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Chiesa Siro-Malabarese:

*Syro-Malabar Particular Law: an Adequate Response to CCEO's Call?*

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*L'attività legislativa delle Chiese sui iuris*

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## Introduction

Without applying adequately the method of hermeneutics,<sup>1</sup> it is not possible to understand the place and function of particular law (PL)<sup>2</sup> in the Eastern Catholic Churches. The application of this method would demand a reflection on the original intention behind the recognition of PL in these Churches. We know that the Catholic Church, in Vatican Council II, has explicitly taught that the Eastern Catholic Churches have a duty and right to govern themselves with their own law (OE 5). This teaching is quite extensively applied in various ways in CCEO. However, we may note that the above-mentioned teaching is nothing new in the history of the Catholic Church. This teaching was part of the perennial attempts of the Church to root itself deeply in its rich inner spiritual sources. The Jews and the Greeks are one in Christ (Gal. 3: 28). However, they become one in faith in Christ, retaining their Jewish and Greek cultural and ethnic identity. Does faith in Christ demand abandoning one's cultural and ethnic identity? According to St Paul, the answer can only be in the negative. This is better clarified in the existence of both male and female faithful. St Paul in the same verse adds «there is no longer male and female». Yet it is only too evident that both categories exist. Male does not abandon his «maleness» or female her «femaleness» to become a believer in Christ. Thus we can speak of a double-faceted identity of the faithful, made up of the unity in faith and diversity in culture.<sup>3</sup> This double-faceted identity of the faithful accounts for two fundamental natures of the Church, namely, it is One and at the same time Catholic: One because of the unity in faith, and Catholic because of its embracing diversity. Since its beginning the Church has recognised this double-identity of the faithful, and this approach of the Church will continue as long as it exists, with far-reaching consequences for its policy always and everywhere.

The Church did not impose Mosaic Law on the Gentile Christians; rather it is more correct to say that the Mosaic Law and the Gentile law found it possible to coexist in the Church Law. In other words, the Church Law was composed of different laws. Thus in the first Christian community we perceive the coexistence of diverging, even contradictory laws, side by side, in the same Church. The Church at that phase was opening itself to different communities which wished to maintain their own law (identity), except at faith level. This is the process of Catholicisation. The acceptance of this unity-diversity is a methodological question for the Church, and is normative for all ages; this method cannot be linked

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<sup>1</sup> See on hermeneutics GIUSEPPE FAGGIN, «Ermeneutica», in Centro di studi filosofici di Gallarate, *Enciclopedia filosofica*, Venezia-Roma, Istituto per la collaborazione culturale, vol. 2, 1957, col. 22; CARLO MOLARI, «Ermeneutica e linguaggio», in *Dizionario teologico interdisciplinare*, Torino, Marietti, vol. 2, 1977, 74-94.

<sup>2</sup> Main abbreviations used in this study are: CCEO – Code of Canons of the Eastern Churches, OE – *Orientalium Ecclesiarum* (the Vatican II document on Eastern Catholic Churches), PCCICOR – Pontifical Commission for the Revision of the Code of Eastern Canon Law, PL – Particular Law, SM – Syro-Malabar, SMC – Syro-Malabar Church, SMPL – Syro-Malabar Particular Law.

<sup>3</sup> Here culture stands for the faithful's identity at social, ethnic, ritual, economic levels, namely, every sphere which is not of faith.

to the past alone. Imposing the Mosaic Law on all who became Christians, or a categorical refusal of it, would not have been Catholicisation.

### 1. Particular Law in CCEO

An often heard complaint in the field of CCEO is that it contains limited room for PL, in spite of all the talk about it in CCEO,<sup>4</sup> and the little room which it has is insignificant. The examples cited to substantiate this complaint refer normally to the case of c. 706 on whether to add or not water in wine for offertory, c. 1127 on the freedom of the sui iuris Churches to set the opening hours of the ecclesiastical tribunals, and the like. Nobody can deny the presence of these two canons, and many others of such minor importance. However, the whole room for PL in CCEO is not limited to these two or such kind of other canons. A closer look at the entire CCEO from the point of view of PL will reveal that within it there is wide possibility of PL: at times requiring it specifically, other times recommending or permitting it implicitly. As Ivan Žužek notes, «with the silence of the Code, if it seems opportune, it [PL] can be enacted again as *ius particulare* of the individual Churches». <sup>5</sup>

The perception of the place and function of PL will depend on how one interprets the CCEO canons and its policy on PL. The mind of Vatican Council II, of PCCICOR and of the popes<sup>6</sup> should be taken into consideration. In the work on PL, it is important not to set the common code as the starting point. In other words, the work on PL should not be limited to searching for CCEO canons which explicitly require or recommend PL and then to making only those PL. If one follows only this method, it is true that there are only very few instances where PL is required,<sup>7</sup> and these are often of minor importance. On the other hand, if we start from the Church's viewpoint (councils, popes, PCCICOR, *sacri canones*, etc.), the result will be very different. In this latter method we have to start the process of making PL of a sui iuris Church by studying the disciplinary tradition of that Church, its present condition and needs. These laws must be rooted in the tradition of that Church and in keeping with the demands of today and not contrary to the prescriptions of CCEO (c. 985 §2).

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<sup>4</sup> See IVAN ŽUŽEK, *Particular Law in the Code of Canons of the Eastern Churches*, in JOSE CHIRAMEL and KURIAKOSE BHARANIKULANGARA, eds., *The Code of Canons of the Eastern Churches: A Study and Interpretation*, Alwaye, STAR, 1992, 39-56; GEORGE NEDUNGATT, *The Spirit of the Eastern Code*, Rome, Centre for Indian and Inter-religious Studies/ Bangalore, Dharmaram Publications, 1993, 182-226.

<sup>5</sup> IVAN ŽUŽEK, *Particular Law in the Code of Canons of the Eastern Churches*, in JOSE CHIRAMEL and KURIAKOSE BHARANIKULANGARA, eds., *The Code of Canons of the Eastern Churches: A Study and Interpretation*, 46.

<sup>6</sup> Paul VI in his speech inaugurating the work of PCCICOR on 18 March 1974, reminded the Commission members that they should preserve the individuality of each Eastern Church, which individuality would include the disciplinary tradition also: see *Nuntia* 1 (1975), 7. John Paul II in the ap. const. *Sacri canones* urges the sui iuris Churches to provide for PL as early as possible after the promulgation of CCEO: see *Code of Canons of the Eastern Churches, Latin-English Edition, New English Translation*, Washington DC., Canon Law Society of America, 2001, xxiv.

<sup>7</sup> CCEO uses the term *ius particulare* or its variants explicitly only 196 times: see IVAN ŽUŽEK, *Index Analyticus Codicis Canonum Ecclesiarum Orientalium*, 170-174; id., "Aggiunte all'indice analitico del *Codex Canonum Ecclesiarum Orientalium*," OCP 60 (1994), 638.

## 2. Syro-Malabar Particular Law

Understanding the place of PL and the method of its making as mentioned above we consider SMPL, bearing in mind the questions: 1. what difficulties SMC encountered in the codification of its PL, 2. which areas have been completed, and 3. which areas remain.

Among the questions which the commission for the codification of SMPL had to face was: how to understand the Vatican II teaching to return to the ancestral disciplinary traditions of SMC, from which «they have fallen away due to circumstances of times or persons» (OE 6)? In the ancestral tradition some of the practices were not very canonical, yet practised for centuries, e.g., the role of archdeacon, the powers held by *yogam*, etc.<sup>8</sup> Thus restoring those traditions would have canonical problems. In addition, there was no canonical collection of SMC. A practical difficulty was abandoning some of the Latin customs practised in the Church of Malabar for more than four centuries.

The disciplinary tradition of the universal Church, however, has sufficient resources to overcome these difficulties.

The ecumenical councils received local discipline and applied them universally (Nicea I c. 6, Trullo c. 2, Nicea II c. 1, etc.). Very rarely can we see the birth of a discipline at the centre which is then spread to the periphery. The process is therefore often centripetal, not centrifugal. We may note that the discipline born in the cultural milieu of the Church of St Thomas Christians (eg., *yogam* in its typical St Thomas Christian form) was not received universally. Similarly, the institutions, which were born elsewhere and then assumed a unique function in this Church (particularly the role of archdeacon), did not get a universal recognition as it was practised in the St Thomas Christian Church.<sup>9</sup> Rather such discipline and institutions of the St Thomas Christians had to be replaced with the discipline of other Churches. In this process St Thomas Christians often find imposition, whether it is called Latinisation or Catholicization.

The existence of different process of decision-making, both synodal and non-synodal in different Churches (Eastern and Western), of the married and celibate clergy, of the election and appointment of bishops, etc. points to the existence of nearly contrary norms in different Churches; but all these are accepted at the universal level. Thus all these are Catholic laws, although they are quasi-contrary norms. Catholicization is not only the process of implementing the same norms for the whole Catholic Church; but it should be conceived, all the more, as making provision for the existence of diverging disciplines in different Churches, all equally acceptable in the Catholic communion. In all these processes, however, the criterion should be whether the mission of the Church can be better served by maintaining the discipline of a Church or by adopting that of another one. The Churches of the East and of the West have the right and duty to govern themselves

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<sup>8</sup> See JACOB KOLLAPARAMBIL, *The Archdeacon of All-India*, Rome, Congregation for the Eastern Churches, 1972, *passim*; GEORGE NEDUNGATT, *Laity and Church Temporalities*, Bangalore, Dharmaram Publications, 2000, *passim*.

<sup>9</sup> This footnote is in the original text, and it reads, "See JACOB KOLLAPARAMBIL, *The Archdeacon of All-India*, Rome: Congregation for the Eastern Churches, 1972. We may note that in the East Syrian Church, archdeacon had ample powers, *ibid.*, pp. 58-78; and in the Indian Church he had still greater powers, *ibid.*, *passim*."

with their own law, not just because this law is ancient, but mainly because it is found to be more suitable for the good of their faithful (OE 5).<sup>10</sup>

### 3. An Overview of SMPL<sup>11</sup>

The work on the codification of the SMPL began before SMC became a major archiepiscopal Church. On 30 November 1990, before SMC was elevated to the status of a major archiepiscopal Church (16 Dec. 1992), the SM Bishops' Conference appointed a committee to draft the code of SMPL.<sup>12</sup> After SMC became a major archiepiscopal Church, the committee was reconstituted and divided into seven subcommittees.

These subcommittees worked according to the guidelines given to them.<sup>13</sup> Each subcommittee prepared a draft of the sector of PL assigned to it. That draft was discussed and modified in the general meeting of all the subcommittees. The modified drafts were sent to different bodies such as the members of the commission, bishops of the SMC, presbyteral and pastoral councils of eparchies, SM religious conference, etc. for their observations and suggestions. Besides, these drafts were published in various issues of the official bulletin of the SMC, *Synodal News*, with a request to the readers to send their observations and suggestions. The drafts were modified in the light of the observations and suggestions received from these bodies and individuals. Different sections of PL were promulgated at various times, depending on the approval of each section by the SM synod. «It was the mind of the synodal fathers that particular law of the Syro-Malabar Church be drafted in keeping with the tradition, history, theology and discipline of this Church and also taking into consideration the present exigencies and the existing civil laws».<sup>14</sup>

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<sup>10</sup> SUNNY KOKKARAVAYIL, *The Particular Law of the Syro-Malabar Church: an Appraisal*, in *Ephrem's Theological Journal* 11 (2007) 180-181.

<sup>11</sup> This whole section 3 is taken, with a slight modification, from SUNNY KOKKARAVAYIL, *The Particular Law of the Syro-Malabar Church: an Appraisal*, in *Ephrem's Theological Journal* 11 (2007) 182-196.

<sup>12</sup> *Synodal News* vol. 11, n. 1 (May 2003) 9.

<sup>13</sup> The guidelines as they are presented in JAMES THALACHALLOR, *Particular Law of the Syro-Malabar Church*, in FRANCIS ELUVATHINGAL, ed., *Syro-Malabar Church since the Eastern Code*, Rome, Mar Thoma Yogam, 94-109, at p. 98 fn. 24. Title: Procedural Guidelines for the Drafting of the Particular Laws of the Syro-Malabar Church. 1) The particular laws should be based on the CCEO; 2) Each subcommittee is expected to point out to the general committee those canons which give provision for particular law; 3) Special attention is to be given to the following points: 3.1) The sources, 3.1.1) Pre-Portuguese (until 16<sup>th</sup> century), 3.1.2) 1599-1887, 3.1.3) 1887-1992, 3.1.4) Present constitutions and statutes of juridical institutes, 3.1.5) The existing particular customs, traditions and laws (their variants in eparchies and regions); 4) Specify the laws and structures to be supplemented; 5) Find the lacunae in the present code and in the present juridical structures in the SMC; 6) Study the PL of other Churches and Christian denominations; 7) Each subcommittee has to prepare a schema of the particular laws in the sections assigned to it, indicating their sources.

<sup>14</sup> SUNNY KOKKARAVAYIL, *The Particular Law of the Syro-Malabar Church: an Appraisal*, in *Ephrem's Theological Journal* 11 (2007) 181-182; JAMES THALACHALLOR, *Particular Law...*, in *Syro-Malabar Church since the Eastern Code*, 109.

SMPL, promulgated thus far, is published as a code in *Synodal News* vol. 11, n. 1 (May 2003).<sup>15</sup> The laws contained in this volume can be divided into two sections: 1) norms complementary to CCEO, and 2) statutes of various organs of SMC.<sup>16</sup>

The published version of SMPL has a preamble, which is divided into two parts: 1) A brief history of SMC, and 2) Sources of the different periods in the history of SMC.

a) The sources of the Indian period: laws given by the Apostle, customs of the first community, liturgical laws, copper plate grants, cultural and art forms, codes of conduct on social life, etc.;

b) The sources of the Chaldean period: some of the East Syrian regulations;

c) The sources of the Latin period: through the synods of Angamaly (1583, 1603), Diamper (1599), Statutes of Ros (1606), Mellano (1879), etc. many Latin rules were introduced in the SMC;

d) The sources of the Syro-Malabar period: the *Book of Decrees* of Mar Makil and the like for eparchies, and the later laws of the 20<sup>th</sup> century.

### 3.1. Norms Complementary to CCEO

The promulgated code of SMPL contains different sections which are mentioned below. The norms complementary to CCEO are contained mainly in the first part.

#### 3.1.1. On Major Archbishop, Metropolitan, Bishops, etc. ...

The PL of this section was approved by SM synod in its session from 5 to 17 Nov. 2001, and it was promulgated on 10 Jan. 2002.<sup>17</sup> It contains the first 20 articles of the code of PL.

#### 3.1.2. Clerics in General

The SM synod approved the laws in this section in January 1998, and they were promulgated on 1 Jan. 1999.<sup>18</sup> This section contains 32 articles (21-52). They are norms for the promotion of vocation, formation, function of those in minor orders, requirements from the candidates for priesthood, obligatory celibacy, life and ministry of priests, etc.

#### 3.1.3. Permanent Diaconate

The SMPL on permanent diaconate was approved by SM synod in its session from 15 to 27 July 2002, and was promulgated on 31 March 2003.<sup>19</sup> CCEO does not contain any norm on permanent diaconate, except the one of c. 354 on the formation of the deacons not destined for priesthood. This section contains 32 articles (53-84). Art. 53 §2 states, «In conformity with the recommendation of the Second Vatican Council, the tradition of the early Church as well as the practice of the East Syrian Church and the St. Thomas' Christian Church the

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<sup>15</sup> All references to SMPL made in this study are to this volume of *Synodal News* (May 2003).

<sup>16</sup> The text of SMPL needs retouching. I have made some observations in this regard in my article *The Particular Law of the Syro-Malabar Church: an Appraisal*, in *Ephrem's Theological Journal* 11 (2007) 178-197.

<sup>17</sup> *Synodal News* 9 (December 2001), 101-102.

<sup>18</sup> *Synodal News* 12 (December 1998), 53.

<sup>19</sup> *Synodal News* 11 (May 2003), 136.

ministry of permanent diaconate shall be restored and promoted in the Syro-Malabar Major Archiepiscopal Church». The norms deal with the qualities and qualifications required of a candidate for permanent diaconate, his formation, impediments to receive and exercise the diaconate, his competence and ministry, etc.

#### *3.1.4. Religious as well as Members of other Institutes of Consecrated Life*

The PL of this section was approved by SM synod in its session from 5 to 17 Nov. 2001, and it was promulgated on 10 Jan. 2002.<sup>20</sup> It contains 13 articles (85-97). The norms deal with the promotion of vocations to religious life, the role of the eparchial vocation director in recruiting candidates, the obligation of SM religious belonging to the institutes of other sui iuris Churches to observe SM rite, the formation of the religious of SMC in accordance with SM rite, erection of parishes and celebration of Sunday liturgies in churches of the religious institutes, conference of SM religious major superiors, hermits, ascetics, etc.

#### *3.1.5. Secular Institutes*

The PL of this section was approved by SM synod in its session from 5 to 17 Nov. 2001, and it was promulgated on 10 Jan. 2002.<sup>21</sup> There are 5 articles (98-102) which deal with their community life, life in secular conditions, formation, etc.

#### *3.1.6. Societies of Apostolic Life*

The PL on the societies of apostolic life was approved by SM synod in its session from 5 to 17 Nov. 2001, and it was promulgated on 10 Jan. 2002.<sup>22</sup> There are 23 articles (103-125), which deal with the theme rather elaborately. There is only one canon (572) in CCEO which governs this form of consecrated life, and that canon leaves it to PL to regulate the societies of apostolic life. There are a few such societies in SMC. The norms deal with the competent authorities to erect and suppress these societies, the required contents of the statutes of each society, qualities and qualifications of the candidates, formation, clerical ascription in the society, competent authority to issue dimissorial letters, powers of the moderators and synaxes, etc.

#### *3.1.7. Evangelisation of Nations*

The PL of this section was approved by SM synod in its session from 5 to 17 Nov. 2001, and it was promulgated on 10 Jan. 2002.<sup>23</sup> There are 6 articles in this section (126-131). The norms deal with catechumens and the remuneration to catechists.

#### *3.1.8. Divine Worship and especially Sacraments*

The PL of this section was approved by SM synod in its session from 5 to 17 Nov. 2001, and it was promulgated on 10 Jan. 2002.<sup>24</sup> There are 24 articles (132-155) which deal with

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<sup>20</sup> *Synodal News* 9 (December 2001), 101-102.

<sup>21</sup> *Synodal News* 9 (December 2001), 101-102.

<sup>22</sup> *Synodal News* 9 (December 2001), 101-102.

<sup>23</sup> *Synodal News* 9 (December 2001), 101-102.

<sup>24</sup> *Synodal News* 9 (December 2001), 101-102.

making available the Catholic building, cemeteries, etc. to other Christians, with minister of baptism, age of godparents, administration of the sacraments of initiation together, liturgical texts and vestments, minimum one hour fasting to receive the Eucharist, ministers of the holy communion, requirements for extraordinary ministers of holy communion, announcing the names of the candidates for sacred orders, minor orders, etc.

### *3.1.9. Feast and Penance*

The PL of this section was approved by SM synod in its session from 5 to 17 Nov. 2001, and it was promulgated on 10 Jan. 2002.<sup>25</sup> There are four articles (156-159). They deal with the days of obligation in SMC, the days of fast and abstinence, etc.

### *3.1.10. Marriage*

These laws were approved in SM synod in its session from 28 Oct. to 15 Nov. 1996, and promulgated on 15 July 1997.<sup>26</sup> There are 41 articles (160-200) in this section, dealing with prenuptial enquiry, form, marriage preparation, betrothal, publication of banns, marriage offering to the church, marriage registers, mixed marriage, etc. The marriage laws of SMPL are elaborate and have taken into account the customs of SM faithful and their cultural situation.

### *3.1.11. Acquisition and Administration of Temporal Goods*

The SM synod approved these laws in its session from 15 to 20 Nov. 1999, and they were promulgated on 17 Dec. 1999.<sup>27</sup> This section has 9 articles (201-209), and they deal with the offering for the celebration of the sacraments, remuneration for priests, eparchial fund for the maintenance and security of priests, annual budget of parishes, norms on the alienation of Church property, etc.

### *3.1.12. Baptised non-Catholics Coming into Full Communion with the Catholic Church*

The PL of this section was approved by SM synod in its session from 5 to 17 Nov. 2001, and was promulgated on 10 Jan. 2002.<sup>28</sup> There are only 2 articles (210-211). The parish priests can receive individual lay persons who come to the Catholic communion. Ecumenical initiatives must be governed by the directives of the Ecumenical Directory.

### *3.1.13. Persons and Juridic Acts*

This has only one article (212), «Civil laws are to be followed as regards the rights of minors». Unfortunately I have not been able to find the date of its promulgation, which could be mentioned in a future edition of SMPL code.

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<sup>25</sup> *Synodal News* 9 (December 2001), 101-102.

<sup>26</sup> *Synodal News* 10 (August 1997), 43.

<sup>27</sup> *Synodal News* 7 (December 1999), 100.

<sup>28</sup> *Synodal News* 9 (December 2001), 101-102.



#### 3.1.14. Hierarchical Recourse

The PL of this section was approved by SM synod in its session from 5 to 17 Nov. 2001, and it was promulgated on 10 Jan. 2002.<sup>29</sup> It has only one article (213). The synod will elect 3 bishops for a term of 5 years, one of whom will be the president. They will deal with cases of recourse.

#### 3.1.15. Trials

The PL of this section was approved by SM synod in its session from 5 to 17 Nov. 2001, and it was promulgated on 10 Jan. 2002.<sup>30</sup> There are 3 articles (214-216) in this section.

The first part of SMPL, comprising the above-mentioned fifteen sections, contains altogether 216 articles. This part can be considered complementary to CCEO, to a great extent reflecting pragmatic requirements, because most of the articles are required explicitly by the common code.

### 3.2. *Palliyogam Procedure Rules*

These rules were approved by SM synod on 16 Jan. 1998, and promulgated on the same day.<sup>31</sup> *Palliyogam* is an expression of communion of the people of God in the parish, which «is intended to advise and help the parish priest and to work in cooperation with him, in exercising the pastoral ministry and administering financial matters of the parish» (rule 1.2). SMPL updates the rules of *palliyogam* and lays down clear prescriptions for its structure and functioning. It highlights the role of the laity (n. 7) in keeping with Vatican Council II (*Apostolicam Actuositatem* 10, *Ad Gentes* 21, etc.), defines the rights, duties and the competence of *palliyogam*. These rules are compact and clear, reflecting the expertise of those who formulated them. The norms on *palliyogam* are in keeping with c. 295, «In the parish there are to be appropriate councils dealing with pastoral and financial matters, in accord with the norms of the particular law of its own Church *sui iuris*».<sup>32</sup>

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<sup>29</sup> *Synodal News* 9 (December 2001), 101-102.

<sup>30</sup> *Synodal News* 9 (December 2001), 101-102.

<sup>31</sup> *Synodal News* 11 (March 1998), 44.

<sup>32</sup> *Palliyogam Procedure Rules* may be the most widely consulted section of SMPL. The first meeting of the subcommittee for drafting these rules was held on 14 May 1994. In this meeting the guidelines for the process of drafting were approved. All the available statutes were collected. The second meeting was on 16 Aug. 1994. Two preliminary drafts were prepared by two different committees (1. Adv. Kurian Joseph, Frs. Jose Porunedom and Mathew Madathikunnel; and 2. Adv. Joy Joseph, Mar Kunnacherry and Fr Kollaparambil). From these a new draft was prepared under the direction of Mar Kunnacherry. This draft was presented to the meeting of the commission for PL held on 17-18 Aug. 1994. At this meeting a new committee was constituted (Frs. Kollaparambil, Thalachalloor, Thazhath, Moolakatt, Madathikunnel and Adv. Joy Joseph). The draft of this committee was studied by the synod in Nov. 1994. This was also presented and discussed in a meeting of bishops, priests, sisters and the laity. The draft was revised in the light of the suggestions from the synod and the meeting just mentioned. The revised draft was sent to eparchies and suggestions were solicited from presbyteral and pastoral councils, religious institutes and other similar bodies. The draft was further modified in the light of such suggestions. This was again discussed and modified by the committee for PL. The modified draft was then presented and discussed on 14 Jan. 1998 in the meeting of the delegates of pastoral and

There are 77 rules, many of them with subdivisions. Its part 1 contains two sections: section 1 specifies the title and purpose, and section 2 defines all the terms used in these rules. Part 2 contains 3 sections: section 1 is on *palliyogam* in general, section 2 is on *potuyogam* (general meeting) of the parish, and section 3 is on *pratinidhiyogam* (meeting of representatives). Part 3 is not subdivided into sections. It deals with the procedure of conducting the meeting of the *potuyogam* and the *pratinidhiyogam*. Part 4 has 3 sections: section 1 lays down norms for the functioning of *kaikaran*,<sup>33</sup> section 2 contains norms for the administration of the temporalities of the parish, and section 3 deals with general and transitory norms. There is provision for an administrative tribunal in every eparchy (n. 70) to deal with and settle disputes arising from the *palliyogam* meetings and functioning.

The *palliyogam* has ample power in the decision-making process. Eg., «To pass resolutions regarding construction of church, chapels and buildings for any of the parish institutions and buying or selling or borrowing or gifting of movable or immovable properties...» (rule 8.9).

### 3.3. Statutes of Various Organs and Institutions of the SMC

The statutes of various organs and institution of SMC are presented in the following section. Many of these organs and institutions are foreseen in the CCEO. Thus their statutes can be considered part of PL, required, at least indirectly, by CCEO for the good of the Church, its smooth functioning, and carrying out its mission properly and effectively.

#### 3.3.1. Statutes of the Synod of Bishops of the Syro-Malabar Church

One of the priorities of SMC as soon as it was made a major archiepiscopal Church, was to enact the statutes of the synod of bishops. The synod held from 22 Nov. to 4 Dec. 1993 approved the statutes and decided «To accept the draft of the Synodal Statutes discussed in the present Synod as final and not to re-open discussion on them except on those articles that needed further clarification from the Holy See and from civil lawyers».<sup>34</sup> I have not succeeded in tracing a decree promulgating these statutes.

It contains 23 articles, most of which are subdivided. They deal with the nature, membership, competence and objectives of the synod, the election of the major archbishop, the convocation, frequency, venue and procedure of the synod, the legislative, the judicial and

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presbyteral councils of all eparchies, representatives of the religious, rectors of the seminaries of Aluva and Kottayam and the bishops. The suggestions from this meeting also were seriously considered when the synod finally discussed and approved the rules in January 1998 (JAMES THALACHALLOR, "Particular Law...", in *Syro-Malabar Church since the Eastern Code*, 104 fn 52).

<sup>33</sup> *Kaikaran* is «a member of the parish, elected by the *potuyogam* or *pratinidhiyogam* and confirmed and appointed by the local hierarch..., to help the parish priest in keeping and administering parish properties and incomes ...and in conducting the programmes and affairs of the parish and to work in cooperation with the parish priest in exercising pastoral ministry and administering financial matters of the parish» (rule 2.13).

<sup>34</sup> *Synodal News* 2 (February 1994), 31.

the administrative roles of the synod, election of bishops, erection of the provinces and eparchies, eparchial bishops outside the territory, etc.

### 3.3.2. Statutes of the Permanent Synod

These statutes were approved in the synod of 7-23 Nov. 1994, promulgated *ad experimentum* for three years on 1 Jan. 1995,<sup>35</sup> and definitively on 1 Aug. 2000.<sup>36</sup> They contain 4 titles, each subdivided into different articles. Altogether there are 19 articles. They deal with the constitution, convocation and sessions of the permanent synod, its competence, and general and transitory norms. As art. 3 states, «The members of the Permanent Synod belong by law to the curia of the Major Archbishop (c. 114)».

### 3.3.3. Statutes of the Superior Tribunal

These statutes were approved in the synod of 7-23 Nov. 1994, promulgated *ad experimentum* on 1 Jan. 1995,<sup>37</sup> and definitively on 1 Aug. 2000.<sup>38</sup> They contain 5 titles, each subdivided into articles, which amount to 35. The first title is divided into 4 chapters, and other titles are not divided into chapters. It has two appendices: 1) on the competence of the general moderator of the administration of justice, and 2) rates of judicial expenses. These statutes deal with the constitution and competence of this tribunal, composition, advocates and attorneys, and the procedure in the synodal tribunal, procedure in the superior tribunal, judicial expenses, and general and transitory norms.

### 3.3.4. Statutes of the Major Archiepiscopal Tribunal

This tribunal was set up on 1 Sep. 1994.<sup>39</sup> These statutes were approved in the synod of 7-23 Nov. 1994, and promulgated *ad experimentum* on 1 Jan. 1995,<sup>40</sup> and definitively on 1 Aug. 2000.<sup>41</sup> There are 3 titles with 48 articles: the first title contains 4 chapters, and the second title has 3 chapters. The last title is not divided into chapters. The statutes deal with the constitution of the tribunal, its competence, its composition and officials, the procedure, judicial expenses, concluding and transitory norms.

### 3.3.5. Statutes of the Major Archiepiscopal Assembly

These statutes were approved in the synod of 28 Oct.-15 Nov. 1996, and promulgated on 15 March 1998.<sup>42</sup> They contain the preamble and 12 articles, many of them divided into various paragraphs. Some paragraphs have further subdivisions. The statutes deal with the nature and scope, name and designation, status and function, convocation, president,

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<sup>35</sup> *Synodal News* 4 (February 1995), 29.

<sup>36</sup> *Synodal News* 8 (September 2000), 66.

<sup>37</sup> *Synodal News* 4 (February 1995), 39.

<sup>38</sup> *Synodal News* 8 (September 2000), 67.

<sup>39</sup> *Synodal News* 4 (February 1995), 40.

<sup>40</sup> *Synodal News* 4 (February 1995), 52.

<sup>41</sup> *Synodal News* 8 (September 2000), 65.

<sup>42</sup> *Synodal News* 11 (March 1998), 75.

participants, guests and observers, agenda, experts, resource persons and commissions, procedure, acts of the assembly, and approbation and amendment of the statutes.

The preamble of the statutes reveals the roots, nature and purpose of the major archiepiscopal assembly of SMC. It is rooted in the tradition of SMC. The preamble states,

The Major Archiepiscopal Assembly of the Syro-Malabar Church is the gathering together of a representative cross-section of the same Church, integrating the spirit and dynamism of the ancient ecclesial institution of the Thomas Christians called *yogam*. In it is restored and updated that organ in fidelity to the tradition of the universal Church and in obedience to the legislation given by the Roman Pontiff to the Eastern Catholic Churches..., so that it is made to correspond to the changed historical situation and the new hierarchical status of the Syro-Malabar Church.

This assembly is a consultative body for dealing with matters of major importance of the Church and its mission (art. 1 §1). It is convoked normally once in five years (art. 4 §1). Its resolution will have the force of law if it is ratified by the competent ecclesiastical authority (art. 10 §3).

In a report submitted to the Congregation for the Propagation of Faith in 1750, Fr Boniface of Infant Jesus OCD gives the following information about the system of *yogams*.

In all their churches, the Christians (of St Thomas) deliberate on ecclesiastical matters in the *yogam*, which is composed of the clergy and the people, so that not only on financial administration for pious purposes, construction and repair of churches, etc. but also on promoting to the sacred orders, or absolving from censures, the people and clergy take counsel together, and the bishop does not promote the candidates to orders, nor absolve any one from the censures incurred, unless the petitioner brings a request of the people who assembled in the church and having heard the petitioner makes the said request to the prelate.

In matters of greater importance they convoke and admit to such *yogam* people of the neighbouring churches in order to take counsel with them and when the matter is most important, they call all the churches of the same kingdom, or sometimes all the churches of the whole diocese.<sup>43</sup>

The institution of *yogam* forms part of the Way or Law of Thomas, the most fundamental source of SMPL. By making it a mere consultative body, it is deprived of its ancient power in the decision-making process.

The volume (code of SMPL, *Synodal News* vol. 11, n. 1, May 2003) ends with the decree of promulgating laws on permanent diaconate and with the guidelines for bringing the particular laws of SMC under one code.

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<sup>43</sup> Archivum S. Congregationis de Propaganda Fide, Congregazioni particolari, vol. 109, f. 90, cited in JACOB KOLLAPARAMBIL, personal notes on the juridical sources of the St Thomas Christian Churches, «Canonical Institutions of the Syro-Malabar Church», p. 117.

### 3.3.6. Other Statutes

The SMC has other PL which are not contained in the code of PL. They are:

- 1) Statutes of the St Thomas Ap. Seminary, Kottayam, promulgated *ad experimentum* on 1 Jan. 1995,<sup>44</sup> and definitively on 1 Aug. 2000;<sup>45</sup>
- 2) Statutes of the *Paurastya Vidyapitham*, Kottayam (a faculty of ecclesiastical sciences), approved in SM synod held from 7 to 23 March 1994, which were further approved by the Roman See *ad experimentum* on 20 Oct. 1994 for a period of five years;<sup>46</sup>
- 3) Statutes of the Liturgical Research Centre, Kochi, erected on 10 April 1999 to promote study and research in liturgy in general and in particular that of SMC. The statutes were approved in the synod of 15-20 Nov. 1999, promulgated for 2 years on 17 Dec. 1999;<sup>47</sup>
- 4) Statutes of the Good Shepherd Seminary, Kunnoth, erected on 1 Sep. 2000. Provisional statutes were approved in the synod of 30 Oct.-11 Nov. 2000, and promulgated on 20 April 2001. These statutes will remain in force until amendments are made to them.<sup>48</sup>

The complementary laws of SMPL contain, at least indirectly, Statutes on the Major Archiepiscopal Assembly and statutes of various organs and institutions of SMC. *Palliyogam Procedural Rules*, however, may be considered supplementary PL of SMC.

### 4. Updating of SMPL after Synodal News of May 2003

The synod of bishops of SMC gathered from 17 to 28 Aug. 2009, amended certain previous PL. The amendments are reported in *Synodal News*, vol. 17, nn. 1&2 (Dec. 2009) 44-45. The amended laws are given below.

Art. 51:

The old text, «A cleric takes possession of his office as per eparchial norms with due regard for the norms on Major Archbishop, metropolitan and bishop (c. 288)».

The new text, «The parish priest and the assistant parish priest take possession of their office as per particular law (Art. 19) and the other clerics as per the eparchial norms with due regard for the norms about major archbishop, metropolitan and bishops (c. 288)».

Art. 137 §1:

The old text, «The sacrament of Holy Eucharist is to be solemnly administered at the age of reason. There is however provision for giving Holy Eucharist earlier together with baptism».

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<sup>44</sup> *Synodal News* 4 (February 1995), 53-85.

<sup>45</sup> *Synodal News* 8 (September 2000), 68. The text of the statutes is the same as the one published in *Synodal News* 4 (February 1995), 53-85.

<sup>46</sup> JAMES THALACHALLOR, *Particular Law of the Syro-Malabar Church*, in *Syro-Malabar Church since the Eastern Code*, 103. The statutes are in *Statutes of the Paurastya Vidya pitham* (PVP), Kottayam, 1995.

<sup>47</sup> *Synodal News* 7 (December 1999), 79-80. The statutes are on pp. 81-90.

<sup>48</sup> *Synodal News* 9 (December 2001), 51. The statutes, pp. 52-80; date of the erection of the seminary, *ibid.*, 46.

The new text, «The Sacrament of Divine Eucharist is to be solemnly administered at the age of reason after due catechetical instruction and reception of the sacrament of penance. There is however provision for giving Divine Eucharist earlier together with baptism».

This norm was again reformulated in the Synod of 17-28 August 2010 as «Although as per the liturgical texts, sacrament of Divine Eucharist is administered together with baptism and chrismation, it is to be solemnly administered after a person has attained the age of reason after due catechetical instruction and reception of the sacrament of penance».<sup>49</sup>

Art. 148 §1:

The old text, «The names of candidates to Sacred Orders whether eparchial or others are to be announced during the Sacred Liturgy on two consecutive days of obligation in the parish church of the candidate».

The new text, «The names of candidates for promotion to sacred orders of presbyterate and diaconate, whether eparchial or non-eparchial are to be announced in the parish church of each candidate during the Divine Liturgy on two consecutive days of obligation before the ordination».

Art. 173 §2:

The old text, «Permission may be granted by the local hierarch of either of the parties for the publication of banns even before betrothal on written application of both the parties».

The new text, «Permission may be granted by the Proto Presbyter of either of the parties for the publication of banns even before betrothal on written application of both the parties, endorsed by the respective parish priests. The parish priest of the party who has obtained the dispensation shall communicate the matter to the parish priest of the other party along with Form B».

Art. 188 §3:

The old text, «Even if dispensation from the form of celebration of marriage is granted for a most grave reason, there should be a public form of celebration and a sacred Rite».

The new text, «“Even if dispensation from the form of celebration of marriage is granted for a most grave reason, there should be a public form of celebration”. The word “sacred rite” is dropped because according to our code, it means the priestly blessing, so once exemption is granted then this could not be insisted upon».

Art. 210:

The old text, «The parish priest can receive individual lay persons into the Catholic Church. Those individual lay persons are to make a petition for the same to the local hierarch with a recommendation of the parish priest and obtain his permission (c. 898 §3)».

The new text, «The parish priest can receive a baptised non-catholic individual lay person into the catholic Church as per the eparchial norms. The person to be received into the Catholic Church shall submit a written petition to the authority determined in the eparchial norms, with the recommendation of the parish priest».

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<sup>49</sup> *Synodal News* vol. 18, nn. 1& 2, (December 2010), 102.

The synod decided to omit the articles 86 and 87 as they are implied in articles 21 and 22.

Art. 86 §1 «Every Institute of Consecrated Life/Society of Apostolic life – herein after referred as Institute – belonging to Syro-Malabar Major Archiepiscopal Church can receive candidates from among the Christian faithful of this Church with due regard to Articles 21-25».

§2 «Institutes of other *sui iuris* Churches not having formation houses in the Syro-Malabar Church can also receive candidates from this Church with the written permission of the local hierarchy».

Art. 87 «The Eparchial Vocation Director shall assist the Vocation Directors of Institutes in selecting suitable candidates».

The same synod of 17-28 Aug. 2009, decided to include in PL certain resolutions made earlier. They are published in *Synodal News*, vol. 17, nn. 1 & 2 (December 2009) 45-46.

X Synod (2002), decision n. 32. «In designating the delegates from the eparchies the eparchial bishop shall follow the common law in this regard [c. 143 §1, n. 6]».

XI Synod (2003), decision n. 10. «To clarify that simple burial means a burial with no homily, no *Qurbana*, no use of mike [microphone], using only two ornamental umbrellas (*Muthukudas*), one cross and one priest for the burial. In scandalous cases of suicide not even the simple burial may be given. In such cases the body will not be allowed to be taken inside the Church. The priest may bless the grave sometime outside the funeral service».

XIV Synod (2006), session 2, decision n. 2. «1. The appointment of the Exarchs is of a stable nature and that their term of service would terminate by the circumstances mentioned in the common and the particular laws. 2. The Exarchs, who were priests and who retired as per the provisions of CCEO c. 210, might retain even after their retirement the privileges and insignia which they had enjoyed. However, the other Exarchs would not have the right to use the insignia and privileges once they lost their office».

XVII Synod (2009), decision n. 29. «The Major Archbishop in consultation with the Permanent Synod may nominate to the Assembly, an adequate number of priests, religious and lay faithful to provide proper representation to the Syro-Malabar faithful living outside the Syro-Malabar eparchies or exarchies».<sup>50</sup>

XVII Synod (2009), directive on stipends. «No priest is authorised to take stipend for himself for a concelebrated Holy *Qurbana* after having celebrated another *Qurbana* for which he received the stipend. If in a day he is offering the Holy *Qurbana* only in a concelebration, he can take the stipend for that *Qurbana*. If a priest binates or trيناتes the Holy *Qurbana* for pastoral purposes, the stipends of those *Qurbanas* should be given for the purposes specified by the Local Hierarchy».

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<sup>50</sup> This is the amendment of a previous norm, promulgated in 1998. That previous norm read, «The Major Archbishop in consultation with the members of the Permanent Synod may nominate some, not more than 15, as participants of the assembly” (art. 6 §3). See *Synodal News* n. 11 (March 1998), 81; *Synodal News*, vol. 17, nn. 1 & 2 (December 2009), 36, 46 and 70.

«The Synod asked the Committee for Canonical Questions to formulate these decisions in the canonical language while they are included in the Particular Law and to consult competent civil lawyers to ascertain the implications of the Civil Law vis-à-vis the formulations of the Particular Laws and to correct the formulations, if needed.

The Synod gave its consent to publish the Particular Laws in Book Form».<sup>51</sup>

The synod of 17-28 Aug. 2010 decided to include the following in the SMPL «Unless the law or the nature of the bodies preclude it, 50% of the members in the eparchial and parish bodies, shall preferably be women. However, their number shall not be less than 25% of the total members in these bodies».<sup>52</sup>

From this overview we understand that SMC has made rather good use of the room left in CCEO for PL. The evaluation of the achievement of SMC in the field of particular legislation should be made taking into consideration the short time it had since the promulgation of CCEO and its elevation to the status of a major archiepiscopal Church. While an unbiased critic will acknowledge that the work accomplished in the field of PL testifies to the sense of responsibility and seriousness with which the pastors of SMC wish to guide that Church, he cannot fail to suggest some modifications for improvement and point out other areas where further PL can be enacted.

##### 5. Further Possibilities for SMPL and Concluding Remarks

As we have seen above, SM synod has competence to legislate even outside the areas which are not specified or circumscribed by CCEO, following the two essential principles: 1) fidelity to the ancient canonical tradition of that Church, with necessary updating in order to make the law relevant today, and 2) respect for the common law in CCEO. In fact, the first of these principles is contained in the second, as the spirit of CCEO generally requires fidelity to ancient law and demands updating. It is essential that SMC, in order to legislate in such areas, start from a thorough knowledge of its own disciplinary tradition. The synod can draw inspiration from the words of John Paul II, contained in the ap. constitution *Sacri Canones*, «Our intention regarding these things is that those who enjoy legislative power in each of the Churches should take counsel as soon as possible for particular norms, keeping in mind the traditions of their own rite and the precepts of the Second Vatican Council».<sup>53</sup>

Following the above-mentioned two principles, SM synod can enact PL in various areas such as church art and architecture, liturgical music,<sup>54</sup> priestly formation and on-going formation of priests, faith-formation of the laity, social commitment of the Church, Church's

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<sup>51</sup> *Synodal News*, vol. 17, nn. 1 & 2 (December 2009) 45-47.

<sup>52</sup> *Synodal News* vol. 18, nn. 1 & 2, (December 2010), 101.

<sup>53</sup> See the English translation of the ap. constitution in *Code of Canons of the Eastern Churches, Latin-English Edition, New English Translation*, xxiv.

<sup>54</sup> At present, as far as I know, there is no norm regulating the church architecture and art, and on the use of musical instruments.



involvement in inter-religious and inter-Church dialogue, forms of consecrated life adapted to SMC's tradition and culture, norms for delatinising the liturgical rite, detailed norms for regulating *communicatio in sacris*, inter-Church marriage, promoting collaboration among the eparchies of SMC in the field of evangelisation in accordance with c. 585 §2, regulations on the function of Church associations and movements (e.g., charismatic movement), regulating the celebration of sacraments in religious houses, etc. There are various areas where the synod has competence to legislate. It is enough that it promote a thorough study on that Church's theological, spiritual, liturgical and disciplinary tradition, study the possibilities of PL in various areas, and then enact such law respecting the common law of CCEO.

With the publication of SMPL in a single volume, SMC can claim that the work on drafting the PL has come to an end, at least those parts which are demanded by the common code and the most needed sections of SMPL. As the editorial to the volume (*Synodal News* vol. 11, n. 1, May 2003) invites the readers to point out errors in the texts, it is clear that the formulation of SMPL is kept open to modification, and we can expect a more perfectly drafted text in future. It is true that the work has not yet finished. As is evident from the citations above from *Synodal News* of Dec. 2009 and of Dec. 2010, the work of improving the text of already promulgated PL, modifying norms and enacting new norms is going on as necessity demands. This implies quite rightly that the process of codification of PL is open to growth and perfection.

Apart from the value of these laws as complementary to CCEO, a few criteria for evaluating SMPL would be whether it is rooted in the ancient Law of Thomas, and at the same time adequate to meet the present-day needs of SMC, whether it promotes unity among Churches, unity among the faithful within the Malabar Church, involvement of the faithful in the civil society's interests and their commitment to the gospel values, etc., all of which are areas of great concern in the situation of India today. An evaluation of the already promulgated SMPL, applying these criteria, might reveal that it still has ample room for improvement.