1983 Code in the Life of the Church with Special Reference to the Indian Church

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Introduction

The 1983 Code had been in preparation for almost 25 years prior to its promulgation. Pope John XXIII had announced his intention to establish a commission to revise the 1917 Code about the same time that he announced his intention to call for the Second Vatican Council. On November 20, 1965, just before the closure of the council, Pope Paul VI addressed the Code Commission and pointed out that Canon Law flows from the nature of the Church and it should be at the service of the Church. Finally Pope John Paul II promulgated the Code of Canon Law on January 25, 1983 which came into effect on 27 November 1983.

I shall try to analyse the positive impact of the present Code and to underline the drawbacks in the implementation of this Code in the life of the Church. At the same time, I shall try to propose a few guidelines especially for the Indian Church to make the law an effective instrument at the service of the Church.

1. Positive Impact of 1983 Code

1.1. Strong Foundation of Code in II Vatican Council

At the close of the Second Vatican Council, Pope Paul VI addressed the Code Commission and pointed out that the Canon Law flows from the nature of the Church and the law should have strong foundation of theology. If the Church's ecclesiology were largely juridical and hierarchical, the Code of Canon Law would embody that perspective as did the 1917 Code, which had little or no meaningful place for the laity in the Church and which contained a major portion listing various "crimes and penalties" applicable to the life of the Church. By contrast, the 1983 Code has a major section on the Church as the People of God, and even provides a bill of rights for all the baptized. Only after treating the lay faithful does the new Code concern itself with the hierarchical structure of the Church, and with emphasis not only on the papacy but on the whole episcopate and on such collegial bodies as world and regional synods, and national conferences of bishops.

Pope John Paul II made the same point while insisting in his letter of promulgation, "The revised Code fully corresponds to the nature of the Church, especially as it is proposed by the teaching of the Second Vatican Council in general and in a particular way by its ecclesiological teaching and indeed this new Code could be understood as a great effort to translate this same conciliar doctrine and ecclesiology into canonical language." Hence Fr Richard McBrien states that what constitutes the substantial newness of the Second Vatican Council, in line with the legislative tradition of the Church, especially in regard to ecclesiology constitutes likewise the newness of the new Code.

John Paul II thereupon listed several ecclesiological elements that form the new code and make it different in approach from that of the 1917 Code: the Church is the people of God, hierarchical authority is for service; the Church is a communion, with a collegial rather than a monarchical structure; the laity participate in the threefold priestly, prophetic and kingly offices of Christ; and finally the Church is ecumenical in outreach.

Thus 1983 Code marked the end of a long process of renewal and revision: 19 years were left behind of laborious efforts, of unending consultations, of hundreds of meetings and thousands of pages written and re-written by experts in an attempt not only to update the previous 1917 code, but also to translate the spirit and the teachings of the Second Vatican Council into canonical language. Therefore the new Code was described as "The last document of the Second Vatican Council". Thus the 1983 Code consolidated the renewal process going on in the life of the Church.

1.2. Fundamental Equality

The Church is communion of faithful under the pastors. All have the fundamental and equal dignity by virtue of baptism though they differ with regard to their function. Holy Orders do make a man a cleric and as such, he can exercise ecclesiastical authority and jurisdiction, but the dignity and importance of a person derives not from his vocation, but from his baptism, which makes that person a child of God. This principle of radical equality means that each and every individual in the Church – pope, layperson, ordained, married, single, consecrated religious – has the same destiny and opportunity. All the baptized are called to holiness. Although the ordained have authority in the Church, they do not have

a monopoly on grace and sanctity, which is equally given to all the baptized.

Their equality and dignity has made each and every one participate in the threefold *munera* of the Church, sanctifying, administering and judging. It has made a lot of improvements in giving share to the lay members of the faithful equally to participate in the ecclesial governance. However still casteism plays havoc in dividing the faithful into different groups and disfiguring the image of Christ especially in the burial places and in the places of worship. One may have to wait until the 50th anniversary of 1983 Code or for a new code to enjoy the equality in the Church. It has become a grave obstacle in the mission of the Church.

1.3. Fundamental Rights of Laity

The Church's first Code of Canon Law, a concise summary of canonical rules issued in 1917, showed respect for the rights of the baptized, but these rights were more often implied than explicitly stated. The 1917 Code gave broad and explicit recognition to the rights of the laity in only one canon: "The laity have the right to receive from the clergy the spiritual goods of the Church and especially the means necessary for salvation (C. 682). Many other obligations of clerics were imposed in order to safeguard the rights of the people. For example, the duties of priest residing in the parish are obligation of Mass for the people, obligation to preach and to teach. By contrast, the 1983 Code has a major section on the Church as the People of God and in it only after treating the lay faithful, the new Code concerns itself with the hierarchical structure of the Church.

For the first time in history, the new Code contained "bill of rights" for all of the Church's members. In addition to

the many rights indirectly asserted and embedded in the obligations and duties of others, now there is a separate and prominent section of the Code on "The obligations and rights of all the Christian faithful" (Cc. 208-223). Fifteen specific rights of all the faithful are declared in these canons. The era of explicit rights for Catholics in the Church had arrived. Catholic canonists celebrated this development as a major breakthrough.

Archbishop Francesco Coccopalmerio, president of Pontifical Council for Legislative Texts while inaugurating the Congress to mark the 25th anniversary on 22 January 2008 said, "The code of canon law is not just a collection of norms created by the will of ecclesiastical legislators, it indicates the duties and rights inherent to the faithful and to the structure of the Church as instituted by Christ. The Code having identified fundamental duties and rights, also establishes a series of norms that have the aim of defining, applying and defending those duties and rights". However, it is only fair to note that making these rights real is still a work in progress. Most Catholics are not aware of their rights, and some of those who know about them have been stymied in their efforts to have them respected. Adequate avenues to pursue these rights are largely lacking.

1.4. Subsidiarity

Due to the insistence of the primacy of Pope, the 1917 Code consolidated the administrative power with the Pope giving the bishops only a mediatory role. It ruled that the bishops especially those who were in the mission field had to obtain faculties to function pastorally. But the 1983 Code empowered the bishops and made them Vicars of Christ especially equal to the Pope in the sacramental ordination

and it did remove the faculties, giving them direct power to administer their flock. It has created the permanent structure of Synod in order to get the views of various bishops of different regions so that a powerful and all embracing decision could be taken with their suggestions. It imposed obligations on the part of the bishops to consult priests and lay members of Christian faithful in their pastoral administration to make effective decisions. Thus subsidiarity became a norm in the pastoral administration of the Catholic Church with the promulgation of the 1983 Code.

1.5. Participative Structures

The wisdom flowed from all the circles including the laity in the administration in the early Church. Slowly the hierarchy usurped the power and stated that the wisdom flows only from hierarchy. It took so many years and only Second Vatican Council again realized the charism of all the faithful and their role in the decision making. Hence the establishment of participative bodies becomes necessary to enable the people to manifest their diverse charism for the building up of the Church. The 1983 Code made it possible to create several structures of consultation both at the national and the diocesan level. Consultation respects the role of the faithful, their co-responsibility and participation in the mission, and serves as a process of building a new way of interaction within the local church.

1.6. Religious

The Code recognises, protects and promotes the autonomy of governance of Institutes of Consecrated Life. The religious communities are more in charge of their own lives, but their apostolic activities are more closely regulated.

1.7. Social Justice

We have seen a great thrust for social justice structures and groups forming themselves for real action in society. Further we have seen these structures validated and supported by the provision of resources and public theology at official levels of our community. We have also seen the strong continuance of our traditional pastoral care for the poor and the disadvantaged. The New Code speaks of just wage and transparency in the administration of Church temporal goods for the sake of mission.

2. Impact of the 1983 Code on the Indian Church

The 1983 Code has made much impact on the life of Christian faithful. The laity was given awareness about their rights through seminars and writings. We shall point out some of the impacts here below:

a. The Latin Rite has realized to form a Bishops' Conference distinct from other rites and hence they worked for the recognition of CCBI especially to promote and develop Latin Rite Liturgy.

b. The Bishops' Conference has established a National Biblical Catechetical and Liturgical Centre at Bangalore in order to form the laity and the clergy in the new form of worship according to the Second Vatican Council and in the light of the new code.

c. The Latin Bishops' Conference has formed a Commission for Legislative Texts especially for the Code of Canon Law and the commission in the past has organized several meetings of Judicial Vicars and Canonists to explore different possibilities and

methods to do justice to the people at large. They have taken several steps to guide the tribunals to dispose the cases speedily.

d. The Bishops' Conference has facilitated the training of judges and other officials of tribunal to acquire licentiate by establishing a Centre of Canon Law Studies in Bangalore.

e. The Institute has started an annual magazine "Studies on Church Law". It contributes much for the canonists to update their canonical knowledge and jurisprudence in order to deal with the marriage cases effectively and also to offer counsels to the bishops in the better administration of the dioceses.

f. Both on the national and the regional level we conduct periodically meetings of canonists in order to update our canonical knowledge in several fields especially through research papers etc. Indian Canon Law Society is bringing out an annual magazine 'Canonical Studies' mostly including the research papers given in the annual meeting. It helps all those who do not attend the meeting. It opens the way for the bishops to know the recent canonical trend which paves the way for canonical equity and pastoral prudence in their administration.

g. Many of the southern dioceses have marriage tribunals constituted and functioning to a certain extent in order to cater to the pastoral need of the faithful. Most of those tribunals have qualified personnel. Many of the dioceses have constituted diocesan pastoral and financial council and some

of the parishes have also pastoral and financial council.

3. Drawbacks in the Implementation of the Code

While addressing the congress of the 25th anniversary of the 1983 Code, Pope Benedict XVI said, "If canon law is to fulfil this invaluable service it must first of all be a well-structured law. In other words, on the one hand it must be bound to the theological foundation that gives it reasonableness and is an essential title of ecclesial legitimacy; on the other, it must keep up with the changing circumstances of the historical reality of the People of God. Furthermore, it must be formulated clearly, without ambiguity, and must always be in harmony with the rest of the Church's laws. It is therefore necessary to abrogate norms that prove antiquated; to modify those in need of correction; to interpret in light of the Church's living magisterium – those that are doubtful, and lastly, to fill possible *lacunae legis*". We shall explore the possibilities to perfect the existing Code so that the Code may be at the service of the Church.

3.1. Code as the Instrument of Communion

The Code of Canon Law is not an end in itself, but only a means to serve an end, which incidentally is the Church herself, contemporarily defined in terms of communion. The 1983 Code was from the very beginning meant to be a means to create normatively a 'pastoral government' necessary for the Church to grow. The task of deciding what is pastorally urgent in each time and place in the life of the Church binds in conscience pastors and faithful *pro sua parte et suo modo.* We must avoid legalism especially to help the irregular ones

to get the sacraments. It should be used as a great instrument in order to foster communion with the brethren of other ecclesial communities especially in the field of sacraments.

3.2. Canonical Formation of Clergy and Laity

I wonder how many priests know thoroughly the different grounds of nullity where they can help the couples in critical situation to find a pastoral solution. Many of the clergy still consider that with the birth of a child all the grounds for annulment expire. The ignorance of the rights and obligations makes the laity passive still folding their hands and bowing their heads to the hierarchy. We have done a great contribution to the Tamil Nadu Church by translating the code into our vernacular language Tamil. But still it has not reached the hands of the laity, may be due to various reasons.

3.3. Empower the Synod of Bishops

The Synod of Bishops was born during the Vatican II and it served as an instrument of Episcopal collegiality. However in practice it remains merely as consultative body discussing matters of moral and faith. Pope John Paul II in his Apostolic Exhortation *Pastores Gregis* acknowledged the need for reform of the synod. "Every general assembly of the synod of bishops is a powerful ecclesial experience, even if some of its practical procedures can always be perfected." The synod needs to be perfected to become an effective instrument of Episcopal collegiality.

3.4. Enhance the Role of Episcopal Conferences

The canonical norms on Episcopal conferences seem to have no sufficient room for legitimate autonomy to the bishops. The national and regional bishops know better the real situation of the pastoral need and hence the Roman Curia

can take into confidence those bishops and allow them to act more responsibly without interfering in several matters. For example, the Episcopal conferences could be allowed to decide on the liturgical matters like translating, reviewing the liturgical text, fixing the maximum amount for the administration of temporal goods etc.

3.5. Adaptations for Marriage Procedural Laws

The instruction *Dignitas Connubii* has helped the tribunal in handling the cases as per the present code and the jurisprudence, but has not offered any solace by exterminating the cumbersome process and undue delays. In 1986, the Pope advised the judges not to delay too long the examination of cases, as it would have adverse effect on the faithful seeking a response from the tribunal to their petition. The time has come to simplify the procedures for the nullity of marriage. Hence a few suggestions regarding marriage tribunal:

a. The Code has laudably provided for the use of an oral contentious procedure for some cases, except for cases of marriage nullity. This procedure may be allowed in certain type of marriage cases as it would have many advantages.

b. The ex-officio appeal to the second instance could be done away with in cases where the decision was given by a collegial tribunal and the parties do not appeal.

c. The third instance tribunal could be established at the national level especially in India to facilitate speedy resolution of the cases.

d. While the Code contains provisions for administrative recourses, it does not have the mechanism to receive such recourses, and therefore often the matters remain at a hierarchical context. The administrative tribunals have not found a place in the 1983 Code. The implementation of the local administrative tribunals seems to be a requirement if the legal system of the Church is to be complete.

e. The pastoral solution could be offered to those cases where one of the spouses is deserted for no fault of his/her. For example, the couples live for some years happily and all of a sudden one of the spouses runs away with somebody else and the other is left alone.

f. The civil governments take several steps to dispose the pending cases citing 'delayed justice is denied justice'. The bishops are enthusiastic to form a legal cell to fight against the government. They should show similar interest to address the grievances of the laity towards their pastors. I strongly suggest forming a similar legal cell with canonists and civil lawyers to scrutinize the pending cases of each diocese and to direct the judicial vicars to dispose at the earliest possible. The laity should be informed of appealing to this body if their case has been merely pending for several years.

3.6. Collaboration between Diocesan and Religious

The Code of Canon Law formulated several norms to bring co-ordination and collaboration between the secular and religious clergy and religious men and women to do the mission of Christ. The present situation has widened the gap between

the religious and the diocesan leading to several conflicts. The law should provide some legal measures in order to avoid these people approaching the civil court which brings enmity and hatred which is anti-witness to the values of Jesus Christ. There should be clear norms from Rome in order to enable the local church to take positive steps to strengthen the unity of these people.

4. Challenges of the New Code

a. The diocesan synods and provincial councils should be held in every diocese, since they are an excellent opportunity for clergy and laity to discuss together matters of common interest for the diocese.

b. The diocese should formulate particular laws taking into account the provisions given in the Canon Law so that they can render effective ministry in justice and truth. They are ready to conduct 'Live-In' for which they are not accountable. However, they are not ready to conduct synods or formulate particular laws because it binds them too to bring order and peace in the diocese. The Code should make it obligatory to induce the bishops to make use of these institutions for effective administration of the diocese.

c. We have witnessed the massive growth of ecclesial movements and associations of the faithful. We will have to be careful to avoid setting up what could be considered to be a 'parallel' Church. There is a new sensitivity to the importance of the recognition of rights and corresponding obligations in the Church.

d. There has not been the same explosion of laity into clear involvement in the mission of evangelization

and transformation of the world seen by the Council as the primary mission of both the clergy and the laity. The clerics have not yet adequately formed people to participate in the mission. We have rightly attracted and formed people for the support act, the ministry but not yet for the main feature, the mission.

e. The consultative structures of the Church are still only 'recommended and advisory'. They do not necessarily facilitate lay participation in real decision making. Such participation as well as its authority are dependent on the individual bishop or parish priest and may be dismantled at will. It is one of the greatest challenges of the third millennium to see the participation of the laity in the ecclesial decision making. We need to embrace decisively a move away from all forms of clericalism towards an understanding of baptismal equality. The present code delivered something short of the expectations raised by the Council. It left ambiguities and uncertainties and threw little light on the 'secular' identity of the laity.

5. New Hope from Pope Francis

The Pope Francis has allowed the Pontifical Council for Legislative Texts to continue with the revision of VI book of the Code i.e. Sanctions. The sanctions of 1983 Code was written with such an emphasis on the role of the individual bishop that each bishop bore the full responsibility of deciding when and how to intervene and what sort of sanction or

punishment were being applied. The vacuum of the law became clear with sexual abuse crisis. It needs to be updated giving exact punishment for several types of offences. The chief concern in the process of updating is to safeguard the truth and to protect the dignity of persons.

The Church's law must uphold the teaching of the Church while responding to the concrete situations of the faithful. Church law follows the theological reality of things. It is not Canon Law that forbids divorce, but the faith does. Canon Law then transforms that into juridical language. The pope has asked the council to identify the bottlenecks that delay judgements in the annulment process and identify improved procedures.

Pope Francis while declaring the current year as the year of Family has announced the calling of a synod to discuss 'Pastoral Challenges of the family in the context of Evangelization'. He has told the reporters that the next synod would explore a somewhat deeper pastoral care of marriage including the question of eligibility of divorced and remarried Catholics to receive communion. He added that the Church is a mother, and she must travel this path of mercy and find a form of mercy for all.

Finally Pope Francis does not think the Vatican, the Curia or the Congregation for the Doctrine of Faith, is the beating heart of Catholicism. Parishes are the new point of reference for the life of the Church. The parish is not an outdated institution. But it proves capable of self renewal and constant adaptivity, it continues to the Church living in the midst of the homes of her sons and daughters.

Conclusion

While addressing the Congress, Pope Benedict XVI acknowledged that like all human works the new Code is perfectible and he underlined that the Congress will aim to identify certain points in need of a little restoration. The Code needs to be perfected with adaptations in order to enforce the existing laws to bring order and justice and finally it will enable each and every one to do the mission of Christ and the law will be ultimately at the service of the Church. In the words of Pope Benedict XVI, "Since Canon Law outlines the rules necessary for the People of God to orient themselves effectively to their own end, one must understand how important it is that this law be loved and observed by all the faithful. Church law is first and foremost *lex libertatis*: a law that sets us free to adhere to Jesus. It is therefore necessary to be able to present to the People of God, to the new generations and to all who are called to make Canon Law respected, its concrete bond with the life of the Church, in order to safeguard the delicate interests of the things of God and to protect the rights of the weakest, of those who have no other means by which to make their presence felt, and also in defence of those delicate goods which every member of the faithful has freely received the gift of faith, God's grace."