages of its members gradually in the history. At present it is commonly held that that the Catholic Church has competence for the marriage of its members. Civil laws of various countries in the world acknowledge and accept catholic marriage laws as personal laws except in matters that have civil effects. CCEO c. 780 §1 asserts the power of the Church over marriages: “Even if only one party is Catholic, the marriage of Catholics is regulated not only by divine law but also by canon law, with due regard for the competence of civil authority concerning the merely civil effects of such a marriage.”

Thus the Church has made laws regulating marriage of her members. The purpose of these laws is to

protect and promote the sacredness of marriage, and to assist the people to build up a happy family life supported by the sacramental grace of marriage.

### **Canonical meaning of marriage**

In the light of CIC c. 1055 and CCEO c. 776 a canonical definition of marriage can be formulated thus: “Marriage between the baptized is a covenant, which has been raised by Christ the Lord to the dignity of a sacrament, by which a man and a woman by their personal consent, establish between themselves partnership of the whole life, and this covenant is by its very nature ordered to the good of the spouses and to the procreation and education of children”. These canons teach that a valid marriage between baptized persons is a sacrament, and the essential properties of marriage are unity and indissolubility.

From this theological definition certain canonical principles of marriage can be sorted out.

#### **a. Marriage as Contract and Covenant**

While the term ‘contract’ was traditionally used to describe marriage, Vatican II consistently spoke of it as a ‘covenant’. While the CIC uses both the terms interchangeably to mean the same reality (c. 1055, §§ 1-2), CCEO uses the term covenant only. All through the Bible, God’s relationship with mankind is expressed in terms of a covenant, a solemn treaty of love and fidelity which God makes with His people. By this covenant, God pledges Himself irrevocably to love His people and never to desert them. The covenantal language serves to broaden and enrich the concept of Christian marriage by linking it to:

- the covenant between God and His chosen people
- the Pauline image of the Church as the spouse of Christ and
- the personalist dimension of marriage as an intimate sharing of life and love.

## **b. Marriage as Sacrament**

Marriage has existed as a natural and social institution, although sacred, from the very beginning of creation. It was Jesus who elevated it to the dignity of a sacrament. In his presence at the wedding at Cana in Galilee, the Church sees the confirmation of the goodness of marriage and the proclamation that thenceforth marriage will be an efficacious sign of Christ's presence (CCC, 1613). In a Christian marriage, the spouses' love for one another becomes the vehicle through which the faithful and irrevocable love of God in Jesus Christ becomes visible and tangible.

## **c. Marriage as Partnership for the Whole of life**

Paragraph one of canon 1055, repeating Vatican II (GS, 48), affirms that in marriage the partners 'establish between themselves a partnership of the whole of life'. The Latin term used for partnership is *consortium* which defies precise translation. It is more than *societas* (partnership) established for business purposes. In the understanding of Pope John Paul II, partnership means communion. It denotes not merely a physical sexual union but a total union on all levels between equal partners. In concrete, partnership means that the spouses' destinies are inextricably intertwined 'in good times and in bad, in sickness and in health'. Only death of one of the spouses or a decree of annulment or dissolution of the marital bond by a competent ecclesiastical forum can terminate the partnership.

## **d. End of marriage: Good of the Spouses and Procreation of Children**

Vatican II brought about a radical change in the understanding of the ends of marriage (GS, 48-52). The current codes faithfully replicate the conciliar and the post-conciliar teaching.

In canon law, the good of the spouses (*bonum coniugum*) and procreation and upbringing of children are equally essential to and inseparable in marriage. Neither is designated as the primary end of

marriage (CCEO c. 776 § 1; CIC c. 1055, §1). Pope John Paul II elucidates “conjugal love, while leading the spouses to the reciprocal ‘knowledge’ which makes them ‘one flesh’, does not end with the couple, because it makes them capable of the greatest possible gift, the gift by which they become cooperators with God for giving life to a new human person. Thus the couple, while giving themselves to one another, gives not just themselves but also the reality of children” (*Familiaris Consortio*, 14).

Since the achievement of the ends of marriage is somewhat beyond the power of the spouses, the failure to attain them does not in itself affect the validity of a marriage. For example, even though marriage is ordered to the procreation and education of offspring, childless marriages are presumed to be valid. Only if one or both spouses exclude this essential end of marriage from their consent by a positive act of the will, they contract invalidly (CIC c. 1101, §2).

### **e. Properties of Marriage: Unity and Indissolubility**

Properties mean the qualities that flow from the very nature of marriage itself, so that without them there can never be real marriage. Unity and indissolubility are the essential properties of marriage.

*Unity* signifies an exclusive conjugal relationship between one man and one woman (Mk 10: 6-8). In marriage a man and woman mutually give and accept each other. To include anyone else within this privileged sphere of marital intimacy violates the unity proper to marriage. Without unity the total self-giving essential to marriage is impossible. It, therefore, excludes all forms of polygamy, whether it be polygyny, where one man has several wives, or polyandry, where one woman has several husbands.

*Indissolubility* is a property of all marriages, whether or not the spouses are baptized. Jesus affirms this fact by stating that “man must not separate what God has joined together” (Mk. 10:9). It means that it is a perpetual relationship which not only should not be

terminated but cannot be terminated, even if the couple's existential relationship is irretrievably broken, that is, once the marriage is validly entered, it cannot be dissolved by the subsequent withdrawal of consent of the parties. Marriage bond is dissolved only through the death of one of the spouses.

### **Pre-requisites for marriage**

Marriage canon law gives much importance to the pastoral preparation of marriage. CCEO cc. 783-789 and CIC cc. 1065-1072 deal with this topic. It is for the pastors to prepare the candidates for marriage with preaching and catechesis and it is their duty to see that the candidates have fulfilled all requirements placed by law. Reception of valid baptism, confirmation, confession, and reception of the Eucharist are to be checked. Regarding pre-nuptial preparation, the particular law of the Syro-Malabar Church gives detailed norms on the basis of CCEO canons.

**1. Pre-nuptial enquiry-** Prior to betrothal the parties shall fill in the prenuptial enquiry form in front of their respective parish priests in order to make sure that they enter into the marriage covenant with due preparation, knowledge and consent (cc. 782-785, PL Art. 150).

**2. Forms or *kuri*-** §1. In connection with the celebration of marriage, the following *Kuries* (Forms) must be exchanged between the concerned parish priests:

- §1. Form A - For betrothal.
- §2. Form B – Information regarding the betrothal conducted and the proposed dates of the publication of banns and the celebration of marriage.
- §3. Form C – *Desa Kuri* or *kettu kuri*, that is, no objection certificate for the licit celebration of marriage.
- §4. Form D – Certificate for entering the details of the celebration of the marriage in the marriage registers of the parishes of the

spouses as well as in the baptismal registers of the parishes where the baptism of the couple took place.

§5. Form E - Notification to be sent back to the parish priest of the place of celebration of marriage regarding the entry of Form D in the baptismal and marriage registers of the concerned parishes of the spouses (c. 841 §§1-2; PL Art. 151).

**3. Pre-nuptial catechism-** The parish priest shall either officiate at the betrothal ceremony or give Form A for betrothal to the parish priest of the other party only when he is morally certain that the party has at least a basic knowledge of Christian faith and morals and about the nature, purpose and essential properties of the Sacrament of marriage (PL Art. 152 - §1).

**4. Marriage preparation course-** The local hierarch shall see to it that in his eparchy marriage preparation courses are conducted and norms are set regarding the attendance at such courses (PL Art. 152 - §2).

**5. Free state certificate-** Those who have lived for more than one year outside the eparchy after reaching marriageable age, should produce a free state certificate. If one has lived in different places after reaching the marriageable age, he/she should produce a free state certificate at least from the parish priest of that place where he/she lived for the last one year. He/she also shall make an affidavit regarding his or her free state covering the period of his or her stay in other places. Though the certificate of the parish priest is normally required for this purpose, the certificates of civil authorities or other persons beyond suspicion may be accepted in case of the non-availability of the former. Exemption from the above norm may be granted only by the local hierarch of the party on any appropriate arrangement decided by him (PL Art. 153 - §1).

**6. Betrothal-** The celebration of marriage shall be preceded by betrothal which is to be celebrated sufficiently in advance in order

to give time for the publication of marriage banns. Betrothal is to be celebrated before the local hierarch or the parish priest of either of the parties or a delegated priest or deacon, in the presence of two witnesses in the parish church or with the permission of the parish priest at another church convenient to the parties. However, in places other than churches, it cannot be celebrated without the permission of the local hierarch. Betrothal may be conducted only on obtaining the form A or an equivalent document. In cases of inter *sui iuris* Church marriages, the law or custom of the other party shall be respected regarding betrothal or engagement. The celebration of betrothal shall be entered in the register maintained for the purpose and be signed by the parties, witnesses and the officiating priest or deacon. After the celebration of the betrothal the parish priest of the other party should be intimated through Form B (CCEO c.782 §1; PL Art. 154 - 158).

In Forms A and B date of birth and date of baptism shall be entered. The betrothal should be solemnized according to the liturgical text. The local hierarch of either of the parties may grant dispensation from betrothal for just and sufficient reasons on written application of both the parties. In case of need, the local hierarchs may grant permission to have betrothal in writing by the parties separately regarding their willingness for the proposed marriage before their proper parish priests in the presence of two witnesses. The parish priests shall communicate the matter to each other. If a party does not want to proceed to marriage after betrothal, he/she shall obtain permission from the local hierarch in order to enter marriage with another person (CCEO c.782 §2, PL art. 159-163).

**7. Marriage banns** - Marriage banns are published in order to bring to the notice of the parish community the proposed marriage and to give the community an opportunity to bring to the attention of the parish priests impediments, if any, which would

impede the valid and licit celebration of the said marriage. Permission may be granted by the Protopresbyter of either of the parties for the publication of banns even before betrothal on written application of both the parties, endorsed by the respective parish priests. Banns are to be published on three Sundays or days of obligation during the Sacred Liturgy in the parish churches and if needed also in the filial churches of the parishes of the parties concerned. Alternatively they may be announced once and published on the notice board of the church for a period covering two more days of obligation (PL Art. 163 -164).

For just and sufficient reasons, the publication of banns can be dispensed. The parish priest is competent to dispense from one of the banns and the Protopresbyter from two. Dispensation from all the three banns is to be granted only by the local hierarch. If banns are published only once, the marriage cannot be celebrated on the same day without the permission of the local hierarch. In the case of dispensation from banns, either of the parties shall submit a petition, stating the reasons, to the competent authority of the place where the marriage is celebrated. If dispensation from banns is to be obtained, it shall be entered in the register for betrothal and in form B. If dispensation is received, the matter shall be communicated to the concerned parish priests. If the marriage did not take place within six months from the completion of the publication of banns, they shall be repeated unless the local hierarch dispenses from this norm. During the course of the publication of banns, if the existence of a public impediment comes to light, the publication of banns shall be stopped. If however the impediment is occult and dispensation is possible the publication of banns is to be continued and completed. The parish priest shall proceed to the celebration of the marriage only after the dispensation has been duly obtained (PL Art. 165 –167).

**8. Marriages with permission of the Hierarchy-** Marriages of the following persons cannot be blessed by a priest without the permission of the local hierarchy.

1. the marriage of transients (wanderers);
2. a marriage which cannot be recognized or entered into according to the norms of civil law;
3. a marriage of a person who is bound by natural obligations toward a third party or toward children arising from a prior union with that party;
4. a marriage of a minor child of a family whose parents are unaware of or opposed to the marriage;
5. the marriage of one who is forbidden by an ecclesiastical sentence to enter into a new marriage unless the person fulfills certain conditions;
6. a marriage of a person who has publicly rejected the Catholic faith, even if that person did not become a member of a non-Catholic Church or ecclesial communion.

### **Requirements for a Valid Marriage**

A valid marriage requires: (a) to be free from impediments, (b) consent manifested in a canonical form, and (c) consent of the spouses. If any one of these aspects is lacking, the marriage will be invalid.

#### **A. To be free from Impediments**

Every person enjoys a natural right to marry. No power on earth can take away this fundamental human right. Nevertheless, both civil and ecclesiastical laws have restricted the freedom to marry in the interest of the common good by establishing impediments. These restrictions are justified by appeal to the experience that certain marital relationships are injurious to both civil and ecclesiastical society and to the institution of marriage and often harm the parties themselves

and their children (CIC c. 1058). Hence an impediment is a legal prohibition or disqualification that renders a person legally incapable of a valid marriage.

An impediment is called “impediment” if it results only in the unlawfulness of the marriage. It is called “diriment impediment” if it results in the invalidity of a marriage (CCEO c. 790). The impediments legislated in the present codes are all diriment. Diriment impediments invalidate marriages even when the parties bound by them are ignorant of or in error about them or their effects. This is so even if the impediment directly affects only one of the parties (CCEO, c. 790, §2).

Dispensation is a relaxation of law by a competent authority for a just and reasonable cause. Impediments that are of ecclesiastical origin, i.e., human and changeable, can be dispensed by competent authority. The examples are disparity of cult, holy orders, vow of chastity, and public propriety. Impediments that are considered to be divine law, i. e., either from God’s revelation or in the very nature of things, cannot be dispensed. The examples are impotence, the bond of a prior marriage, and the closest degrees of consanguinity (brother and sister). There must be just cause to dispense from impediment; otherwise, the dispensation would be invalid and subsequently the marriage also would be invalid.

The CIC has listed twelve diriment impediments to marriage. In the CCEO, they number thirteen, since it has the impediment of spiritual relationship, which invalidates marriage between the sponsor and the baptized person and his/her parents (CCEO, c. 811).

An impediment is absolute or relative. An *absolute* impediment affects the person directly and prohibits any marriage, namely, the impediments of age, prior bond of marriage, holy orders, and public perpetual vow of chastity in a religious institute. A *relative* impediment only invalidates a marriage with certain partners. Relative

impediments are disparity of cult, abduction, crime, consanguinity, affinity, public propriety, and legal relationship by adoption. Impotence may be either absolute or relative.

The particular law of an Eastern Catholic Church *sui iuris* may establish diriment impediments in addition to those in the Eastern code. However, this may be done only for a serious reason and after consulting eparchial bishops of other Churches *sui iuris* who may have an interest in it and consulting the Apostolic See (CCEC, can. 792).

A *public* impediment is one that can be proved in the external forum; otherwise, it is an *occult* impediment (can. 1074). The possibility of proof in the external forum exists when the impediment can be proved by an authentic document or by two witnesses giving concordant testimony of things of which they have personal knowledge, or by the testimony of an official concerning matters pertaining to his office, e.g., a pastor asserting he assisted at a certain marriage; also by the testimony of experts or by the confession of the party made in court. A case is considered occult if the impediment is by nature public but is in fact occult. Thus, an impediment that is public by nature (because it arises from a fact that is public) can be occult in fact because it is not known and not likely to become known.

### **Impediment in Particular**

CIC lists twelve impediments and the CCEO lists thirteen impediments to marriage.

**1. Age** - A man before he has completed his sixteenth year of age and a woman before she has completed her fourteenth year of age, cannot validly celebrate a marriage (CCEO c. 800; CIC c. 1083, §1). However, the particular law of the Syro-Malabar Church Art. 181 stipulates: Civil law must be followed as regards the marriageable age without prejudice to c. 800 §1. Accordingly

in India men must have completed 21 years and women 18 years (c. 800 §2).

**2. Impotence-** Antecedent and perpetual impotence for intercourse, whether on the part of the man or the woman, whether absolute or relative, by its very nature renders marriage invalid (CCEO c. 801; CIC c. 1084, §1). Impotence is the incapacity for intercourse that is suitable for generation. It is the impossibility of having normal sexual intercourse. Impotence in the male is verified if he fails to achieve erection, penetration of the Vagina, and ejaculation. For the female, to be impotent means that she is incapable of receiving the erect penis of the husband.

Impotence can be either absolute or relative. Absolute impotence prevents marital intercourse with all persons; relative impotence prevents it with a certain person or persons. Relative impotence is an impediments only regarding the persons with whom the person affected cannot have intercourse.

To be invalidating, the impotence must be both antecedent (before the marriage is celebrated) and perpetual, i.e., incapable of being cured by ordinary means. Extraordinary means include a miracle, illicit means, danger to one's life, serious harm to health, or doubtfully successful means.

*Sterility* neither prohibits nor invalidates marriage, without prejudice to canon 821 (CCEO c. 801§3; can. 1084, §3). Sterility is the incapacity for generation. People who are sterile can have intercourse but are incapable of propagating offspring. Whatever hinders the human act of generation (intercourse) constitutes impotence; whatever hinders the natural process of generation constitutes sterility.

**3. Prior Bond-** Anyone who is held by a prior bond of marriage, even if not consummated, invalidly attempts marriage. Even though a former marriage is invalid or dissolved for any reason whatever, it

is not therefore allowed to contract another marriage until the nullity or dissolution of the former has been legally and certainly established (CCEO c. 802; CIC c. 1085). A married man or woman can enter into another marriage only after the death of the spouse or after getting the declaration of nullity of marriage from an ecclesiastical court. In India civil decree of divorce also should be obtained for a second marriage.

**4. Disparity of Cult-** Marriage with a non-baptized person cannot be validly celebrated (CCEO. 803; CIC c. 1086, §§ 1, 2). This impediment can be dispensed by the eparchial bishop under certain conditions. He is not to grant it unless the following conditions are fulfilled: 1. the Catholic party declares that he or she is prepared to remove dangers of falling away from the faith and makes a sincere promise to do all in his or her power to have all the offspring baptized and educated in the Catholic Church; 2. the other party is to be informed at an appropriate time of these promises which the Catholic party has to make, so that it is clear that the other party is truly aware of the promise and obligation of the Catholic party; 3. both parties are to be instructed on the essential ends and properties of marriage, which are not to be excluded by either spouse (CCEO c. 814). A form of marriage prescribed by the Church is to be observed in this case (CCEO c. 834).

**5. Holy Orders-** One who has received holy orders invalidly attempts marriage (CCEO c. 804; CIC c. 1087). The impediment binds bishops, presbyters, and deacons, including permanent deacons. For a cleric to marry validly, he must receive a dispensation from the obligation of celibacy, which the pope alone grants (CIC c. 291).

**6. Public Perpetual Vow of Chastity in a Religious Institute**  
- Those who are bound by a public perpetual vow of chastity in a religious institute invalidly attempt marriage (CCEO c. 805; CIC c. 1088). The impediment binds perpetually professed members of

either clerical or lay institutes, whether they are of pontifical or patriarchal or diocesan right. They have to obtain dispensation either from the Apostolic See or from the patriarch (CCEO c. 798).

**7. Abduction-** There can be no marriage between a man and a woman who was abducted or at least detained for the purpose of marrying, unless the woman later has been separated from her abductor and, while in a safe and free place, willingly chooses marriage (CCEO c. 806; CIC c. 1089).

**8. Crime (Conjucide) -** One invalidly attempts marriage who, in view of marrying a certain person, has caused the death of the spouse of either of them through physical or moral cooperation (CCEO c. 807; CIC c. 1090). There are two species of crime that create the impediment: (1) a person who, to marry another, kills his or her own spouse or the spouse of the other; and (2) two persons who conspire and cause the death of the spouse of either, even without an intention of marrying each other. In either case, the murder must be committed for the impediment to be incurred, whether it is committed by the man or woman or both, or by someone else acting in the service of either or both. The dispensation from the impediment of crime is reserved to the Apostolic See.

**9. Consanguinity-** In the direct line of consanguinity marriage is invalid between all ancestors and descendants both legitimate and natural. In the collateral line it is invalid up to the fourth degree inclusive (CCEO c. 808 §§ 1, 2; CIC c. 1091, §§ 1, 2). Direct line consanguinity is the blood relationship between direct ancestors and descendants, e.g., grand father, mother, son, granddaughter, etc. Collateral consanguinity is the blood relationship when two persons have a common ancestor, but neither is the direct ancestor of the other, e.g., brother and sister, uncle and niece, first cousins, second cousins, etc. The impediment invalidates any marriages between persons related in the direct line and, on the collateral line, between brothers and sisters (second degree), aunt and nephew or uncle

and niece (third degree), first cousins (fourth degree), and great-aunt and grandnephew or great-uncle and grandniece (fourth degree).

A dispensation is never given from the impediment of consanguinity in the direct line or in the second degree of the collateral line (can. 1078, §3). Third and fourth degree collateral consanguinity can be dispensed by the local hierarch.

**10. Affinity** - Affinity in the direct line in any degree and in collateral line in the second degree invalidates marriage (CCEO c. 809; CIC c. 1092). Affinity in collateral line is not included in CIC. Affinity arises from valid marriage, even if not consummated. It exists between the husband and the blood relatives of the wife, and between the wife and the blood relatives of the husband. Unlike the Latin law, an Eastern Catholic would not be free to marry a sister-in-law or brother-in-law upon the death of the spouse without getting a dispensation from the impediment.

**11. Public Propriety** -The impediment of Public Propriety arises from an invalid marriage after common life has been established or from notorious or public concubinage or from the cohabitation after civil or non-Catholic marriage; it invalidated marriage in the first degree of the direct line between the man and the blood relatives of the woman, and vice-versa (CCEO c. 810; CIC c. 1093). The impediment only exists once the couple begins to live together in the invalid union. Concubinage is when two persons live as husband and wife for the purpose of habitually having sexual intercourse, but the union does not have even the appearance of marriage. For the impediment to arise, it is necessary that the concubinage be notorious or public, i. e., well known to the community. The impediment is perpetual. Even if the invalid marriage or concubinage has been dissolved, the impediment still exists and must be dispensed.

**12. Legal Relationship**- Those who are legally related by reason of adoption cannot validly marry each other if they are related in the

direct line or in the second degree of the collateral line (CCEO c. 812; CIC can. 1094). The impediment exists in all degrees of the direct line. An adopted daughter could not marry her legal father, his father, his naturally begotten son, grandson, etc. The impediment extends to the second degree of the collateral line. An adopted son could not marry a natural or an adopted daughter of his legal parents. Legally, they are brother and sister, although they have no blood relationship.

**13. Spiritual Relationship** - From baptism arises a spiritual relationship that invalidates marriage between the godparent and the baptized and between the godparent and the parents (CCEO c. 811). This impediment binds only the members of Eastern Catholic Churches. CIC does not contain this impediment.

## **B. Consent of the Spouses**

It is consent of the spouses that makes marriage. Consent is an act of the will by which a man and woman mutually give and accept each other through an irrevocable covenant in order to establish marriage. No human power can replace this matrimonial consent (CCEO c. 817; CIC c. 1057, §2). It must be expressed in words or, if they cannot speak, through equivalent signs (CIC c. 1104, §2). Except the spouses no human power, parents, and elders, as in India, cannot do this.

If consent is lacking or canonically defective, whether on the part of one or both parties, the marriage is invalid. The vast majority of declarations of nullity of marriage done in the Church tribunals are on some ground of defective consent. Canon law enumerates eight grounds that may render matrimonial consent inefficacious. Each ground is briefly explained here below.

**1. Incapacity**- They are incapable of contracting marriage: 1° who lack the sufficient use of reason; 2° who suffer from grave lack of discretion of judgment concerning essential matrimonial rights and

duties which are to be mutually given and accepted; 3° who are not capable of assuming the essential obligations of matrimony due to causes of a psychic nature (CCEO c. 818; CIC. c 1095).

This canon proposes three grounds of marital nullity. Use of reason required for marriage is not the simple use of reason that the law presumes is attained by age seven but sufficient use of reason to understand that marriage is a community of conjugal life for the good of the spouses and the generation and upbringing of children. Due discretion for marriage requires that the intellect make a mature judgment and that the will consent freely. Those lacking in due discretion are frequently immature or they may have an identity disorder or personality disorder of at least moderate degree. Third ground points to the serious mental disorders in a person that make him incapable of assuming the essential obligations of marriage.

Profound mental retardation (sub-normal intelligence), manic depression, schizophrenia, personality disorders (anti-social, narcissistic, avoidant, dependent, obsessive-compulsive, etc), psychological immaturity, nervous disorders (epilepsy), alcohol dependence, homosexuality and other sexuality and other sexual perversions are some of the causes of incapacity to contract marriage.

**2. Ignorance-** Those who contract marriage must be at least not ignorant that marriage is a permanent partnership between a man and woman ordered towards their mutual good and the procreation of offspring by means of sexual cooperation (CCEO c. 819; CIC c. 1096). Ignorance can arise as a result of societal and cultural factors that conflict with the Catholic understanding of marriage, and people can come to adulthood and still be lacking an understanding of marriage, as a permanent commitment ordered to the good of the spouses and the children.

**3. Error of Person or Quality-** Error about the identity of one's partner renders marriage invalid, but an error concerning a quality

of the partner does not, unless that quality is directly and principally intended (CCEO c. 820; CIC c. 1097). Error consists in a defect in the act of comprehension through which one makes a false judgment or a mistaken assessment of an object.

Error concerning a person happens, though rarely, when the contracting party, wanting to marry a determined person, marries someone else by mistake. For example, banns are published for the marriage of Mary and John, but on the wedding day, it is not John but his brother James who exchanges consent with Mary who is totally unaware of it. Mary, therefore, enters marriage in error concerning the person of her partner.

Error concerning a quality of the partner happens very frequently. A quality of person could be moral, physical, social, religious, or legal in nature, e.g. honesty, good health, wealth, occupation, education, etc. It is directly and principally intended by the partners and is the primary reason for marrying. Sometimes a quality may not be intended expressly but is presumed tacitly because it is a cultural element highly valued in society.

**4. Fraud or Deceit-** While in error a party makes a false judgment about an esteemed quality for marriage, in deceit she/he is manipulated by the other party or third person to enter into marriage by deliberately concealing a disruptive quality. If the party had known about the fraud prior to marriage, she/he would have never consented. The law states: ‘A person contracts invalidly who enters into a marriage deceived by malice, perpetrated to obtain consent, concerning some very important quality of the other partner which by its very nature can gravely disturb the partnership of conjugal life’ (CCEO c. 821; CIC c. 1098). Qualities that might be grave enough to nullify a marriage when concealed are: prior illicit pregnancy, homosexuality, alcoholism, drug addiction, sexual dysfunction (impotence), prior vasectomy or tubectomy, previous marriage, prior

crimes like murder or theft, mental illness, infertility, dangerous diseases like AIDS, Cancer, leprosy, etc.

**5. Error about the Essential properties of Marriage** - One who is in error about the unity, indissolubility, or sacramental dignity of marriage contracts invalidly, if that person's will is determined by the error (CCEO c. 822; CIC c. 1099). Unity requires that marriage be an exclusive relationship between one man and one woman and that it excludes polygamy and marital infidelity. Error concerning indissolubility would be regard marriage not as a permanent bond but as a personal relationship that can be terminated anytime at the will of the parties ('divorce mentality'). Error concerning the sacramental dignity of marriage is the belief that marriage between two baptized is not *ipso facto* a sacrament, or that the marriage of the baptized is purely a social affair. As long as this error does not affect the will, it does not invalidate marital consent.

**6. Simulation**- If, contrary to their spoken words or signs, one or both parties deliberately exclude marriage itself of some essential element or property of marriage, they contract marriage invalidly (CCEO c, 824; CIC c. 1101). As stated above, the essential elements of marriage are the good of the spouses and procreation and education of children. The essential properties are unity, indissolubility and sacrament. Total simulation is the exclusion of all the essential elements and properties, i.e., exclusion of the marriage itself. In this case the party goes through the marriage ceremony solely for an extrinsic reason, e.g. for getting dowry, obtaining a job or visa, etc. Partial simulation is the exclusion of one of the essential elements or properties of marriage, as, for instance, a party marrying with the thought of divorcing his/her partner (simulating against indissolubility), continuing illicit sexual relationships (simulating against procreation), or undergoing the wedding ceremony purely as social event (simulating against sacrament).

**7. Condition-** Marriage based on a condition cannot be validly celebrated (CCEO c. 826). CIC has some difference in the articulation of this canon. It says : Marriage subject to a condition about past or present is valid or not depending on the actual fulfillment of the condition; a marriage subject to a condition about the future cannot be contracted validly (CIC c. 1102).

**8. Force and Fear -** If a person is compelled to choose marriage by force or grave fear which is inflicted from without, even if unintentionally, the marriage is invalid (CCEO c. 825; CIC c. 1103). Force is generally understood as physical or moral coercion from without, which the person cannot resist. Since marriage is contracted by the free consent of the parties, a marriage that is forced against one's will is invalid. Fear comes from within the person. The fear must force one to choose marriage in order to be free of it. The person feels no other choice but to enter the marriage in order to be free of the fear. Fear is the cause of the marriage that would not take place without it.

Jurisprudence admits what is known as 'reverential fear' which is found in a subject in relation with one's superior whose indignation or anger the subject cannot resist. In the question of marriages the party accepts marriage coerced by the parents or elders in order to escape their anger and subsequent rejection or estrangement, threats of losing property, expulsion from home, threats of suicide by the parents, etc.

### **C. Form of Marriage**

The canonical form of marriage means the canonically prescribed manner of expressing the matrimonial consent of the spouses and celebrating the marriage. It is the form of officially manifesting the consent of the spouses to each other. It also means to solemnize the marriage before a duly authorized minister of the Church (diocesan bishop, vicar general, parish priest, delegated priest; for the Latins,

also deacon or lay person) and at least two witnesses. Canon law makes it obligatory for the validity of a Christian marriage. Thus the baptized Catholics cannot enter into a sacramental marriage, if they exchange their matrimonial consent in any other way. The Church prescribes this canonical form of marriage for Catholics for the reasons a) to make a Christian marriage a public celebration in the church community (thus to prevent serious problems arising from clandestine marriages), b) to make known in the community the new status of the spouse as members of the Church, and above all, c) to make the spouses aware of their sacramental conjugal union after the manner of the union of Christ with his Church. Indeed, the canonical form mainly aims at expressing the sacred and sacramental character of Christian marriage. It is precisely for this reason that the Christian spouses are asked to exchange their marriage consent and celebrate their marriage before the church community officially represented by its proper pastor and at least two witnesses.

The two witnesses at marriage, unlike the sponsors at baptism and confirmation, assume no responsibility to attest to the faith of the partners entering marriage or to assist them in living out their marital obligations. Their sole function is to witness to the fact that the marriage was legitimately celebrated. Hence they should possess the use of reason and be capable of attesting the event of marriage, and should not be mentally retarded or ill, or in an intoxicated condition. The witnesses can be men or women.

CIC c. 1108 CCEO c. 828 prescribes the ordinary form of marriage. It is the celebration of marriage in the presence of a bishop / priest (deacon for the Latins) authorized for a marriage and two witnesses. For the Latins, the intervention of priest or deacon means to be present and to officially “ask and receive” from the spouses the manifestation of their matrimonial consent in the name of the Church. Their role is “to assist at marriage”. For the Orientals it means the priest assisting and giving the blessing. In the oriental

churches (catholic and non -catholic) deacons have no faculty of blessing a marriage. For them “sacerdotal blessing” is an essential element of ordinary form of marriage and therefore it is a must for the validity of marriage. Hence a deacon cannot be delegated to bless a marriage of Orientals. While for the Latins, deacons can officially assist at a marriage.

This canonical form is to be observed, if at least one of the parties celebrating marriage was baptized in the catholic Church or was received into it (non catholic reunited with the catholic Church) (CCEO 834.1) and has not by a formal act defected from it (CIC 1117). In a situation of mixed marriage, exception may be given (CIC c. 1127 § 2; CCEO c. 835). However, if a catholic party (latin or oriental) celebrates a marriage with a non-catholic oriental, the form is to be observed only for liceity. The blessing of a priest is required for validity while observing the other requirements of law (CIC c. 1127§1, CCEO c. 834 § 2).

### **Faculty to bless marriage**

From the day of taking canonical possession of office and as long as they legitimately hold office, everywhere within the boundaries of their territory, local hierarchs and pastors validly bless the marriage of parties whether they are subjects or non-subjects, provided that at least one of the parties is enrolled in his Church *sui iuris*. The hierarch and the personal pastor, by virtue of their office, only validly bless marriages within the boundaries of their jurisdiction when at least one of the parties is a subject. By the law itself, the patriarch/major Archbishop is endowed with the faculty to personally bless marriages anywhere in the world, as long as at least one of the parties is enrolled in the Church over which he presides, observing the other requirements of law (CCEO c. 829).

The local hierarch and the local pastor, as long as they validly hold office, can delegate the faculty to bless the marriage within their territory to other priests. One who has received general

delegation for marriages can sub-delegate another priest in individual cases. No sub-delegated power can be sub-delegated again unless the one delegating has expressly permitted it (CIC c. 137 § 4).

### **Extra-ordinary form**

If one cannot have present or have access to a priest who is competent according to the norm of law without grave inconvenience, those intending to celebrate a true marriage can validly and licitly celebrate it before witnesses alone:

1° in danger of death;

2° outside the danger of death, as long as it is prudently foreseen that such circumstances will continue for a month.

In either case, if another priest, even a non-Catholic one, is able to be present, inasmuch as it is possible he is to be called so that he can bless the marriage, without prejudice for the validity of a marriage in the presence only of the witnesses.

If a marriage was celebrated in the presence only of witnesses, the spouses shall not neglect to receive the blessing of the marriage from a priest as soon as possible (CCEO c. 832).

### **Dispensation from Canonical Form**

CIC c. 1127 § 2 and CCEO c. 835 deals with dispensation from canonical form. According to CIC if there are grave difficulties in observing the canonical form, the local hierarch can give dispensation from it. However, the CCEO specifies that dispensation from the form for the celebration of marriage required by law is reserved to the Apostolic See or the patriarch, who will not grant it for a most grave cause.

### **D. Mixed Marriages**

Canon law uses the term ‘mixed marriage’ to denote a marriage between a catholic and a baptized non-Catholic. Marriage between

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a Catholic and a non-Christian is called 'disparity of cult' marriage. CCEO c. 813 and CIC c. 1124 speak of mixed marriage, i.e., marriage between a Catholic and a baptized non-Catholic. Particular Law of the Syro-Malabar Church gives detailed norms on this issue (PL 184-185 and 190-194). Following two canons of CCEO gives clear norms in this regard:

CCEO c. 813 - Marriage between two baptized persons, one of whom is Catholic and the other of whom is non-Catholic, is prohibited without the prior permission of the competent authority.

CCEO c. 814 - For a just reason the local hierarchy can grant permission; however he is not to grant it unless the following conditions are fulfilled:

1° the Catholic party declares that he or she is prepared to remove dangers of falling away from the faith and makes a sincere promise to do all in his or her power to have all the offspring baptized and educated in the Catholic Church;

2° the other party is to be informed at an appropriate time of these promises which the Catholic party has to make, so that it is clear that the other party is truly aware of the promise and obligation of the Catholic party;

3° both parties are to be instructed on the essential ends and properties of marriage, which are not to be excluded by either spouse.

While applying these two canons in mixed marriages, the following points must be taken into account by the pastors:

In all cases of mixed marriages, the pastors shall make sure that the partners are duly prepared for the same. When the parties apply for a mixed marriage they should be told that the marriage within the same faith is better for the harmony of the family and the upbringing of the children. If they insist on conducting the mixed marriage they

should be instructed properly about the faith of the couples, the celebration of marriage, the formation and practice of faith after marriage, the duties towards children and about the special agreements made between the Churches, if any. It should be stressed that while each partner holds his/her ecclesial faith as supreme or paramount, he/she should respect the ecclesial faith of his/her partner. A pre-marriage preparatory course and a premarital counseling session are highly recommended. The bride/bridegroom shall produce her/his baptism certificate. §7. The priest must ensure that the bride/bridegroom is eligible for marriage (PL Art. 184).

For mixed marriage, the parties shall submit a written petition together with the endorsement of the parish priest of the Catholic party to the local hierarch requesting permission for mixed marriage. Together with this petition, the Catholic party shall submit a written declaration regarding the promises and obligations mentioned in CCEO c. 814 §1. Before endorsing the petition for permission for mixed marriage, the parish priest of the Catholic party shall inform the non-Catholic partner about the above said declaration of the Catholic party and shall notify the matter in the petition. If the non-Catholic party has no objection, he/she may be invited to counter-sign the declaration of the Catholic party to the effect that he/she is aware of the promises of the Catholic party. The parties should, in the course of the contacts in this connection, be invited and encouraged to discuss the Catholic baptism and education of the children they will have, and when possible come to a decision on this question before marriage (c. 815; PL Art. 185).

Betrothal and publication of banns may be allowed in these cases at the discretion of the local hierarch after duly considering the nature and circumstance of the petition; if these are allowed their form also shall be stipulated in the same rescript (Art. 186).

The form of the celebration of marriage prescribed by law is to be observed if at least one of the parties celebrating the marriage

was baptized in the Catholic Church or was received into it (c. 834 §1). §2. A marriage between a Catholic and a member of an Oriental non-Catholic Church is valid if it has taken place with the celebration of a religious Rite by an ordained minister, as long as all other requirements of law for validity have been observed. For lawfulness in these cases, the canonical form of celebration is to be observed. §3. Canonical form is required for the validity of marriage between Catholics and members of non-Catholic and non-Oriental Churches and ecclesial communities (PL Art. 187 - §1).

Before or after the canonical celebration of marriage, it is forbidden to have another religious celebration of the same marriage to furnish a new consent; likewise, a religious celebration is forbidden in which both the Catholic priest and non-Catholic minister ask for the consent of the parties (CCEO c. 839). However, avoiding scandal, the officiating Catholic priest may invite a non-Catholic minister to read a scriptural passage or to give a brief exhortation and to bless the couple. In like manner, the Catholic priest may participate in a mixed marriage with the dispensation from the form of the celebration of the marriage (PL Art. 189).

A mixed marriage celebrated according to the Catholic form ordinarily takes place outside the Eucharistic liturgy. However, for a just cause, the local hierarch may permit the celebration of the Holy Qurbana, if it is a marriage with a non-Catholic Oriental. There shall be no celebration of Holy Qurbana in connection with the marriage between a Catholic and a non-Oriental non-Catholic. *Communicatio in Sacris* must be observed regarding the reception of Holy Communion on the occasion of such marriages (CCEO c. 671 §§1,2,5; PL Art. 190).

### **Marriage between members of Catholic Church and Syrian Orthodox Church**

An agreement between Catholic Church and the Malankara Syrian Orthodox Church on inter-Church marriages has been

prepared on the basis of a common declaration made by Pope John Paul II and the Syrian Orthodox Patriarch Zakka II dated on 23<sup>rd</sup> June 1984. For marriages between members of the Catholic Church and the Malankara Syrian Orthodox Church, as part of the preparation for these inter Church marriages, besides what is given in Article PL 184 §§ 1-7, the following norms are to be followed:

1. The priest should ensure that the bride/bridegroom has paid the donations due to the parish in connection with marriage according to the practice of the Churches.
2. The bride and bridegroom, after mutual consultation, may select the church in which the marriage is to be celebrated.
3. Written permission for inter-Church marriage from the respective Bishops should be obtained by the bride and the bridegroom.
4. Betrothal may be permitted according to the custom of the place.
5. Banns which also announce that it is an inter-Church marriage should be published in the respective parish churches.
6. Once permission is obtained from the Bishops, the respective parish priests are expected to issue the necessary documents for the conduct of marriage.
7. Marriage in lent or advent seasons is only to be conducted with the permission of the Bishops. §3.

After preparation, the following norms for the *celebration of the* inter-Church Marriages are to be observed:

1. The liturgical minister should be the parish priest of the church where the marriage is celebrated or his delegate from the same ecclesiastical communion.
2. There is to be no joint celebration of marriage by the ministers of both Churches. The marriage is to be blessed either by the Catholic or by the Syrian Orthodox minister. However, there could be some kind of participation at the liturgical service by

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the other minister who could read a scriptural passage or preach a sermon.

3. On the occasion of these celebrations the couple, and any members of their families who belong to these Churches, are allowed to participate in the Holy Eucharist in the church where the sacrament of matrimony is being celebrated.
4. Proper entries must be made in the church registers and marriage certificates should be issued for a record to be made in the register of the other church.

Regarding the pastoral care of the Catholic-Syrian Orthodox inter-Church Families the following guidelines are to be observed:

1. The Catholic partner is to be reminded that he/she has to commit himself/herself to imparting to their children proper Catholic formation, to the extent possible, in agreement with his/her partner. Such a formation should be fully in harmony with the Catholic tradition to which he/she belongs.
2. The pastors of both partners are bound in conscience to provide continued pastoral care to the inter-Church families in such a way as to contribute to their sanctity, unity and harmony.
3. Each partner is to be advised to attend the liturgical celebrations of his/her respective Church, but the couple may be allowed to participate jointly in the Eucharistic celebration on special occasions when this joint participation is socially required.
4. Any declaration of the nullity of such marriages is to be considered only with the consent of the Bishops concerned from both Churches.
5. The funeral service should, as far as possible, be conducted according to the rite of the dead person's Church, even though he/she may be buried in either of the cemeteries, especially if the other partner is already buried there in a family tomb.

## **E. Convalidation of Marriage (CIC 1156-1165; CCEO 843-852)**

There are marriages valid in appearance, but in reality invalid (a marriage becomes invalid due to an impediment, or due to defect in consent, or due to the lack of canonical form). When such invalidity is discovered, the remedies proposed by canon law are declaration of nullity or convalidation. Convalidation means making or getting an invalid marriage validated.

There are two kinds of convalidation (a) simple convalidation and (b) radical sanation.

### **1. Simple Convalidation**

Simple convalidation means rectifying the situation that makes a marriage invalid, and renewing the matrimonial consent by the parties.

The two elements of this kind of convalidation are:

- a. Removal of the cause of invalidity (impediment/ defect in form/ defect in consent).
- b. Renewal of the consent after having known about the nullity or having a suspicion of nullity.

If a marriage is null because of an impediment, it is necessary that the impediment ceases by itself or by a dispensation. Besides that, the party, who is conscious of the impediment, has to renew the consent. This renewal of consent is to be made with the consciousness that the marriage was invalid. When the impediment is public, the consent is to be renewed by both parties, following the canonical form.

If a marriage is invalid due to defective consent, it is convalidated by expressing a valid consent by the party who did not make a proper consent, and the consent that was given by the other partner should continue to exist. If the defect of consent could be proved, then the consent is to be renewed with canonical form.

If a marriage is invalid due to lack of canonical form, then the marriage is to be celebrated again with canonical form to validate it.

## **2. Radical Sanation**

Radical sanation is a healing at the root of an invalid marriage by the intervention of a competent ecclesiastical authority. It is a convalidation which is given by ecclesiastical authority and which does not require a formal renewal of consent (provided consent of the parties existing).

The four points of radical sanation are:

- a. If an impediment exists, dispensation is given (if it is dispensable);
- b. If the canonical form had not been observed, dispensation is granted;
- c. A dispensation from the renewal of consent is given; (provided, the consent is existing);
- d. Retroactive canonical effects are guaranteed.

In this case of convalidation, once the dispensation is given for canonical form or for an impediment, the consent already given is made juridically valid. However, if consent was lacking (defective) in either or both parties, marriage cannot be sanated.

Radical sanation should not be given unless it is clear that the partners desire to continue their conjugal relationship.

Competent ecclesiastical authority for giving radical sanation is the Apostolic See/ Patriarch/ Major Archbishop/ Diocesan bishop, depending on the nature of impediment for which a dispensation is to be obtained.

## **F. Matrimonial Reliefs (CIC 1141-1155 CCEO 853-866)**

In marriages the partners have great expectations. But often their expectations are not easily fulfilled. Things go wrong in marital relationship. Many are the factors that lead marriages to a

breakdown. This existential situation is taken into account by canon law, and suitable reliefs are prescribed by it. At first, all the possible pastoral means are to be employed for reconciling the partners in problem. Only if the reconciliation of the partners is not possible, the canonically prescribed reliefs may be sought. Dissolution, separation and declaration of nullity are the matrimonial reliefs provided by canon law.

### **a. The Dissolution of the Bond**

From a valid marriage there arises a marital bond which is exclusive and perpetual. It is sacramental bond for the baptized. Such a sacramental marital bond has the essential properties of unity and indissolubility. Consequently the church never permits dissolution and the law states that a ratified and consummated marriage cannot be dissolved by any human power or for any reason other than death (CIC 1141 CCEO 853). There is no “divorce” in the church. However, the canon law gives provision for the dissolution of marriages by the competent authority in certain particular circumstances.

#### **1. The Dissolution of a Non-consummated marriage (CIC 1142, 1697-1706; CCEO 862, 1384):**

A sacramental consummated marriage is absolutely indissoluble. But a sacramental non-consummated marriage can be dissolved. “A non-consummated marriage between baptized person or between a baptized party and an un-baptized party can be dissolved by the Roman Pontiff for a just reason, at the request of both parties or if either party, even if the other is unwilling” (CIC 1142; CCEO 862). A marriage exists from the moment of matrimonial consent of the parties. When this consent is perfected with sexual intercourse, the matrimonial bond becomes absolutely unbreakable. And, if the marriage has not been consummated by sexual intercourse in a human manner (cf. CIC 1061 §1), the Roman Pontiff can dissolve the bond for a just cause.

## **2. The Dissolution of marriage by “Pauline Privilege” (CIC 1143-1150; CCEO 854-861):**

The dissolution by Pauline privilege is based on the teaching of St. Paul in 1Cor. 7: 12-15. St. Paul stated that in a case of marriage contracted between two non-baptized persons, one of whom after the marriage, had been converted to Christianity and baptized, and that the other partner not converted to Christianity, did not want to stay with the Christian spouse in peace, then the Christian partner was free to live separately or free to marry.

Based on this teaching of St. Paul, canon law prescribes the following:

1. The marriage to be dissolved must be one contracted between two un-baptized persons, one of whom seeks baptism and the other does not;
2. The un-baptized spouse departs from the baptized spouse's company;
3. The un-baptized spouse should be interpellated (officially interrogated) to ensure that he or she does not want to be baptized nor cohabit with the baptized spouse in peace and without offence to God;
4. In the case of a polygamous or polyandrous marriage, the baptized spouse is free to choose a new spouse among the several partners;
5. New marriage to be contracted must have all ordinary formalities;
6. The obligations of justice and equity towards the earlier partner and the children, if there are, remain binding;
7. In the case of enforced separation, the parties must be unable to re-establish conjugal life because of captivity or persecution.

When these requirements are fulfilled, the baptized party can have a new marriage. It is self-operative, that is, once the requirements for it are present, the baptized partner acquires the

right to enter a new marriage. When a new marriage is contracted the former is dissolved.

### **3. The Dissolution of Marriage in Favour of the Faith (CCEO 1384):**

This type of dissolution of marriage was introduced in the Church to meet the pastoral situation arising from natural marriages (non sacramental union) between the baptized and the un-baptized. A valid non-sacramental marriage can be dissolved by the Roman Pontiff. CCEO 1384 states that the special norms of the Apostolic See are to be observed exactly for obtaining the dissolution of a marriage in favour of the faith. According to the norms given by the Apostolic See in favour of faith cases are examined by the Congregation for the Doctrine of Faith.

#### **b. Separation of spouses (CIC 1151-1155; 1692-1696 CCEO 863-866; 1378-1382)**

Separation implies the existence of marital bond, but the spouses discontinue the common living. Common conjugal life or conjugal partnership is an essential element of marriage. However, because of human nature and serious failure in marital relationship, a peaceful and happy common conjugal living may be very difficult. The spouses are found not reconcilable, though the Church, in her pastoral concern for the couples and their children, prescribes reconciliation (cfr. CIC 1446 & 1676 CCEO 1103; 1362). In such a situation separation may be the prudent step and the possible way to settle the problem in a human way. Hence canon law provides for a legal separation of the spouses, but the marriage bond exists.

#### **c. Annulment of Marriages (CIC 1671-1688 CCEO 1357-1374)**

Annulment is the declaration of nullity of a marriage. In general, annulment is the judicial declaration of nullity of a marriage given by

a competent ecclesiastical tribunal after a prescribed judicial process (CIC 1671-1685 CCEO 1357-1371). It also can be through an administrative declaration made by the Judicial Vicar or a judge designated by him in keeping with the provisions for a documentary process (CIC 1686-1688 CCEO 1372-1374).

### **Ecclesiastical Tribunals**

A judicial declaration of nullity is given by an ecclesiastical tribunal. An ecclesiastical tribunal is a legal forum, governed by detailed and exacting procedure laws, directed by a group of judges who examine petitions submitted to it, instruct a case through the help of witnesses, evidences and documents, and apply the appropriate canon law and jurisprudence of the Church to the facts of the case at hand, and give a judgment. The tribunal that deals with marriage cases is called “marriage tribunal”. There are different grades of tribunals: eparchial, metropolitan, patriarchal and finally Roman Rota. Before 8 December 2015, every judgment made by the first instance court had to be confirmed by a second instance tribunal. For example, the judgments of the eparchial tribunals had to be confirmed by the metropolitan tribunal. By two *motu proprio*, “*Mitis et Misericors jesus*” (for Oriental Catholics) “*Mitis et Iudex Dominus Iesus*” (for Latin Church), Pope Francis has removed this canonical provision from the procedural law.