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THE PLACE AND ROLE OF WOMEN IN THE CATHOLIC CHURCH: A STUDY BASED ON *THE CODE OF CANON LAW* AND *THE CODE OF CANONS OF THE EASTERN CHURCHES*

Abstract

Although Pope John Paul II taught through his apostolic letter *Ordinatio Sacerdotalis* (1994) that the Catholic Church is unable to ordain women to priesthood, the Catholic Church gives a special place to women in it, and a survey of *the Code of Canon Law* (CIC 1983) and *the Code of Canons of the Eastern Churches* (CCEO 1990) shows that there is a marked improvement in the Catholic Canon Law regarding the place and role of women in the Catholic Church. Whereas the Pio-Benedictine Code (CIC 1917) did not consider men and women as having the same rights and duties in the Church, the fundamental equality of men and women is acknowledged in the canons of the new Codes. The author argues that there is no violation of fundamental rights of women in the prohibition to ordain women to priesthood. At the same time, the article highlights the clarion call the Pope Francis to have a special role for the “Feminine Genius” within the Catholic Church.

KEYWORDS

Code of Canon Law 1917, *Code of Canon Law* 1983, *Code of Canons of the Eastern Churches* 1990, *Ordinatio Sacerdotalis*, Pope John Paul II, Pope Francis, rights and duties of lay faithful, fundamental rights of women, deaconesses, feminine genius

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Kodeks prawa kanonicznego 1917, Kodeks prawa kanonicznego 1983, Kodeks kanonów Kościołów wschodnich 1990, *Ordinatio Sacerdotalis*, Papież Jan Paweł II, Papież Franciszek, prawa i obowiązki wiernych świeckich, podstawowe prawa kobiet, diakonisy, geniusz kobiecy

1. INTRODUCTION

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

¹ Cf. <https://zenit.org/articles/pope-calls-for-commission-to-study-possibility-of-women-deacons/> (accessed 28 May 2023); <https://zenit.org/articles/full-text-of-popes-q-and-a-with-women-religious/> (accessed 23 May 2023).

² <https://zenit.org/articles/pope-institutes-commission-to-study-the-diaconate-of-women/> (Zenit news, 2 August 2016; accessed 23 May 2023); <http://www.bbc.com/news/world-europe-36951554> (accessed 23 May 2023); <https://cruxnow.com/vatican/2016/08/02/pope-taps-prom-women-deacon-advocates-new-commission/> (accessed 22 May 2023); It is noteworthy that the committee is headed by Archbishop Luis Francisco Ladaria Ferrer, the secretary of the Congregation for the Doctrine of Faith and the committee includes six men and six women. They are: Rev. Robert Dodaro, President of Augustinianum in Rome, Piero Coda (Gregorianum, Rome), Santiago Madrigal Terrazas SJ (Madrid), Karl-Heinz Menke (Bonn), Bernard Pottier SJ (Brussels), Aimable Musoni SDB (Salesianum, Rome), Phyllis Zagano (Hofstra University, USA), Nuria Calduch-Benages from Spain, Francesca Coccini (La Sapienza, Rome), Michelina Tenaci (Rome), Mary Malone SFA (Rector, Antonianum, Rome) and the German Professor Marianne Schlosser. The inclusion of the American Professor Phyllis Zagano, who recently vehemently argued through an article published in Harvard Bulletin in favour of ordaining women as deacons in the Catholic Church is a clear indication that the Pope has taken this issue in a very serious manner. Cf. <http://bulletin.hds.harvard.edu/articles/summerautumn2015/ordain-catholic-women-deacons> (accessed 23 May 2023); <https://www.washingtonpost.com/news/acts-of-faith/wp/2016/08/02/this-new-committee-will-study-female-deacons-in-the-catholic-church/> (accessed 23 May 2023).

institution of deaconesses within the Catholic Church in its report. However, it has not categorically closed the possibility of its re-introduction either.

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

2. THE PLACE AND ROLE OF WOMEN IN THE CATHOLIC CHURCH ACCORDING TO *CIC* 1917

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

2.1. THE RIGHTS AND DUTIES OF LAY PERSONS IN *CIC* 1917

The Pio-Benedictine *Code of Canon Law* of 1917 did not deal with the rights and duties of the Christian faithful in a specific manner. Although the Code divided the people of God into clergy, laity and religious, the section on laity contained only two canons (cc. 682-683). Whereas the first canon reiterated the right of the laity to receive from the clergy “according to the norm of ecclesiastical discipline” spiritual goods (*CIC* 1917, c. 682), the second one forbade the laity from wearing the clerical habit, with certain exceptions.

It read thus: “It is not permitted for laity to wear clerical habit, unless it concerns either a student in a Seminary or others aspiring to orders as described in Canon 972, § 2, or those laity legitimately dedicated to the service of a church while they are in the church or are outside of it taking part in some ecclesiastical ministry”.

From these two canons, it is evident that there is no positive articulation of the role and rights of the laity in that pre-Vatican Code of Canon Law and the role of women also does not find a place in that section. Though not in the section

on laity, there is yet another reference to laity in CIC 1917 c. 1342, § 2 and it is again a prohibition: “All laity are forbidden to preach in churches, even religious”. Another reference to the faithful in CIC 1917 c. 1348 is also a duty: “The faithful are to be diligently warned and encouraged to be present frequently for holy sermons”. Likewise, CIC 1917 c. 1496 stipulated: “The Church also has the right, independently of civil power, of requiring from the faithful what is necessary for divine cult, the honest sustenance of clerics and other ministers, and for the remaining ends proper to her”. From these three canons it is clear that the 1917 *Code of Canon Law* lacked a positive vision and presentation of lay persons in the Church and it did not have a section on the rights proper to lay persons.

2.2. RIGHTS AND DUTIES OF WOMEN RELIGIOUS *VIS-À-VIS* MEN RELIGIOUS IN THE PIO-BENEDICTINE CODE

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

According to CIC 1917 c. 500, §3, through an apostolic indult it was permitted for a religious institute of men to have a religious institute of women subjected to it. CIC 1917 c. 506, §1, while legislating regarding the major superior of religious institutes of men, did not stipulate that such an election is to be presided over by the local Ordinary. However, §3 of the same canon stipulated that similar election in a religious institute of women shall have his presence in person or through another as the president of the election. Regarding the obligation of visitation by the local Ordinary, given in CIC 1917 c. 512 too discrimination existed between the norms regarding the visitation of houses of women and men. According to CIC 1917 c. 517, there was the obligation on the part of religious institutes of pontifical right of men to have a procurator general designated “who conducts the affairs of his religious institute before the Holy See”. However, the women religious institutes of pontifical right were not given this provision. Similarly, where the men religious were permitted to invest their money according to the proper law of their institute, CIC 1917 c. 533 directed that the women religious needed the permission of the local ordinary for such investments.

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

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

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

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

3. FUNDAMENTAL RIGHTS OF WOMEN ACCORDING TO CIC 1983 AND CCEO

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

3.1. RIGHTS AND DUTIES OF CHRISTIAN FAITHFUL ACCORDING TO CIC 1983

The *Code of Canon Law* of 1983 is divided into seven books, of which the second one is entitled *The People of God*. This book is divided into three parts: 1. Christ's Faithful, 2. The Hierarchical Constitution of the Church, and 3. Institutes of Consecrated Life and Societies of Apostolic Life. The first title of the first part of this book is entitled *The Obligations and Rights of All Christ's Faith-*

ful (cc. 208-223). The term Christ's faithful (*Christifideles*) denotes all baptized: "Christ's faithful are those who, since they are incorporated into Christ through baptism, are constituted the people of God..." (*CIC* c. 204 §1). Hence, this term is used in the Code to denote the People of God without distinguishing them based on their particular status or office in the Church.

The opening and most important canon in the above section is *CIC* c. 208 which reads thus:

Flowing from their rebirth in Christ, there is a true equality of dignity and action among all of Christ's faithful. Because of this equality they all contribute, each according to his or her own condition and office, to the building up of the Body of Christ.

This canon is not an invention of *the Code of Canon Law* of 1983. In fact, it is the reiteration of the teachings of the Second Vatican Council. In fact, *Lumen Gentium* n. 32 teaches as follows:

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

Likewise, in *Gaudium et Spes*, n. 29, we read thus:

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

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

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

This canon also complies very well with Article 1 and 2 of the *Universal Declaration of Human Rights* of 1948.³ Article 1 of this Declaration reads thus: "All human beings are born free and equal in dignity and rights...". Article 2 states:

³ Cf. I. Brownlie, G. S. Goodwin-Gill, *Basic Documents on Human Rights*, Fourth Edition, Oxford 2002, pp. 18-23, here at 19.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...⁴

After having affirmed the fundamental equality of everyone in the Church irrespective of sex or status in CIC c. 208, *CIC* cc. 209-223 enlist the rights and duties of every Christian faithful, without distinguishing them as man or woman, nor as clerics, religious or lay persons.⁵ James A. Coriden, a noted canonist, categorizes these rights as human rights, ecclesial rights, ecclesiastical rights and communal rights.⁶ Coriden writes:

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

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

Some human rights are qualified or limited because of their exercise within the church. For example, while the canons recognize the right and duty of the faithful to make their opinions known to their pastors, the people are urged to do so keeping in mind the faith and moral teachings of the church and with reverence for their pastors.⁷

The rights mentioned in the Code include access to the Word of God and to the sacraments of the Church (c. 213), the right to worship according to the prescripts of their own rite (c. 214), the right to one's own form of spiritual life (c. 214), the right to found and direct associations for the purpose of charity or piety or for the promotion of Christian vocation in the world (c. 215), the right to promote or sustain apostolic action (c. 216), the right to a Christian education (c. 217), the right to a just freedom of enquiry and of expressing the opinion prudently (c. 218), the right to be free from any kind of coercion in choosing a state of life (c. 219), the right to good reputation (c. 220), the right to legitimately vindicate and defend the rights or in other words the right to self-defence (c.221), the right to be judged according to the prescripts of the law applied with equity (c. 221), the right not to be punished with canonical penalties except according to the norm of law (c. 221), the right to marry in the Church (c.1058), and the right to Christian burial (c. 1176, §1).⁸ However, CIC c. 223§1 reminds that "in exercising their rights, the Christian faithful, ... must take into account the common good of the Church, the rights of others and their duties toward others", and in CIC 223 §2, we are reminded that

⁴ *Ibid.*

⁵ For a detailed treatise on these rights, cf. J. A. Coriden, *The Rights of Catholics in the Church*, New York 2007, pp. xiv+145.

⁶ *Ibid.*, pp. 8-10.

⁷ *Ibid.*, p. 9.

⁸ Regarding a detailed analysis of these rights, cf. J. Pudumai Doss, *Freedom of Enquiry and Expression in the Catholic Church: A Canonico-Theological Study*, Bangalore 2007, pp. 5-15.

“in view of the common good, ecclesiastical authority can regulate (*moderari potest*) the exercise of rights which are proper to the Christian faithful”.

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

3.2. RIGHTS AND DUTIES OF CHRISTIAN FAITHFUL ACCORDING TO CCEO

The Code of Canons of the Eastern Churches (CCEO) promulgated in 1990 by Saint John Paul II is the common code of all the Eastern Catholic *sui iuris* Churches and is divided into thirty titles and its first title is “The Rights and Obligations of All the Christian Faithful” (cc. 7-26). This section is almost identical with CIC cc. 208-223, except for the slight change present in CCEO c. 17, which states that “the Christian faithful have the right to worship God according to the prescriptions of their own Church *sui iuris*” (cf. CIC c. 214), and for the stipulation in CCEO c. 12, §2 that the Christian faithful “are to fulfill with great diligence their obligations to the universal Church and to their own Church *sui iuris*”. Its parallel canon in the Latin code is CIC c. 209, §2 reads thus: “With great diligence they are to fulfil the duties which they owe to the universal Church and the particular Church to which they belong according to the prescripts of the law”. In fact, the term particular Church refers to the Diocese in CIC, whereas the term Church *sui iuris* is much more than that (cf. CCEO c. 27). It is to be observed that in CCEO too, the section on rights and duties of Christian faithful does not enlist any special right or duty of women in the Church. To put it differently, every right that is recognized by the code for a male Christian faithful is equally present for a woman Christian faithful too in the Eastern Code as it is the case in the Latin Code of 1983.

3.3. RIGHTS AND DUTIES OF LAY PERSONS ACCORDING TO CCEO AND CIC 1983

Whereas the 1917 *Code of Canon Law* did not present the lay persons in any positive and affirmative mode, both CIC 1983 and CCEO present the lay per-

sons with a positive outlook. In fact, the Eastern Code has an entire title on “Lay Persons”: Title XI. The opening canon in this title, CCEO c. 399 defines the lay persons thus:

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

With this definition, where a lay person is identified as one who is not in sacred order and not ascribed to a religious institute, the Eastern Code has made a tripartite division of the people of God as clergy, laity and religious. This tripartite division is apparently absent in CIC, where the division of the people of God is said to be bipartite: namely, as clergy and laity.⁹ CIC c. 207 states thus:

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

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

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

3.3.1. RIGHTS AND DUTIES OF LAY CHRISTIAN FAITHFUL ACCORDING TO CIC 1983

CIC c. 225 §1 states that the lay persons “are bound ... to work so that the divine message of salvation is made known and accepted by all persons everywhere in this world”. In other words, laity has the obligation to take part in the

⁹ J. M. Pampara, *Place and Role of Consecrated Persons in the Church According to Lumen Gentium and the Codes of Canon Law*, (in:) S. Chackalackal (ed.), *Consecrated Life for a Transformed World*, Bangalore 2016, pp. 117-134; I. Žužek, *Bipartizione o tripartizione dei Christifideles nel CIC e nel CCEO*, (in:) idem, *Understanding the Eastern code*, “Kanonika”, Vol. 8, Rome 1997, pp. 328-353; J. M. Pampara, *Fundamental Rights and Duties of Women in the Catholic Church: A Study based on the Code of Canons of the Eastern Churches and the Code of Canon Law*, “Journal of Dharma” 2016, Vol. 41, No. 4, pp. 389-414; J. M. Pampara, *Fundamental Rights and Duties of Women in the Catholic Church: A Study based on the Code of Canons of the Eastern Churches and the Code of Canon Law*, (in:) J. Nandhikkara (ed.), *Feminine Genius: Perspectives and Projects*, Bangalore 2016, pp. 325-350.

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

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

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

Though from the wording of this canon it is evident that the lay persons do not have "the right" in this regard in the strict sense, this canon has enormously enlarged the horizon of men and women in the Church by opening many offices and functions to them. The second paragraph of the same canon states that "lay persons who excel in necessary knowledge, prudence, and integrity are qualified to assist the Pastors of the Church as experts and advisors, even in councils according to the norm of law" (CIC c. 228, §2). According to CIC c. 229, lay men and women have the right to acquire the knowledge of Christian doctrine (§1), right to acquire "that fuller knowledge of the sacred sciences which are taught in ecclesiastical universities and faculties or in institutes of sciences by attending classes there are pursuing academic degrees" (§2), and "are also qualified to receive from legitimate ecclesiastical authority a mandate to teach the sacred sciences, if they have the required qualifications" (§3). According to CIC c. 230, §2, "lay persons can fulfil the function of lector in liturgical actions by temporary designation", though stable designation through liturgical rite to the ministries of lector and acolyte is foreseen only for men (CIC c. 230, §1). CIC c. 230, §3 permits both lay men and women to supply the lack of ministers by doing "certain of their duties, namely, to exercise the ministry of the word, to preside over liturgical prayers, to confer baptism, and to distribute communion...". However, it is to be noted that the homily is reserved only to priests and deacons (CIC c. 767), though a lay person can give a homily or a sermon in a celebration of the Word of God. CIC c. 231 stipulates that lay men and women who hold ecclesiastical offices have the right to "decent remuneration appropriate to their condition so that they are able to provide decently for their own

needs and those of their family. They also have a right for their social provision, social security, and health benefits to be duly provided”.

According to *the Code of Canon Law*, lay men and women having the right qualifications can be appointed as judges in ecclesiastical tribunals (CIC c. 1421, §2). They can also hold office of notary (CIC c. 1437), promotor of justice and defender of bond in such tribunals (CIC c. 1435). They can also be appointed as auditors (CIC c. 1428, §2) and assessors (CIC c. 1424). According to CIC c. 1112, lay persons can be even delegated to assist a marriage in certain situations and they can administer certain sacramentals too (CIC c. 1168). CIC c. 129, §2 declares that laity can cooperate in the exercise of the power of governance in the Church. They can take part in diocesan synods (CIC c. 463, §1, 5°, 463, §2), and can be members of diocesan pastoral councils (CIC c. 512, §1). A lay person of either sex can hold the office of diocesan financial officer (CIC c. 494) and the diocesan financial council which shall have “at least three members of the Christian faithful truly expert in financial affairs and civil law, outstanding in integrity, and appointed by a bishop” (CIC c. 492) and these experts can be any lay person. According to CIC c. 482, the office of the chancellor of a diocese is not restricted to priests alone and therefore this is another office to which even a lay woman can be appointed. Likewise, the Latin Code foresees the consultation with “laity outstanding in wisdom” regarding the appointment of diocesan or coadjutor bishops (CIC c. 377, §3). Lay men and women can be permitted to preach in a church or oratory (CIC c. 766), and they assist in catechetical formation (CIC cc. 776, 785, §1). CIC c. 517, §2 envisages the possibility of entrusting the pastoral care of a parish even to a non-ordained person when there is a real scarcity of priests. The Code also has a provision for consulting the laity before the appointment of a pastor of a parish (CIC c. 524).¹⁰

3.3.2. RIGHTS AND DUTIES OF LAY PERSONS ACCORDING TO CCEO

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

With due regard for the right and obligation to observe everywhere their own rite, lay persons have the right to participate actively in the liturgical celebrations of any Church *sui iuris* whatsoever, according to the prescripts of the liturgical books.

¹⁰ For a more detailed study of the rights and duties of women in the Catholic Church, cf. D. le Tourneau, *Les Droits et le devoirs fondamentaux de la femme dans l'Église*, “*Studia Canonica*” 2015, Vol. 49, pp. 443-482. See also P. Ade Hoteyin, *The Role of Women in the Church in the Light of the New Code of Canon Law*, Pars dissertationis ad lauream in Facultate Iuris Canonici, Rome 1985, xvii+92.

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

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

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

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

4. ABOLITION OF THE OFFICE OF CHAPLAIN OF CONVENTS OF WOMEN RELIGIOUS IN CCEO

An interesting difference that we find in the section of canons on Consecrated Life in the CCEO is that it has abolished the office of chaplains of convents except in contemplative monasteries of women. CIC 1917 c. 529 stipulated thus: "If it concerns non-exempt lay religious [institutes], it is for the local Ordinary to designate a priest for sacred ministry and to approve one for preaching; if it is an exempt one, the regular Superior will designate some priest for it, the Ordinary supplying for negligence". This same idea of appointing a chaplain is found also in CIC 1983 c. 567: "§1. The local ordinary is not to proceed to the appointment of a chaplain to a house of a lay religious institute without consulting the superior, who has the right to propose a specific priest after the superior has heard the community. §2. It is for the chaplain to celebrate or direct liturgical functions; nevertheless, he is not permitted to involve himself in the internal governance of the institute". Though these canons do not distinguish between men religious and women religious, and that the 1983 CIC canon explicitly prohibits the chaplain from interfering in the internal affairs of religious institutes, sometimes in the convents of women reli-

gious, some of the chaplains get more sway or in fact do interfere. To ward off any such possibility, in CCEO, only in monasteries, the office of chaplain is foreseen, and that too not as an office of chaplain, but under the designation “a priest who regularly ... to celebrate the Divine Liturgy and preach the word of God”: “For monasteries in which there are no presbyter-monks, the local hierarch is to designate in the same manner a priest, who regularly is to celebrate the Divine Liturgy and preach the word of God in the monastery, with due regard for can. 612, §2” (CCEO c. 475, §2). The first paragraph of CCEO c. 475 is regarding the appointment of confessors in monasteries. Its parallel canon in CCEO which deals with the appointment of confessors is CCEO c. 539. Unlike CCEO c. 475, this canon is silent regarding the appointment of chaplains or “priests to celebrate the Divine Liturgy and preach the word of God” in this canon. In fact, the *Motu Proprio Postquam Apostolicis Litteris*,¹¹ canon 61, §1 without any distinction gave the competence to the local hierarch to appoint chaplains in convents of women, albeit without using the name chaplain: “... *in mulierum monasterio et in laicali Ordine vel Congregatione, Hierarchae loci est sacerdotum a sacris designare et a contionibus probare*”. Although PAL was used as the *testi initiali* in the revision of Eastern Code, without explaining the reason, in the revision process, a distinction was placed to this competence of the local hierarch in the appointment of chaplains to convents and thus, in the actual legislation, it is the right and duty of the local superior of each religious house of Orders and Congregations (both of men and women) to find a priest each time to celebrate the Divine Liturgy in the convent chapel and there need not be any appointed chaplains for the convents of women. However, it is still possible for the concerned superiors of women to ask the bishop of the place to appoint or designate a priest to regularly celebrate the Holy Mass in the convent, in case they are not able to find such a priest by themselves. In short, this author considers this abolition of the chaplaincy in convents of women religious of Orders and Congregations in CCEO as a recognition of the ability of women religious to govern themselves and to arrange for their needs. It is to be considered as a right step towards the emancipation of women religious from the oppressive structures of clerical dominance.

5. APOSTOLIC LETTER *ORDINATIO SACERDOTALIS* AND THE PROHIBITION TO ORDAIN WOMEN TO PRIESTHOOD

According to CCEO c. 754 and CIC c. 1024, “only a baptized man is able to receive sacred ordination validly”. On 22 May 1994, Pope John Paul II issued

¹¹ Pius XII, *Motu Proprio Postquam Apostolicis Litteris*, 9 February 1952, “AAS” 1952, Vol. 44, pp. 65-152.

an apostolic letter on priestly ordination and women entitled “*Ordinatio Sacerdotalis*” in which he wrote: “Wherefore, in order that all doubt may be removed regarding a matter of importance, a matter which pertains to the Church’s divine constitution itself, in virtue of my ministry of confirming the brethren (cf. Lk.22:32) I declare that the Church has no authority whatsoever to confer priestly ordination on women and that this judgement is to be definitively held by all the Church’s faithful”.¹² Congregation for the Doctrine of Faith (CDF) in Vatican, while responding to a *dubium* concerning the inadmissibility of women to Ministerial Priesthood, on 28 October 1995 responded stating that the teaching contained in *Ordinatio Sacerdotalis* that the Church has no authority whatsoever to confer priestly ordination to women as part of the deposit of faith.¹³ Though CDF explained that the teaching in this Apostolic Letter is to be considered as infallible, the internal evidence and the style of the letter did not support it and hence it is not considered as an infallible teaching.¹⁴ According to CCEO c. 597 and CIC c. 749, “no doctrine is understood to be infallibly defined unless it is clearly established as such”. This apostolic letter at no point stated that it is to be considered as an infallible teaching and therefore it is not imperative from the part of the believer to consider it as such. However, the Roman Pontiff clearly stated that his teaching on this matter is to be considered as a definitive teaching. This has, in fact, given rise to a new category in the levels of teaching authority in the Church and thus one can find at least four levels authentic magisterium in the Catholic Church, namely, the infallible and definitive teaching of popes or the college of bishops (ecumenical councils), the non-infallible definitive teaching of popes or the college of bishops, the non-infallible non-definitive teaching of popes or the college of bishops (CCEO c. 599; CIC c. 752) and finally the authentic teaching of one’s own bishop or of the bishops gathered together in synods or in particular councils (CCEO c. 600; CIC c. 753).

¹² John Paul II, Apostolic Letter *Ordinatio Sacerdotalis on Reserving Priestly Ordination to Men Alone*, 22 May 1994, “AAS” 1994, Vol. 85, pp. 545-548; English translation: “Canon Law Digest” 2009, Vol. XIII, pp. 533-536, here at p. 536. In fact, it must be observed that in his apostolic letter *Mulieris Dignitatem*, No. 26, already contained this teaching: “I declare that the Church has no faculty at all to confer priestly ordination to women and that this teaching is to be held definitively by all the faithful of the Church”. John Paul II, Apostolic Letter *Mulieris Dignitatem on the Dignity and Vocation of Women*, 15 August 1988, “AAS” 1988, Vol. 80, pp. 1653-1729.

¹³ Congregation for the Doctrine of Faith (CDF), *Response to a dubium Concerning the Inadmissibility of Women to Ministerial Priesthood*, 28 October 1995, “AAS” 1995, Vol. 87, p. 1114.

¹⁴ Cf. F. A. Sullivan, *Creative Fidelity. Weighting and Interpreting Documents of the Magisterium*, Dublin 1996, pp. 181-184. In fact, CDF stated regarding *Ordinatio Sacerdotalis* as follows: “This teaching requires definitive assent, since, founded on the written Word of God, and from the beginning constantly preserved and applied in the Tradition of the Church, it has been set forth infallibly by the ordinary and universal Magisterium (cf. Second Vatican Council, *Dogmatic Constitution of the Church Lumen Gentium*, 25, 2)”. CDF, *Response to a dubium Concerning the Inadmissibility of Women to Ministerial Priesthood*, 28 October 1995, “AAS” 1995, Vol. 87, p. 1114.

This new category of non-infallible definitive teaching¹⁵ in *Ordinatio Sacerdotalis* created another problem for *CIC* 1983 and *CCEO*, since it did not contain such a category. In fact, the codes, following *LG* 25, defined that the response due to the infallible definitive teaching from the part of the believers is that they “must believe with divine and Catholic faith” (*CCEO* c. 598, §1, *CIC* c. 750). Since what should be the response of the believers to a non-infallible but definitive magisterium of the Roman Pontiff was not stipulated in the codes of canon law, John Paul II, on 18 May 1998, through an Apostolic Letter given *Motu Proprio* and entitled *Ad tuendam fidem*, modified *CCEO* c. 598 and *CIC* c. 750 and included in them a section stipulating that such teachings “must be firmly accepted and held”.¹⁶ This *Motu Proprio* also added a penalty to those who refuse to accept and hold such teachings by changing *CCEO* c. 1436 and *CIC* c. 1371:

In addition to these cases, whoever obstinately rejects a teaching that the Roman Pontiff or the College of Bishops, exercising the authentic Magisterium, have set forth to be held definitely, or who affirms what they have condemned as erroneous, and does not retract after having been legitimately warned, is to be punished with an appropriate penalty.¹⁷

6. ORDINATION OF WOMEN AS DEACONS: A HISTORICO-THEOLOGICAL AND CANONICAL ANALYSIS

Though Saint John Paul II, through *Ordinatio Sacerdotalis* taught in a definitive manner that the Church cannot ordain women to priesthood, he did not evidently close the door for the ordination of women as deacons in the Church. In fact, Cardinal Carlo Maria Martini, the Archbishop of Milan, on 2 June 1994, is reported to have stated at the Eucharistic Congress in Siena that “the pope has said nothing about the ordination of women to diaconate”. He added that “our real task is ... to see how ... a path of ecumenical dialogue remains possible ... in which one can show the presence of women in every field”.¹⁸ A noted theologian, Bruno Forte, just three days after, urged the Church through his article in the Italian

¹⁵ Cf. M. Mosconi, *Magistero autentico non infallibile e protezione penale*, Rome 1996, pp. xix+572.

¹⁶ John Paul II, Apostolic Letter *Motu Proprio Ad Tuendam Fidem*, 18 May 1998, “AAS” 1998, Vol. 90, pp. 457-461; English translation: “Canon Law Digest” 2012, Vol. XIV, pp. 643-647. Cf. also D. Salatori, *L'oggetto del magistero della Chiesa alla luce del m.p. Ad Tuendam Fidem: il can. 750 visto attraverso i Concili vaticani*, Tesi Gregoriana, Serie Diritto Canonico 51, Rome 2001, pp. 461.

¹⁷ *CCEO* c. 1436, §2; cf. also, *CIC* c. 1371, 2°.

¹⁸ P. Hebblethwaite, *A Search for Openings in the Absence of Infallible*, “National Catholic Reporter” 1994, June 17, p. 10, cited (in:) Canon Law Society of America, *The Canonical Impli-*

daily *L'Informatione*, to “pinpoint the best possible ways of female ministry to make its own original and irreplaceable contribution to ecclesial unity, expressed and served by ordained ministry. It might not be incongruent for her to make an appeal to the female diaconate in the ancient church...”¹⁹

In fact already in 1992, the Canon Law Society of America entrusted one of its committees to take up a study of “the canonical implications of ordaining women to the permanent diaconate”²⁰ based on the Declaration *Inter Insigniores* of 1976²¹ which stated the need to study the ordination of women to the diaconate and came up with a document entitled *The Canonical Implications of Ordaining Women to the Permanent Diaconate* in 1995.²² Likewise, the International Theological Commission, which functions under CDF, also came up with a document on this topic in 2003 which is entitled “*From the Diakonia of Christ to the Diakonia of the Apostles*”.²³ Regarding the deaconesses, this study has concluded as follows:

With regard to the ordination of women to the diaconate, it should be noted that two important indications emerge from what has been said up to this point:

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

cations of Ordaining Women to the Permanent Diaconate, Report of an Ad Hoc Committee of the Canon Law Society of America, Washington 1995, p. 4.

¹⁹ A. Tornielli, *Career Women*, “30 Days in the Church and in the World” 1994, 6/7-8, p. 17, cited (in:) Canon Law Society of America, *The Canonical Implications of Ordaining Women to the Permanent Diaconate, Report of an Ad Hoc Committee of the Canon Law Society of America*, Washington 1995, p. 4.

²⁰ *CLSA Proceedings* 54 (1992) 276-277.

²¹ CDF, *Declaration Inter Insigniores on the Question of the Admission of Women to the Ministerial Priesthood*, 15 October 1976, “AAS” 1977, Vol. 69, pp. 98-116.

²² Canon Law Society of America, *The Canonical Implications of Ordaining Women to the Permanent Diaconate, Report of an Ad Hoc Committee of the Canon Law Society of America*, Washington 1995, pp. 53. Some important works on this topic of ordination of women to diaconate are the following: C. Vagaggini, *L'ordinazione della diaconessa nella tradizione greca e bizantina*, “Orientalia Christiana Periodica” 1974, Vol. 40, pp. 146-189; R. Gryson, *The Ministry of Women in the Early Church*, Collegeville 1976 and A. G. Martimort, *Deaconesses: An Historical Study*, (transl. by K.D. Whatehead), San Francisco 1986.

²³ International Theological Commission, *From the Diakonia of Christ to the Diakonia of the Apostles. Historico-Theological Research Document*, Chicago/Mundelein 2003; idem, M. Sharkey, T. Weinady (eds.), *Texts and Documents, Vol. II, 1986-2007*, San Francisco 2009, pp. 229-317. http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_pro_05072004_diaconate_en.html (accessed 24 July 2016).

In the light of these elements which have been set out in the present historico-theological research document, it pertains to the ministry of discernment which the Lord established in his Church to pronounce authoritatively on this question.²⁴

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

Canonically, a decision to ordain women to the permanent diaconate is possible.²⁵ ... Historically, women have been ordained as deaconesses. While it would be anachronistic to call “deaconesses” the women whose ministry is recorded in the New Testament, by the third century there clearly were women deacons. What their ministry involved has varied for place to place, and from century to century. Although some debate whether they were indeed “ordained”, the evidence points to an ordination parallel to that conferred on men to be deacons. Although this past experience does not require that women be ordained to the permanent diaconate today, it does indicate that this possibility is not foreclosed to the Church.²⁶

7. DEACONESSSES IN THE DRAFT CANONS DURING THE CODIFICATION OF CCEO

Prof. George Nedungatt SJ, in his recent book *Renewal of Life and Law: An Indian Contribution*²⁷ describes in detail the failed attempt of the *Coetus IV* of the Pontifical Commission for the Redaction of the Code of Oriental Canon Law, which was headed by him, to insert canons on deaconesses in the Eastern Code. He writes thus regarding it as follows:

Without trespassing on the sensitive theological question about the ordination of women, Coetus IV tried to make a canonical provision for the restoration of the ancient institution of the deaconess. Unfortunately, CCEO does not contain the text of

²⁴ International Theological Commission, *From the Diakonia of Christ to the Diakonia of the Apostles. Historico-Theological Research Document*, Chicago/Mundelein 2003, p. 109; M. Sharkey, T. Weinady (eds.), *International Theological Commission. Texts and Documents. Vol. II, 1986-2007*, San Francisco 2009, p. 317.

²⁵ Canon Law Society of America, *The Canonical Implications of Ordaining Women to the Permanent Diaconate, Report of an Ad Hoc Committee of the Canon Law Society of America*, Washington 1995, p. 49.

²⁶ *Ibid*, p. 50.

²⁷ G. Nedungatt, *Renewal of Life and Law: An Indian Contribution*, “Dharmaram Canonical Series”, Vol. 10. Bangalore 2015, pp. xxii+305, here at pp. 92-99.

the two canons formulated by the Coetus IV and approved by the Coetus Centralis because they failed to win Vatican approval.²⁸

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

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

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

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

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

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

4° to teach catechism;

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

6° in monasteries of nuns or in the houses of other women religious, in the absence of a priest or deacon, also to read the Gospel during the celebration of the liturgy of the hours, to preach, and to minister Holy Communion.²⁹

From these canons, it is evident that those functions enlisted as those of a deaconess are in fact ecclesiastical functions that can be entrusted to any lay man or women and therefore, they cannot be considered as radical in nature. Nevertheless, they failed to get the approval of the Vatican at that time. Therefore, it seems that it may not be that easy even today during the pontificate of Pope Francis to have a speedy revival of the much-disputed ancient institution of deaconesses in the Catholic Church. However, since the Catholic Church recognizes herself as *Ecclesia semper reformanda*, one cannot foreclose for sure the possibility of reviving such an institution.

8. PROHIBITION OF THE ORDINATION OF WOMEN TO PRIESTHOOD: A HUMAN RIGHT VIOLATION?

It may appear to some that the definitive teaching that the Church cannot ordain women to priesthood is a violation of the fundamental rights of women in the Church. In fact, this is not the case. It is because no one has a fundamental

²⁸ *Ibid*, p. 92.

²⁹ G. Nedungatt, *Renewal of Life and Law: An Indian Contribution*, pp. 96-97.

right to be ordained. CCEO c. 323 and CIC c. 1008 clearly state that clerics are Christian faithful “chosen by the competent ecclesiastical authority”:

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

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

9. THE NEED OF FEMININE GENIUS IN THE CATHOLIC CHURCH

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

We have to work harder to develop a profound theology of the women. Only by making this step will it be possible to better reflect on their function within the Church. The feminine genius is needed wherever we make important decisions. The challenge today is this: to think about the specific place of women also in those places where the authority of the Church is exercised for various areas of the Church.³⁰

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

The Church acknowledges the indispensable contribution which women make to society through the sensitivity, intuition and other distinctive skill sets which they, more than men, tend to possess. I think, for example, of the special concern which women show to others, which finds a particular, even if not exclusive, expression in motherhood. I readily acknowledge that many women share pastoral responsibilities with priests, helping to guide people, families and groups and offering new contributions to theological reflection. But we need to create still broader opportunities for a more incisive female presence in the Church. Because “the feminine genius is needed in all expressions in the life of society, the presence of women must also be guaranteed in the workplace” and in the various other settings where important decisions are made, both in the Church and in social structures.³¹

³⁰ Pope Francis in dialogue with Antonio Spadaro S.J., editor of *Civiltà Cattolica* – A. Spadaro, *The Heart of a Jesuit Pope: Interview with Pope Francis*, “Studies” 2013, No. 407, pp. 255-278, at p. 270, cited in: G. Nedungatt, *Renewal of Life and Law: An Indian Contribution*, pp. 101-102, No. 20.

³¹ Pope Francis, Apostolic Exhortation *Evangelii Gaudium*, 24 November 2013, http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html (accessed 28 July 2016), No. 103.

10. CONCLUSION

This study has shown that in the law books of the Catholic Church, there has been a tremendous improvement after the Second Vatican Council regarding the fundamental rights and duties of women. *The Code of Canon Law* of 1983 and the *Code of Canons of the Eastern Churches* in fact give equal rights to both men and women in the Church when the fundamental rights and duties of Christian faithful are considered. Although CIC 1917 did not consider the women religious on par with the men religious, the reform of canon law carried out in the spirit of the Second Vatican Council has abolished all such discriminatory canons and thus there exists a fundamental equality between both sexes in the Church law. However, the Catholic Church continues to teach in a definitive manner that she does not have the competence to ordain women to priesthood since it is not in the Scripture and in her Sacred Tradition. But the Catholic Church still has kept open the possibility of ordaining women as deacons, although at present CIC and CCEO do not have such provisions. In fact, what the Catholic Church needs today is perhaps not to revive the institution of deaconesses, which may not have much relevance in today's ecclesial life, but to find the ways and means in which the feminine genius is heard and felt in the decision-making structures in all levels. In fact, Pope Francis has already started opening many offices and ministries within the Catholic Church to women, especially by opening the appointment to higher offices in the Roman Curia to women. This process must continue with added pace. In fact, there is nothing that prohibits women from being heads of many of the dicasteries of Roman Curia, where the power of orders is not absolutely necessary in the carrying out of such offices, as canon law foresees the collaboration of the laity in the power of governance, although still Catholic Canon Law gives a prominent place to those who have the orders (cf. *CIC* c. 129, *CCEO* c. 979).

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