

General Governace in the Societies of Apostolic Life

O governo em geral das Sociedades de Vida Apostólica

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Abstract: The original appeal to found the Societies of the Apostolic Life was to insist on the aspect of priestly sanctification and to concentrate on the missionary activity which took shape in Europe from the sixteenth century. Having undergone many processes the 1983 code is the authoritative document which defined and described the nature and identity of these Societies. According to Can. 731§ 1, the common and constitutive elements are: the apostolic activity, fraternal life in common, the striving for the perfection of charity. Another important aspect in Societies is the act of governance. The governance in Societies like in religious institute is accomplished in three ways: laws, bodies and persons. Laws include the universal law - as contained in 1983 Code and those issued by the Apostolic See – and the norms of the particular law issued by the particular Church and the proper law of the individual institute. Bodies may be collegial or non-collegial, e.g., chapter, councils and other lawfully designated groups. Persons are individuals who govern the institute in accordance with the norm of law and with personal authority.

Resumo: O apelo original para fundar as Sociedades de Vida Apostólica foi para evidenciar a necessidade da santificação sacerdotal e concentrar-se na atividade missionária que tomou forma na Europa a partir do século XVI. Tendo passado por muitos processos, o Código de 1983 é o documento oficial que definiu e descreveu a natureza e a identidade de tais Sociedades. De acordo com o cân. 731 § 1, os elementos comuns e constitutivos são: a atividade apostólica, a vida fraterna em comum, a busca pela perfeição da caridade. Um aspecto importante nas Sociedades é o governo. A governança nas Sociedades tal como nos Institutos Religiosos é realizada por três maneiras: leis, órgãos e pessoas. As leis incluem o direito universal - conforme contido no Código de 1983 e aquelas promulgadas pela Sé Apostólica - e as normas do direito particular com leis promulgadas pela Igreja particular e pelo direito próprio de cada instituto. Os órgãos podem ser colegiais ou não colegiais, por exemplo, capítulos, conselhos e outros grupos legalmente designados. Pessoas são os indivíduos que governam o instituto de acordo com as normas e com autoridade pessoal.

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Introduction

The primordial nature of the Church, according to the Second Vatican Council, is «Missionary»² and the work of evangelization is considered as the fundamental duty of the people of God³. Inspired by the Holy Spirit many holy men and women responded positively to the needs manifested at different periods⁴ and initiated spiritual movements which continued and expanded in the history of the Church down through the centuries. The Church by virtue of her authority accepted and approved these movements and which fostered the Church's ministry of building up the Mystical Body of Christ. Society of Apostolic Life⁵ is one among those inspirations along with Solitary Hermits and Monks, Cenobites, members of Mendicant Orders, Canon Regulars, Contemplatives, Apostolic Communities, Non-Clerical and Secular Institutes which originated to accomplish the task of the Church⁶.

This article intends to expose an understanding of the SAL by analyzing their origin and development, the mind of the Church about them as expressed in her various documents and the diverse understandings in various periods, their nature, purpose, characteristics and constitutive elements as per the present-day legislation. Also, the gen-

² Cf. VATICAN COUNCIL II, Decree on the Church's Missionary Activity, *Ad gentes divinitus*, 7 December 1965, no. 2, in *AAS*, 58 (1966), p. 948; English translation in A. FLANNERY (ed.), *Vatican Council II: The Conciliar and Post-Conciliar Documents*, vol. 1, St. Pauls, Mumbai 2004, pp. 715 - 716.

³ Cf. c. 781, CIC/1983: «[...] et opus evangelizationis habendum sit fundamentale officium populi Dei, [...]».

⁴ Cf. M. CASEY, *The Evolution of New Forms of Consecrated Life*, in *Studia Canonica*, 36 (2002), p. 464.

⁵ Hereafter the Societies of Apostolic Life are cited as SAL.

⁶ Cf. A. MAMPRA, *Perfectae caritatis, Decree on the Adaptation and Renewal of Religious Life*, in T. ANCHUKANDAM, D. VELIATH AND J. KUTTIANIMATTATHIL (eds.), *Towards Deeper Understanding of Vatican II and the Post-Conciliar Documents*, Kristu Jyoti Publications, Bangalore 2001, p. 173.

eral illustration drawn here of the juridical structure given by the Church with regard to the governance of these Societies, their autonomy, constitutions and governing bodies.

1 Historical and Juridical Growth of SAL until 1983 Code

Historians take different views with regard to the origin of SAL and indeed it is an enigma in the Church. This section would help us to understand better the historical development of SAL and their juridical growth from its origin until 1983 Code.

1.1 Origin and Development of SAL through 1917 Code

Tracing the genesis of these Societies with regard to their exact period of origin by emphasizing the aspect of living in common without vows⁷, takes us to the fourth century when St. Eusebius, Bishop of Vercelli in Italy, gathered the secular priests to live in common under one rule⁸. There are also examples in the history of the Church about women who lived a similar type of life⁹. After this, the traces of apostolic life are found only in the twelfth century with the Beguines¹⁰ which is considered by some authors as the first Society of Common Life¹¹.

⁷ According to c. 673 § 1 of CIC/1917, the fundamental characteristic of these Societies is to live the common life without vows imitating the life style of the religious.

⁸ Cf. A. CALABRESE, *Istituti di Vita Consacrata e Società di Vita Apostolica*, Libreria Editrice Vaticana, Città del Vaticano 1997, p. 385.

⁹ Cf. C. J. DUSTER, *The Canonical Status of Members of Missionary Societies of Apostolic Life of Pontifical Right*, Corpus Publications, Rome 1994, p. 115.

¹⁰ Lambert Beghe, a Belgian priest founded at Liege, the Beguins of Belgium, the first Society of Common Life, who took only the vow of chastity but lived in common. Cf. E.W. MC DONNEL, *Beguines and Beghards*, in W. J. MC DONALD et al. (eds.), *New Catholic Encyclopedia*, vol. 2, Mc Graw-Hill Book Company, New York 1967, pp. 224 – 226.

¹¹ Hereafter the Societies of Common Life are cited as SCL. The Societies which were recognized by 1917 Code as SCL were later entitled as Societies of Apostolic Life in 1983 Code.

Various other authors however are of the opinion that the proximate antecedents of SAL as we know it today were specifically known as the secular congregations. These secular congregations had their beginning in Rome, dating from the middle of the 16th century¹². Congregation of Oratory by St. Philip Neri and Daughters of Charity by St. Vincent de Paul are the earliest of this type. St. Phillip Neri who is considered to be the father of today's SAL for men, founded the oratory and received approval from Pope Gregory XIII on 15 July 1575¹³ and many others continued it. These groups, especially the male communities, had two different approaches towards the mission of the Church. One approach was to insist on the aspect of priestly sanctification and the other approach was to concentrate on the missionary activity¹⁴.

Secular congregations came into existence since the religious life, especially after the Council of Trent, which was identified by solemn vows and regular life, caused difficulties in pursuance of apostolic work and at the same time Rome had reluctance to set up a new type of religious life concentrating on apostolic activity¹⁵. In order to provide for the acute need for apostolic mission, the new missionary movement took shape in Europe from the sixteenth century in the form of apostolic associations or secular congregations, where some religious minded men and women and even diocesan priests lived the evangelical counsels in common but did not live to the fullness prescribed for religious institutes; that means they did not pronounce the solemn vows¹⁶.

¹² Cf. J. G. NEGUNT, *Societies of Common Life*, in W. J. MC DONALD et al. (eds.), *New Catholic Encyclopedia*, vol. 13, p. 384.

¹³ Cf. J. BONFILS, *Le Società di Vita Apostolica, Identità e Legislazione*, Brescia, Editrice Queriniana, 1991, p. 14.

¹⁴ Cf. C. J. DUSTER, *The Canonical Status of Members of Missionary Society of Apostolic Life of Pontifical Right*, pp. 116 – 117.

¹⁵ Cf. T. J. FINN, *An Old Entity – A New Name Societies of Apostolic Life*, in *Studia Canonica*, 20 (1986), p. 441.

¹⁶ Cf. J. G. NEGUNT, *Societies of Common Life*, p. 385; S. KAROTEMPREL, *Heralds of the Gospel in Asia*, RABC Office of Evangelization, Shillong 1998, pp. iii – iv.

Ever since their origin, these groups have been popularly known under different names, as secular congregations, missionary societies, institutes of associated apostolic life¹⁷, secular institutes, societies, institutes, ecclesiastical congregations¹⁸, quasi-religious societies¹⁹, societies of men or women living in community without vows²⁰, etc., so much so the Church authorities have found it difficult to designate them with an appropriate title.

However, in order to preserve the religious tradition and to avoid scandals, the Church kept vigilance over these Societies and this was reflected in manifold ways. Hence, the history of these Societies is marked with two apostolic constitutions by Pope Pius V: namely, *Circa pastoralis* of 29 May 1566 for women and *Lubricum vitae genus* of 17 November 1568 for men. In 1749 the force of *Circa pastoralis* was virtually removed by Benedict XIV and *Lubricum vitae genus* was interpreted by the canonists as though it affected only few institutes. Despite these legislations and restrictions, some communities continued in existence and the Holy See tolerated others. In 19th century the Holy See positively encouraged many such Societies and thus began the period of foundations of Missionary Societies²¹.

The Societies that existed and those which came into existence later could be classified into three categories. In the first category the members did not take any vow or oath. There was only one promise or contract with the respective Society, obliging the observance of the constitutions, rules, traditions and the purposes for which the Society

¹⁷ Cf. S. L. HOLLAND, *Societies of Apostolic Life (cc. 731 – 746)*, in JAMES A. CORIDEN, THOMAS J. GREEN AND DONALD E. HEINTSCHEL (eds.), *The Code of Canon Law, A Text and Commentary*, Theological Publications in India, Bangalore 1991, p. 534.

¹⁸ Cf. G. ROCCA, *Società di Vita Apostolica*, in IGINO LUSTRISSIMI (ed.), *Dizionario degli Istituti di Perfezione*, vol. 8, Edizioni Paoline, Rome 1988, cols 1738 – 1739.

¹⁹ Cf. C. L. PARRES, *Societies of Apostolic Life*, in JORDAN HITE, SHARON HOLLAND AND DANIEL WARD (eds.), *A Handbook on Canons 573 – 746: Religious Institutes, Secular Institutes, Societies of the Apostolic Life*, The Liturgical Press, Minnesota 1985, p. 288.

²⁰ Cf. c. 673 § 1, CIC/1917: «*Societas sive virorum sive mulierum, in qua sodales vivendi [...]*».

²¹ Cf. J. G. NEGUNT, *Societies of Common Life*, pp. 384 – 385.

was instituted. In the second category the members had a bond or private vow expressed externally to observe the evangelical counsels. The third category of Societies inclined to become religious institutes and so the members usually made a formal – though not solemn and public – profession of the vows of obedience, chastity and poverty, and wore a special habit. When 1917 Code took effect in 1918, some of the communities that made the profession opted to become religious and so were established as religious institutes and others as SCL²².

1.2 Evolution of SAL in 1917 Code

The first official Code of Canon Law which was promulgated in 1917, accepted all previous legislations regarding these Societies and gave a specific title for them as «Societies of men or women living in a community without vows» and described their specific nature in c. 673 § 1²³. Many of the secular congregations opted for recognition as SCL under the above-mentioned title²⁴. 1917 Code though placed them under the title of *De religiosis*, rendered a unique legal status to these SCL and acknowledged them as different from the religious due to the absence of the public vow²⁵.

The essential elements of these SCL as categorized by 1917 Code are common life, imitating a religious rule, under the governance of a Superior, according to an approved constitution and lived without public vows. Since some essential elements and rules of religious congregations influenced the life of these SCL, they were con-

²² Cf. S. JOHN BOSCO, *Societies of Apostolic Life and Societies of Common Life according to the Manner of Religious: A Comparative Study*, Dahrmaram Publications, Bengaluru 2015, pp. 20 – 22.

²³ Cf. c. 673 § 1, CIC/1917: «*Societas sive virorum sive mulierum, in qua sodales vivendi rationem religiosorum imitantur in communi degentes sub regimine Superiorum secundum probatas constitutiones, sed tribus consuetis votis publicis non obstringuntur, non est proprie religio, nec eius sodales nomine religiosorum proprie designantur*».

²⁴ Cf. S. L. HOLLAND, *Societies of Apostolic Life* (cc. 731 – 746), p. 534.

²⁵ Cf. S. WOYWOD, *A Practical Commentary on the Code of Canon Law*, vol. 1, Joseph F. Wagner, Inc., New York 1948, p. 337.

sidered to be imitating the way of life of the religious. Though both SCL as well as religious had life in common, which ensured membership in a Society and life under a definite rule and a Superior, common life is essential to SCL in the first sense²⁶.

However, they differed from the religious by the absence of three public vows. Though SCL differed from the religious by the absence of three public vows, the notion and the practice of vow however existed in certain SCL in the form of promise or vow, professing one or all the three but in private form. In general, these SCL are set apart from the religious due to the absence of public vows and from the associations of the faithful by common life²⁷.

1.3 SAL and the Apostolic Constitution, *Provida Mater Ecclesia*

Apart from the legislative tradition of the Church, many official documents of the Church have guided various Church activities in different periods. In many occasions they substituted a lacuna in the law or paved way for future legislation. Though the period, from 1917 Code to the Second Vatican Council, witnessed very many pronouncements in the form of documents, the Apostolic Constitution, *Provida mater Ecclesia* is spoken widely in relation to SCL, since the document mentions about SCL - though it has nothing to do with SCL directly.

Provida mater Ecclesiae is a pre-Conciliar Apostolic Constitution of Pope Pius XII, which gave an official recognition and approval to Secular Institutes in the Church. While speaking in relation to SCL, the document gave a different notion about SCL. According to it, in the legislation on religious, Church equalizes the Societies with those of the canonical state of perfection. Though SCL lacks some of the requirements which are necessary for the complete state of perfection or which are regarded as essentials for the life of perfection such as public vows, yet SCL are equalized with religious in other respects. In

²⁶ Cf. T. L. BOUSCAREN - A. C. ELLIS, *Canon Law, A Text and Commentary*, The Bruce Publishing Company, Milwaukee 1946, p. 323.

²⁷ Cf. C. L. PARRES, *Societies of Apostolic Life*, pp. 288 – 289.

short it declares that the Church wished to absorb SCL to the canonical state of perfection²⁸.

1.4 SAL and the Second Vatican Council

Another set of documents that affected the life of the Church is that which came out as the result of the Second Vatican Council. Effectively, the documents of the Council, especially the Decree on the up-to-date renewal of religious life, *Perfectae caritatis*²⁹, the Decree on the pastoral office of Bishops in the Church, *Christus Dominus*³⁰ and the Dogmatic Constitution on the Church, *Lumen gentium*³¹ had much to contribute in the context of Societies. Since these documents are not juridical in nature, they use the titles like Religious or Consecrated Life and do not explicitly mention about SCL, except in few occasions where it mentions explicitly SCL without vows and Secular Institutes³². This precisely shows that the Second Vatican Council does not ignore SCL.

However, a close observation of the documents proves that they have spoken about various aspects of the life of consecration and enormously contributed for their reformation. Some of those aspects are: their way of living, the evangelical counsels, the formation of the

²⁸ Cf. PIUS XII, Apostolic Constitution on Secular Institute, *Provida mater Ecclesiae*, 2 February 1947, in *AAS*, 39 (1947), p. 117; English translation in T. L. BOUSCAREN (ed.), *The Canon Law Digest*, vol. 3, The Bruce Publishing Company, Milwaukee 1954, p. 138.

²⁹ Cf. VATICAN COUNCIL II, Decree on the up-to-date Renewal of Religious Life, *Perfectae caritatis*, 28 October 1965, in *AAS*, 58 (1966), pp. 702 - 712; English translation in A. FLANNERY (ed.), *Vatican Council II: The Conciliar and Post-Conciliar Documents*, vol. 1, pp. 545 – 555.

³⁰ Cf. VATICAN COUNCIL II, Decree on the Pastoral Office of Bishops in the Church, *Christus dominus*, 28 October 1965, in *AAS*, 58 (1966), pp. 673 – 701; English translation in A. FLANNERY (ed.), *Vatican Council II: The Conciliar and Post-Conciliar Documents*, vol. 1, pp. 505 - 527.

³¹ Cf. VATICAN COUNCIL II, Dogmatic Constitution on the Church, *Lumen gentium*, 21 November 1964, in *AAS*, 57 (1965), pp. 5 – 75; English translation in A. FLANNERY (ed.), *Vatican Council II: The Conciliar and Post-Conciliar Documents*, vol. 1, pp. 320 - 385.

³² Cf. *Perfectae caritatis*, no. 1.

members and the dependence of the members on their moderators and the diocesan Bishop etc. Though the Council speaks of these aspects in general, keeping in mind every association that is recognized by the Church as the inspiration of the Holy Spirit, they could be applied to SCL analytically unless they are contrary to their very nature. Some of those principles could be traced precisely in: *Perfectae caritatis* 1, 6, 12 – 14, 15, 18, *Christus dominus* 34, 35: 1 – 4, and *Lumen gentium* 45³³.

1.5 SAL and the Post-Conciliar Documents

The speciality of the post-Conciliar documents is that for the most part they contain the decisions of the Pontifical Commissions and the executive norms. Even in the post-Conciliar documents, the traces of SCL are found only in relation to institutes of perfection. Among those post-Conciliar documents, which may have some interest to our topic, are the instruction, *Renovationes causam*³⁴ that dealt mainly with the novitiate formation; the apostolic exhortation *Evangelica testificatio*³⁵ on the renewal of Religious Life, *Mutuae relationes*³⁶ which spoke on relations between Bishops and religious and the document of the Sacred Congregation for Religious and Secular

³³ Cf. PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, *Codex Iuris Canonici: Fontium Annotatione et Indice Analytico-Alphabetico Auctus*, Libreria Editrice Vaticana, Città del Vaticano 1989, pp. 204 – 206.

³⁴ Cf. SCRSI, Instruction on the Renewal of Religious Life, *Renovationis causam*, 6 January 1969, in *AAS*, 61 (1969), pp. 103 – 120; English translation in A. FLANNERY (ed.), *Vatican Council II: The Conciliar and Post-Conciliar Documents*, vol. 1, pp. 564 - 582.

³⁵ Cf. PAUL VI, Apostolic Exhortation on the Renewal of Religious Life, *Evangelica testificatio*, 29 June 1971, in *AAS*, 63 (1971), pp. 497 – 526; English translation in A. FLANNERY (ed.), *Vatican Council II: The Conciliar and Post-Conciliar Documents*, vol. 1, pp. 604 – 626.

³⁶ Cf. SCRSI, Directives for Mutual Relations between Bishops and Religious in the Church, *Mutuae relationes*, 14 May 1978, in *AAS*, 70 (1978), pp. 472 – 506; English translation in A. FLANNERY (ed.), *Vatican Council II: More Post-Conciliar Documents*, vol. 2, St. Pauls, Mumbai 2005, pp. 232 - 266.

Institutes³⁷, which unfolded the essential elements in the doctrine of the Church as applied to institutes dedicated to the works of the apostolate³⁸. Among these documents, the precise references in the context of the Societies can be found in *Ecclesiae sanctae I*: 23, 24, 25, 26, 29, 33 – 36, *Ecclesiae sanctae II*: 25 – 29, 34, 35, *Renovationis causam* 1, 2, 5, *Mutuae relationes* 28, 31 – 35, 46, 52³⁹.

1.6 SAL in 1983 Code

Though a new name is attributed to these Societies and a separate section is allotted in 1983 Code, from the history we know that SAL is an old entity in the Church⁴⁰. However, in order to reach this present state or recognition, it underwent many processes. It attained this state after many discussions among the consulters of various schemas of 1983 Code. This means that the Societies which were recognized by 1917 Code as SCL were later entitled as Institutes of associated apostolic life⁴¹ and included among the Institutes of Consecrated Life⁴² in the schema of 1977. This identity was objected by many Societies, hence forcing the commission to review the schema and entitle the Societies as SAL in the 1980 schema. But SAL were under the general title of «Associations»⁴³. In the 1982 schema their position was rearranged and as a result, the third part of the Book II, i.e., «People of God», in Part III dealt with ICL and SAL, and treated them under two separate sections as different entities⁴⁴. Fortunately, this

³⁷ Hereafter Sacred Congregation for Religious and Secular Institutes is cited as SCRSI.

³⁸ Cf. SCRSI, *Document on the Essential Elements in the Church's Teaching on Religious Life as applied to Institutes Dedicated to the Works of the Apostolate, 31 May 1983*, in *Enchiridion Vaticanum*, Documenti Ufficiali della Santa Sede 1983 – 1985, vol. 9, Edizioni Dehoniane Bologna, Bologna 1991, pp. 180 – 238.

³⁹ Cf. PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, *Codex Iuris Canonici*, pp. 204 – 206.

⁴⁰ Cf. T. J. FINN, *An Old Entity – A New Name Societies of Apostolic Life*, p. 441.

⁴¹ Cf. COMMUNICATIONES, 10 (1978), p. 162.

⁴² Hereafter the Institutes of Consecrated Life are cited as ICL.

⁴³ Cf. COMMUNICATIONES, 13 (1981), p. 387.

⁴⁴ Cf. C. J. DUSTER, *The Canonical Status of Members of Missionary Society of Apostolic Life of Pontifical Right*, pp. 124 - 128.

structuring was embraced in 1983 Code and SAL are treated specifically in cc. 731 – 746. The legislator valuing equally the gifts of the Spirit in the Church sets this section solely for these Societies in 1983 Code.

2 Nature and Characteristic Features of SAL

1983 Code is the authoritative document which defines and describes the nature and identity of SAL in the Latin Church today. As an outcome of all the efforts of the drafting commissions, c. 731 of 1983 Code explicitly exposes the fundamental nature, characteristic features and juridic identity of SAL by undoubtedly affirming that:

§ 1. Societies of apostolic life approximate to institutes of consecrated life. Their members, without taking religious vows, pursue the apostolic purpose proper to each Society. Living a fraternal life in common in their own special manner, they strive for the perfection of charity through the observance of the constitutions.

§ 2. Among these Societies are some in which the members, through a bond defined in the constitutions, undertake to live the evangelical counsels⁴⁵.

Describing certain concepts that correspond to this entity as given in this canon would deepen our understanding with regard to the juridical nature and various characteristic of SAL.

⁴⁵ c. 731 § 1, CIC/1983: «*Institutis vitae consecratae accedunt societates vitae apostolicae, quarum sodales, sine votes religiosis, finem apostolicum societatis proprium prosequuntur et, vitam fraternam in communi ducentes, secundum propriam vitae rationem, per observantiam constitutionum ad perfectionem caritatis tendunt.*

§ 2. *Inter has sunt societates in quibus sodales, aliquot vinculo constitutionibus definito, consilia evangelica assumunt».*

2.1 Societies

The word «Society» derives from the word «*socius*» (companion, mate) and «*sequor*» which means to follow, to go together⁴⁶. The concept «Society» could be defined as «a stable aggregate of persons for the attainment of a common goal, characterized by a systematic organization, with norms and authorities»⁴⁷. This union of persons shares the same aim and uses the same means to achieve the end. But SAL have a true juridic personality in the Church in accord with c. 113 § 2 of 1983 Code, and thereby differ from mere aggregation of persons⁴⁸. This expression of community of persons pursuing a specific end could be easily traced from c. 673 of 1917 Code. Though the schema of 1977 called these Societies as institutes of apostolic life⁴⁹, later, on 27 May 1980, the title «Societies of Apostolic Life» was chosen from the other six titles that had been proposed⁵⁰ and the word «Institute» is used exclusively for the Religious and the Secular Institutes. Subsequently the schemas that followed and 1983 Code also used the word Societies for the SAL and in this sense the word «Society» appears in the Code around 42 times⁵¹.

⁴⁶ Cf. D. J. ANDRÉS, *Religious Institutes*, in Á. MARZOA, J. MIRAS AND R. RODRÍGUEZ – OCAÑA (eds.), *Exegetical Commentary on the Code of Canon Law*, vol. 2, Wilson & Lafleur, Montréal 2004, pp. 1577 – 1582; F. MASCARENHAS, *Societies of Apostolic Life: Their Identity and their Statistics with regard to the Consecration*, in *Commentarium pro religiosiis et missionariis*, 71 (1990), pp. 19 – 20.

⁴⁷ G. BATTELLI, *Religious Life in the Light of the New Canon Law*, St. Paul Publications, Nairobi 1998, p. 73.

⁴⁸ Cf. E. L. AYUBAN, *Canonical Issues Related to Religious Life*, Claretian Publications, Bangalore 2006, p. 2.

⁴⁹ Cf. COMMUNICATIONES, 10 (1978), p. 162.

⁵⁰ Cf. COMMUNICATIONES, 13 (1981), p. 382; J. BONFILS, *Societies of Apostolic Life*, in MARZOA, MIRAS AND RODRÍGUEZ – OCAÑA (eds.), *Exegetical Commentary on the Code of Canon Law*, vol. 2, pp. 1973 - 1979.

⁵¹ Cf. X. OCHOA, *Index verborum ac locutionum Codicis Iuris Canonici*, Libreria Editrice Lateranense, Città del Vaticano 1984, pp. 456 – 457.

2.2 Apostolic Life

Apostolic life is indeed an important part of the nature of the Church and SAL have this apostolic work or apostolic life as their primary purpose. In religious life existed for centuries, the difference between the contemplative life and the active life. It is in this context that one gets the clear notion of «apostolate» and «the apostolic life»⁵². The drafting commission of 1983 Code also discerned rightly that above all aspects, it was the apostolic work that was held in high esteem among these Societies. The importance of this aspect could be evidently understood from the very title which is given to these Societies. Therefore, the very essence of these Societies would be to be active in the apostolic activities and the members have no choice whether to opt or not to opt for the active apostolate⁵³.

2.3 SAL and Institutes of Consecrated Life

In c. 731 § 1 of 1983 Code we notice that the juridic nature of SAL is established in comparison with religious institutes. The Code states that Societies approximate to institutes of consecrated life⁵⁴. According to the commentators, the Latin verb «*accedunt*» could be translated as «approximate» or «near to» or «close to» and not as «similar» or «like»⁵⁵. This expression clearly distinguishes the nature of SAL from the nature of institutes of consecrated life – i.e., religious institutes, secular institutes and other forms of life like eremitic or anchoritic form of life and order of virgins - which hold the profession of the evangelical councils as their important characteristic⁵⁶. At the

⁵² Cf. V. MACCA, *Apostolato*, in Lustrissimi (ed.), *Dizionario degli Istituti di Perfezione*, vol. 1, pp. 719 – 721.

⁵³ Cf. F. MASCARENHAS, *Societies of Apostolic Life: Their Identity and their Statistics with regard to the Consecration*, pp. 14 – 16.

⁵⁴ Cf. S. L. HOLLAND, *Societies of Apostolic Life*, in JOHN P. BEAL, JAMES A. CORIDEN AND THOMAS J. GREEN (eds.), *New Commentary on the Code of Canon Law*, Theological Publications in India, Bangalore 2004, pp. 894 – 895.

⁵⁵ Cf. J. BONFILS, *Societies of Apostolic Life*, p. 1976.

⁵⁶ Cf. C. J. DUSTER, *The Canonical Status of Members of Missionary Society of Apostolic Life of Pontifical Right*, pp. 123 - 124.

same time, c. 731 § 1 also makes it obvious that SAL are different from ICL on the very fact that its members «do not take religious vows». On the other hand, we should remember that although their differences are shown in 1983 Code by situating them in different sections, their closeness that prevails is evident by the fact of placing them under the same part (Part III of Book II) in the Code.

2.4 Constitutive Elements of SAL

Both paragraphs of c. 731 of 1983 Code consist of necessary clarifying aspects of SAL. While c. 731 § 1 furnishes the common and the constitutive elements in SAL, the second paragraph treats aspects specific only to some Societies. Accordingly, the common elements found in SAL are: their apostolic purpose, fraternal life in common, the striving for the perfection of charity through the observance of the constitutions in a form proper to them and the absence of religious vows, however with the possibility of some of their members undertaking the evangelical counsels by a bond or promise or a vow (not religious vow) as defined in the constitutions⁵⁷.

Among these common elements the apostolic activity, the fraternal life in common, and the striving for the perfection of charity are considered as constitutive elements, which are characteristic to all SAL⁵⁸. SAL, as their very name suggests, are characterized by the fact that their finality is the apostolic activity⁵⁹. The second element i.e., fraternal life in common, is integral to the apostolic dimension; the apostolate is exercised in the fraternity and demands the common life as gathered by the love of Christ. Fraternal life in religious institutes is more rigorous⁶⁰ but in SAL, fraternal life underlines the unity that has to exist among the members when participating in the same apostolic

⁵⁷ Cf. E. GAMBARI, *Religious Life According to Vatican II and the New Code of Canon Law*, translated by the Daughters of St. Paul, St. Paul Editions, Rome 1984, p. 619.

⁵⁸ Cf. S. L. HOLLAND, *Societies of Apostolic Life*, pp. 894 – 895.

⁵⁹ Cf. COMMUNICATIONES, 2 (1981), p. 381.

⁶⁰ Cf. E. MC DONOUGH, *Common Life*, in *Review for Religions*, 52 (1993), pp. 305 – 307.

mission of the Church⁶¹. The third element common to all the SAL is the striving towards the perfection of charity. Indeed, the purpose of all walks of Christian living is striving towards holiness. However, for the members of SAL, this striving goes necessarily through the project of life proper to the Society, which is codified in the constitutions. Therefore, it demands the observance of the constitutions⁶².

2.5 Features Proper to Certain SAL

Canon 731 § 2 indicates the element which is proper to certain SAL. According to it, the Societies are divided into two groups: Societies that assume the evangelical counsels and those others which do not assume. Those who assume, do so by a bond which may be a vow (though not a religious vow), a promise, an oath or a written contract. They assume one or all the three evangelical counsels which implies a juridical obligation but do not contradict the prescriptions of c. 731 § 1. It is the constitutions which should speak of the kind of bond by which the counsels are assumed and also state the specific manner of observing them⁶³. In many Societies the assumption of the evangelical counsels is the act of incorporation, which constitutes a bond between the Society and its member. Besides, it is an act of greater dedication primarily to the apostolic work of the Society rather than an act of consecration.

Consequently, it is evident that, assuming evangelical counsels is not a constitutive factor for SAL. But those who assume the evangelical counsels through a sacred bond are obliged to live a life of chastity, poverty and obedience, in conformity with cc. 599 – 601. In Societies where the members do not formally bind themselves to observe the evangelical counsels, nevertheless, they live what is expressed and attempted by the formal acceptance of the evangelical counsels. The members of these Societies publicly choose this form of life by their incorporation motivated by the love of God and by the

⁶¹ Cf. COMMUNICATIONES, 7 (1975), pp. 78 - 79.

⁶² Cf. A. CALABRESE, *Istituti di Vita Consacrata e Società di Vita Apostolica*, pp. 386 – 389.

⁶³ Cf. S. L. HOLLAND, *Societies of Apostolic Life*, p. 894.

love for their brothers and sisters to realize the apostolic mission to which they are called for⁶⁴.

2.6 Concept of Membership in SAL

The concepts like bond and incorporation which we have discussed earlier lead us naturally to discuss about the aspect of membership in SAL. Details concerning the admission, preparation and incorporation of members in SAL, for the most part, are left to the proper law of each Society⁶⁵. So, each Society has the obligation to draw up its own particular program of probation and formation⁶⁶. However, 1983 Code demands that the norms regarding admission to the religious institutes (cc. 642 – 645) should be observed but according to the character of each Society⁶⁷.

After a period of probation, the candidate is incorporated into the Society according to the norms of its constitutions. It is the juridical bond that unites the subjects to the Society. The Code does not specify anything concerning the nature or manner of this incorporation in SAL. These matters are to be referred to the proper law of each Society. In most Societies this act of incorporation is realized through private vows, oaths or promises. However, the Code highlights the mutual responsibilities involved between the Society and the member by the act of incorporation. The candidate becomes subject to rights and duties defined in the constitutions and the Society assumes the duty of caring for the welfare of the member and providing what is needed for the fulfillment of his/her vocation⁶⁸.

With regard to the incardination of members in clerical SAL, clerics are incardinated into the Society. However, the incardination of the clerical members of SAL to a particular Church is foreseen in the Code and it is left to the determination of the proper law of a Socie-

⁶⁴ Cf. C. L. PARRES, *Societies of Apostolic Life*, pp. 290 - 291.

⁶⁵ Cf. c. 735 § 1, CIC/1983.

⁶⁶ Cf. c. 735 § 3, CIC/1983.

⁶⁷ Cf. C. L. PARRES, *Societies of Apostolic Life*, p. 295.

⁶⁸ Cf. c. 737, CIC/83; V. DE PAOLIS, *La Vita Consacrata nella Chiesa*, Edizioni Dehoniane Bologna, Bologna 1991, p. 436.

ty⁶⁹. When the constitutions of a Society provide for incardination into a diocese, special arrangements are to be made if these members are to play an active role in the life of the Society. Consequently, the dual alliance effected by incorporation into a Society and incardination into a diocese is governed by the proper law of a Society or by particular arrangements between the Society and the proper Bishop as each case arises⁷⁰.

2.7 Typology of SAL

Apart from the common diversity, these Societies could be grouped together into various other canonical divisions. In accordance with the provisions of c. 732⁷¹, the divisions of the institutes which are prescribed in 1983 Code are applicable also to SAL. According to it, the Societies could be thought of, as clerical or lay, pontifical or diocesan, exempt or non-exempt, and of men or women. A brief analysis of these types would help us to determine their canonical status.

a) Clerical or Lay: A Society is clerical, if, in accordance with the intention of the founder and legitimate tradition, it is under the supervision of clerics and assumes the exercise of sacred order and is recognized as such by the ecclesiastical authority. A Society is lay which in accordance with the purpose of the founder or legitimate tradition does not intend the exercise of sacred order and is recognized as lay by the ecclesiastical authority⁷².

b) Pontifical or Diocesan: Pontifical status is obtained by the fact of the Society being erected by the Holy See or approved through a formal decree by the same. They are immediately subject to the Roman Pontiff in internal matters exceeding the competence of the au-

⁶⁹ Cf. c. 736, CIC/1983.

⁷⁰ Cf. c. 738 § 3, CIC/1983.

⁷¹ Cf. c. 732, CIC/1983: Canons 578 – 597 and 606 apply to Societies of apostolic life, with due regard, however, for the nature of each society. For the Societies mentioned in c. 731 § 2, canons 598 – 602 also apply.

⁷² Cf. c. 588, CIC/1983; T. PAZHAYAMPALLIL, *Pastoral Guide*, vol. 3, Kristu Jyoti Publications, Bangalore 2004, pp. 811 – 814.

thority within the Society⁷³. This notion comes from the time of Pope Leo XIII's Apostolic Constitution, «*Conditae a Christo*»⁷⁴. A Society, erected by a diocesan Bishop but lacks a decree of approval from the Holy See, is of diocesan right⁷⁵. Diocesan right Societies are subject to the Local Ordinary to a greater extent than pontifical right institutes. However, the former too enjoy the autonomy of government and discipline due to their status as canonically erected juridical persons in the Church⁷⁶.

c) Exempt or Non exempt: Exempt in our context means withdrawn from the jurisdiction of the Local ordinary and subject either directly to the Supreme Pontiff or to another ecclesiastical authority, in order that their charism can be better preserved. It pertains mainly to the internal organization. These institutes are subject to the Local Ordinary only in cases expressly defined by law⁷⁷. In the revised Code, the concept of exemption has been virtually eliminated and it survives only in c. 591. This canon does not consider any institute as exempt *a iure*, but rather it establishes only the possibility that the Supreme Pontiff could grant such an exemption when it is proposed for the common good⁷⁸. However, there are a few Societies which explicitly mention this privilege of exemption granted in the past, in their constitutions⁷⁹. However, in the present context, Societies of pontifical

⁷³ Cf. c. 589, CIC/1983; D. KAY, *The Historical Origins of Canon 591 of the Code of Canon Law*, in *Studia Canonica*, 25 (1991), pp. 460 – 461.

⁷⁴ Cf. LEO XIII, Apostolic Constitution, *Conditae a Christo*, 8 December 1900, in P. GASPARRI (ed.), *Codicis Iuris Canonici Fontes*, vol. 3, Typis Polyglottis Vaticanis, Romae 1933, pp. 562 - 566.

⁷⁵ Cf. c. 589, CIC/1983.

⁷⁶ Cf. R. MC DERMOTT, *Ecclesiastical Authority and Religious Autonomy: Canon 679 under Glass*, in *Studia Canonica*, 38 (2004), pp. 476 – 477.

⁷⁷ Cf. LEO XIII, Apostolic Constitution, *Romanos Pontifices*, 8 May 1881, in P. GASPARRI (ed.), *Codicis Iuris Canonici Fontes*, vol. 3, pp. 171 – 186; *Mutuae relationes*, nos. 8, 22; *Lumen gentium*, no. 45; *Christus dominus*, no. 35.3; c. 488 § 2, CIC/1917.

⁷⁸ Cf. T. RINCÓN-PÉREZ, *Norms Common to All Institutes of Consecrated Life*, in MARZOA, MIRAS AND RODRÍGUEZ – OCAÑA (eds.), *Exegetical Commentary on the Code of Canon Law*, vol. 2, pp. 1520 – 1529.

⁷⁹ Cf. J. M. HUELS, *The Demise of Religious Exemption*, in *The Jurist*, 54 (1994), p. 53; COMPANY OF THE DAUGHTERS OF CHARITY OF SAINT VINCENT DE PAUL, *Constitutions and Statutes*, Art. 1, , [No publication], Paris 2004, p. 23; SOCIETY

right enjoy many provisions that were applied to exempt institutes or Societies in the past⁸⁰.

d) Feminine or Masculine: The Societies could be of men or of women. However, 1983 Code treats both groups equally and we find legislative unification, unless it is established from the nature of the matter or some particular situation warrants otherwise (c. 606). Greater equality is achieved in the present Code in comparison to the previous Code though a few differences prevail⁸¹.

e) Another peculiar division may be made on the basis of the dependency on the hierarchical Congregation. According to the apostolic constitution *Pastor bonus*⁸² of Pope John Paul II, SAL that are founded for the missions would be subjected to the authority of the Congregation for Evangelization of Peoples⁸³. All the rest would be subjected to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life with regard to the approval of their constitutions and any other matters of concern for which the constitutions do not provide direction⁸⁴.

3 The Aspect of Governance in SAL

The Church by its divine origin is a spiritual reality but at the same time it is also a human entity as it is made up of community of faithful. Since it is a social and visible structure, it cannot exist without certain structures of governance and legal systems which guide her

OF THE CATHOLIC APOSTOLATE, *Law of the Society of the Catholic Apostolate*, no. 5, SAC, Rome 2018, p. 25.

⁸⁰ Cf. R. MC DERMOTT, *Ecclesiastical Authority and Religious Autonomy: Canon 679 under Glass*, pp. 476 – 477.

⁸¹ Cf. T. RINCÓN-PÉREZ, *Norms Common to All Institutes of Consecrated Life*, pp. 1575 - 1576.

⁸² Cf. JOHN PAUL II, Apostolic Constitution, *Pastor Bonus*, 28 June 1988, in *AAS*, 80 (1988), pp. 841 – 912; English translation in *Code of Canons of the Eastern Churches*, Latin-English Edition, Theological Publications in India, Bangalore 2003, pp. 775 – 843.

⁸³ Cf. JOHN PAUL II, *Pastor Bonus*, Art. 90 § 2.

⁸⁴ Cf. V. DE PAOLIS, *Congregazione per L'evangelizzazione dei Popoli*, in PIO VITO PINTO (ed.), *Commento alla Pastor Bonus e alle Norme Sussidiarie della Curia Romana*, Libreria Editrice Vaticana, Città del Vaticano 2003, pp. 130 – 131.

in achieving the purpose⁸⁵. This principle applies to all the institutions and other entities of the Church and so also to SAL. Before glancing into the structures and the exercise of governance in SAL, some preliminary knowledge about the concept of governance, the exercise of power of governance is imperative.

3.1 The Concept of Governance

Governance in the Church is a form of shepherding in imitation of the Good Shepherd. Governance exists for service and is not a form of dominance. The root word for governance that was used in the Latin tradition and common in 1917 Code is «*regimen*» which derives from the Latin verb «*regere*». «*Regere*» does not mean «to rule over» or «to dominate», but «to guide or direct», as a rider does a horse or a helmsman does a ship⁸⁶. Further, in the documents of the Second Vatican Council, the word «*regimen*» is found thirteen times referring to a spiritual governance of Bishops. Thus, it is clear that the concept of «governance» refers to shepherding or guarding activity of a person to whom the care of a portion of the people of God is entrusted. So, although generally translated as «governance», what is intended is «shepherding»⁸⁷.

At the same time in legal terms, governance could be described as a canonical vehicle or an instrument of Church's administration⁸⁸ through which the Church exercises authority and performs various

⁸⁵ Cf. B. ALONSO, *Governance in Religious Institutes*, in JOSE MA. TINOKO (ed.), *Selected Readings in Canon Law*, vol. 1, Santo Tomas University Press, Manila 1989, pp. 232–233.

⁸⁶ Cf. J. A. CORIDEN, *An Introduction to Canon Law*, Paulist Press, New York 2004, p. 164; J. A. CORIDEN, *Lay Persons and the Power of Governance*, in *The Jurist*, 59 (1999), p. 335.

⁸⁷ Cf. M. A. FAHEY, *Diocesan Governance in Modern Catholic Theology and in the 1983 Code of Canon Law*, in JAMES K. MALLETT (ed.), *Ministry of Governance*, Canon Law Society of America, Washington 1986, p. 129.

⁸⁸ Cf. J. JAMES CUNEO, *The Power of Jurisdiction: Empowerment for Church Functioning and Mission Distinct from the Power of Orders*, in *The Jurist*, 39 (1979), p. 185.

functions⁸⁹. In the case of SAL, the act of governance is carried-out through the instrumentality of the Chapters and the Superiors who are the duly chosen individuals inspiring, directing and administering with authority the affairs of a Society. The proper law in conformity with the provisions of the Code should provide structures and offices that would facilitate the mission by designating the functions of the members and at the same time preserve and protect the inspiration, nature and purpose of a Society and make it a living reality⁹⁰.

Potestas regiminis, better translated as «power of governance», and also called as «jurisdiction», is the name given to the authority of leadership in the Church⁹¹. C. 129 § 1 says that the power of governance exists in the Church by divine institution but the way this power is exercised is a matter regulated by ecclesiastical law. This concept is not defined by 1983 Code and so there is no single definition for it. For our study here, we could adopt the definition given by John M. Huels:

«The power of governance is the lawfully granted, public power necessary for validly performing a juridical act that is legislative, executive or judicial»⁹².

While those who are in sacred order are capable of the power of governance, the lay members of Christ's faithful can cooperate in the exercise of it⁹³. This power of governance is received through the concession of a canonical mission⁹⁴. Canonical mission is a juridical act whereby an individual or group is endowed with rights and obligations to exercise certain functions in the name of the Church⁹⁵. This power

⁸⁹ Cf. J. PULICKAL, *Ecclesiastical Governance*, in *A Dictionary of Canon Law*, Biblia Publications, Trissur 2004, p. 209.

⁹⁰ Cf. M. LINSKOTT, *Leadership, Authority, and Religious Government*, in *Review for Religious*, 52 (1993), pp. 169 – 171.

⁹¹ Cf. J. A. CORIDEN, *An Introduction to Canon Law*, p. 164.

⁹² J. M. HUELS, *The Power of Governance and its Exercise by Lay Persons: A Juridical Approach*, in *Studia Canonica*, 35 (2001), pp. 65 – 66.

⁹³ Cf. c. 129, CIC/1983.

⁹⁴ Cf. J. JAMES CUNEO, *The Power of Jurisdiction: Empowerment for Church Functioning and Mission Distinct from the Power of Orders*, pp. 185 - 189.

⁹⁵ Cf. *Ibid.*, p. 184.

can be exercised in the internal and external forum⁹⁶. The terms «internal» and «external» describe where jurisdiction is exercised. But its effect need not be restricted to one forum⁹⁷. The power of governance is divided into legislative, executive and judicial power. In other words, this power is required in order to perform, not every kind of juridical act but only those juridical acts that are legislative, executive or judicial in nature⁹⁸. Along with this division, c. 131 classifies it into ordinary power and delegated power in relation to its transmission and its exercise⁹⁹.

3.2 The Structures of Governance in SAL

1983 Code provides structures of governance for SAL, in order to attain the specific purpose of its members and the Society at large. SAL which shares various aspects - like origin, erection, patrimony, aggregation, divisions, mergers, suppression, the typology, proper law, general relations with the hierarchy, exemption, chapters and general norms for admission process – with ICL¹⁰⁰, continues to draw heavily on cc. 617 – 633 that regulate consecrated life in general or religious institutes in particular with regard to their governance, despite the fact of c. 734 stating that the governance of SAL is defined by their constitution¹⁰¹. At the same time, though a broad recourse is made to the canons regulating religious institutes¹⁰², SAL do not lose its uniqueness with regard to their governance because the law itself limits the applications of those canons on SAL¹⁰³.

⁹⁶ Cf. c. 130, CIC/1983.

⁹⁷ Cf. R. J. BOWERS, *Episcopal Power of Governance in the Diocesan Church: From the 1917 Code of Canon Law to the Present*, The Catholic University of America, Washington 1990, p. 9.

⁹⁸ Cf. J. M. HUELS, *The Power of Governance and its Exercise by Lay Persons: A Juridical Approach*, p. 66.

⁹⁹ Cf. c. 131, CIC/1983; J. I. ARRIETA, *Governance Structures within the Catholic Church*, I, Wilson & Lafleur, Montréal 2000, pp. 24 – 26.

¹⁰⁰ Cf. E. GAMBARI, *Religious Life According to Vatican II and the New Code of Canon Law*, pp. 619 - 620.

¹⁰¹ Cf. c. 734, CIC/1983; V. DE PAOLIS, *La Vita Consacrata nella Chiesa*, p. 435.

¹⁰² Cf. E. MC DONOUGH, *Basic Governance Structures in Religious Institutes*, in *Review for Religious*, 49 (1990), p. 929.

¹⁰³ Cf. c. 734, CIC/1983: «[...] according to the nature of each Society».

3.3 Exercise of Governance in SAL¹⁰⁴

With regard to the exercise of governance, c. 596 § 1 states that «Superiors and Chapters of institutes have that authority over the members which is defined in the universal law and in the constitution». Every institute as public juridical person in the Church whether lay or cleric, possesses the power which is necessary for carrying out its administration according to its nature and the proper end¹⁰⁵. This power comes from God through the ministry of the Church¹⁰⁶. During the revision process, this power was described as «an ecclesiastical power» but «non-hierarchical power», «internal power», «a public power»¹⁰⁷. The document of SCRSI, states that «It is conferred by the Church at the time of establishing each institute and by the approving of its constitutions. [...] It is to be exercised according to the norms of common and proper law in a spirit of service [...]»¹⁰⁸.

The power attributed to an institute has a public character, that is, it implies the exercise of a function proper to the Church and it is carried out in her name and so their task may be called «an ecclesiastical office»¹⁰⁹. This power which is granted to the institutes does not distinguish between clerical and non-clerical institutes and at the same time this power is distinguished from the power of governance. This is evident from c. 596 § 2 which clearly states that in clerical religious institutes of pontifical right, the Superiors and the Chapters possess a twofold type of authority: that is the ecclesiastical power of govern-

¹⁰⁴ In this section, SAL and Religious Institutes are used interchangeably unless they are obviously contrary to their nature explicitly.

¹⁰⁵ Cf. E. GAMBARI, *Religious Life According to Vatican II and the New Code of Canon Law*, p. 497.

¹⁰⁶ Cf. S. L. HOLLAND, *Internal Governance in Consecrated Life*, in *CLSA Proceedings*, 45 (1983), p. 39.

¹⁰⁷ Cf. COMMUNICATIONES, 11 (1979), pp. 305 – 306.

¹⁰⁸ SCRSI, *Document on the Essential Elements in the Church's Teaching on Religious Life as applied to Institutes Dedicated to the Works of the Apostolate*, 31 May 1983, no. 49, in *Enchiridion Vaticanum*, Documenti Ufficiali Della Santa Sede 1983 – 1985, vol. 9, pp. 232 – 234.

¹⁰⁹ Cf. E. GAMBARI, *Religious Life According to Vatican II and the New Code of Canon Law*, p. 499.

ance or jurisdiction for both the internal and external forum and «that power» common to all institutes of consecrated life (c. 596 § 1). Though this power has no suitable name in the law, it is evident that the basis of the unnamed power is not sacred order¹¹⁰. By virtue of this power Superiors of any institute of consecrated life and SAL can urge the observance of the constitutions, can admit a candidate to the institute or Society or dismiss him/her according to the constitutions, etc¹¹¹.

Though this unnamed power is different from the power of governance, it is given some of the provisions that are specified in the context of the power of governance by c. 596 § 3; they are - with regard to ordinary power, delegated power, sub-delegation, exercise of executive power, and executive power of governance supplied by the Church in common error and probable doubt¹¹².

3.4 Autonomy of SAL

The revised Code through c. 586 grants to institutes a right to proper autonomy of life. This autonomy of governance is not a special favour but an acknowledgement of the inherent right and indispensable quality possessed by institutes in their own internal structures, norms and procedures¹¹³. By this autonomy each institute enjoys considerable freedom in directing their internal affairs. It also gives legal power and right to the competent authority of the Society to exercise various functions¹¹⁴. This autonomy of life does not indicate total independence but has to be understood within the context of the hierarchical Church and subject to its authority. This is because the Church is the source of their life and existence and institutes cannot exist in-

¹¹⁰ Cf. J. KOCHUPURACKAL, *Religious Authority and Power in the Particular Law of the Little Flower Congregation*, Pontifical Oriental Institute, Rome 1994, p. 145.

¹¹¹ Cf. T. PAZHAYAMPALLIL, *Pastoral Guide*, vol. 3, p. 861.

¹¹² Cf. T. PAZHAYAMPALLIL, *A Commentary on the New Code of Canon Law*, KJC Publications, Bangalore 1985, pp. 426 – 427.

¹¹³ Cf. V. KOLUTHARA, *Rightful Autonomy of Religious Institutes*, Dharmaram Publications, Bangalore 2005, p. 63.

¹¹⁴ Cf. J. M. HUELS, *The Demise of Religious Exemption*, p. 53.

dependent of the Church¹¹⁵. The just autonomy of institutes provides a guarantee against unwarranted hierarchical influence¹¹⁶.

The primary object of just autonomy is twofold: it provides the mechanism that regulates the life and discipline of the members of the institute and serves as a standard bearer to protect the patrimony of an institute so that it can grow and flourish in the Church¹¹⁷. Through this proper autonomy the members themselves structure and regulate their life and discipline within the institute according to the norms of the common and proper law. Therefore, the internal governance which consists of the acts of the Superiors and Chapters is autonomous¹¹⁸.

3.5 Organs of Governance

Governance in religious institute is accomplished in three ways: laws, bodies and persons¹¹⁹. Laws include the universal law - as contained in 1983 Code and those issued by the Apostolic See – and the norms of the particular law issued by the particular Church and the proper law of the individual institute. Bodies may be collegial or non-collegial, e.g., Chapter, councils and other lawfully designated groups. Persons are individuals who govern the institute in accordance with the norm of law and with personal authority¹²⁰.

¹¹⁵ Cf. V. DE PAOLIS, *La Vita Consacrata nella Chiesa*, pp. 100 – 101.

¹¹⁶ Cf. L. CHIAPPETTA, *Il Codice di Diritto Canonico*, vol. 1, Edizioni Dehoniane, Roma 1996, p. 723; V. KOLUTHARA, *Rightful Autonomy of Religious Institutes*, p. 64.

¹¹⁷ Cf. A. CALABRESE, *Istituti di Vita Consacrata e Societa di Vita Apostolica*, pp. 38 – 39.

¹¹⁸ Cf. A. L. KAITHARATH, *The Autonomy and Hierarchical Dependence of Religious Institutes According to the Code of Canon Law*, Pontificia Universitas Urbaniana, Rome 2002, pp. 110 – 111.

¹¹⁹ Cf. R. M. SMITH, *The Governance of Institutes*, in J. BEAL, J. CORIDEN AND T. GREEN (eds), *New Commentary on the Code of Canon Law*, p. 780.

¹²⁰ Cf. A. MACHA, *The Juridical Identity of the Societies of Apostolic Life Compared to Institutes of Consecrated Life in the Light of the Present Code of Canon Law (CIC/1983), Can. 731: A Comparative Study*, Urbanian Pontifical University, Rome 1994, pp. 120 – 121.

3.5.1 *Proper Law*

Life and activities of the members of an institute or a Society are governed for the most part by 1983 Code and the proper law of the individual institute. Each institute has its own proper law which serves the institute in ways that are both pedagogic and exhortatory¹²¹. The *Motu proprio, Ecclesiae sanctae II*, 12 – 14¹²², recommends that the proper law of each institute be articulated in two different codes: 1) a fundamental code or constitutions and 2) a secondary code or supplementary code. So, we could say that the proper law is the combination of these both codes. This has been adopted by 1983 Code in c. 587. Dispensation from the proper law depends on the nature of the law and the authority with the right to dispense¹²³. The norms in proper law are necessary for the harmonious ordering of the institute because they contain practical applications of the principles and rules contained in the constitutions. By their nature they can be reviewed according to the needs of time and place¹²⁴.

3.5.1.1 *Constitutions*

Every institute in view of c. 587 ought to have their constitution which is also called as fundamental code and it must be the combination of both doctrinal and canonical elements¹²⁵ or of both spirituality

¹²¹ Cf. R. M. MC DERMOTT, *Norms Common to all Institutes of Consecrated Life*, in J. BEAL, J. CORIDEN AND T. GREEN (eds.), *New Commentary on the Code of Canon Law*, pp. 753 – 755.

¹²² Cf. PAUL VI, Norms for Implementing the Decree, on the Up-to-Date Renewal of Religious Life, *Ecclesiae sanctae II*, 6 August 1966, nos. 12 – 14, in *AAS*, 58 (1966), p. 777; English translation in A. FLANNERY (ed.), *Vatican Council II: The Conciliar and Post-Conciliar Documents*, vol. 1, p. 558.

¹²³ Cf. R. M. MC DERMOTT, *Norms Common to all Institutes of Consecrated Life*, pp. 753 – 755.

¹²⁴ Cfr. T. PAZHAYAMPALLIL, *Pastoral Guide*, vol. 3, p. 827.

¹²⁵ Cf. M. CERLETTY, *Some Practical Helps for the Development of Constitutions*, in *Studia Canonica*, 14 (1980), pp. 157 – 158; J. F. GALLEN, *Typical Constitutions and Directory of Autonomous Religious House*, in *Review for Religious*, 39 (1980), pp. 762 – 763.

and law¹²⁶. Along with social boundaries of membership, minimal norms of behavior and organization in general¹²⁷, they articulate the specific purpose of the institute¹²⁸ and the constitutive norms, i.e., its nature, character, purpose and governance, the discipline concerning the administration of goods, the formation, incorporation and separation of a member¹²⁹. At the same time, *Normae* (norms) given by the Congregation for Religious¹³⁰ provide the details about the aspects which should be excluded from the constitutions. So, with great esteem for individual constitutions of institutes and for the purpose of preserving and safeguarding the identity and the freedom of individual institutes, the common legislation is limited to the minimum¹³¹. However, the constitutions require approval and it is granted respectively by the Apostolic See for the institutes of pontifical right (c. 589) and by the Bishop of the principal seat of the institute for those of diocesan right (c. 595 § 1).

3.5.1.2 *Supplementary Code(s)*

The supplementary code is a companion book which is spoken in c. 587 § 4 along with universal law and constitutions¹³² and contains norms which are with lesser juridical nature and more easily

¹²⁶ Cf. SCRSI, Private Reply, 10 July 1972, in JAMES I. O'CONNOR (ed.), *The Canon Law Digest*, vol. 7, Canon Law Digest, Chicago 1975, p. 482.

¹²⁷ Cf. C. OSIEK - K. HUGHES, *Constitutional Hermeneutics: On the Interpretation of Constitutions*, in *Review for Religious*, 45 (1986), pp. 59 – 60.

¹²⁸ Cf. E. MC DONOUGH, *Constitutions*, in *Review for Religious*, 50 (1991), pp. 458 – 459.

¹²⁹ Cf. B. PENNINGTON, *The New Code of Canon Law and the New Legislation of the Religious Institute*, in *The Jurist*, 42 (1982), pp. 192 – 193; V. KOLUTHARA, *Rightful Autonomy of Religious Institutes*, p. 77.

¹³⁰ Cf. SACRA CONGREGATIO DE RELIGIOSIS, *Normae Secundum quas Sacra Congregatio de Religiosis in Novis Religiosis Congregationibus Approbandis Procedere Solet*, 6 March 1921, no. 22, in XAVERIUS OCHOA (ed.), *Leges Ecclesiae*, vol. 1, Commentarium pro Religiosis, Roma 1966, cols 376 – 377.

¹³¹ Cf. J. SUNDARA RAJ, *The Juridical Nature of the Religious Constitutions in the New Law System of the Church*, Pontificia Universitas Lateranensis, Roma 1991, p. 39.

¹³² Cf. c. 587 § 4, CIC/1983; S. EUART, *Religious institutes and the Juridical Relationship of the Members to the Institute*, in *The Jurist*, 51 (1991), pp. 107 – 108.

adoptable¹³³. It may have whatever name the institute chooses such as Complementary codes, Norms, Directories, Applications, *Ratio institutionis religiosae*, that is, the guidelines for formation, as well as the statutes for the missions, the ritual or book of ceremonies, Statutes (general statutes enacted by General Chapter, Provincial Statutes enacted by Provincial Chapter), Books of Customs, Supplementary collection of laws and the like. These supplementary codes permit the elimination of many secondary elements from the constitutions¹³⁴. It is not subject to the approval of the ecclesiastical authority; rather it is subject to the General Chapter, which may modify norms and introduce new ones as needed with the passing of time. Nevertheless, for the first time the supplementary code is to be submitted with the fundamental code to the competent ecclesiastical authority, so that it may be seen whether the two codes are in harmony with each other¹³⁵.

3.5.2 Superiors

The word «Superior» derives from Latin «*Superus*» which means «above». In view of the religious institutes, we can speak of two main categories of Superiors¹³⁶: 1) External Superiors – Roman Pontiff¹³⁷ and Diocesan Bishop, and 2) Internal Superiors – Superiors mentioned in c. 596. The interest of our study here lies upon internal Superiors, who could be defined as «[...] in the strict sense, the physical person who is legitimately appointed or elected to govern an institute, a house or a part of the institute who exercises ordinary power and has primacy in the internal hierarchy»¹³⁸. This power, since they

¹³³ Cf. J. F. GALLEN, *Typical Constitutions and Directory of Autonomous Religious Houses*, pp. 762 – 763.

¹³⁴ Cf. E. GAMBARI, *Religious Life According to Vatican II and the New Code of Canon Law*, pp. 75 – 77.

¹³⁵ Cf. M. CERLETTY, *Some Practical Helps for the Development of Constitution*, p. 159.

¹³⁶ Cf. V. J. POSPISHIL, *Eastern Catholic Church Law*, Saint Maron Publications, New York 1996, pp. 314 – 315.

¹³⁷ The Roman Pontiff is also an internal Superior for all in the Church. By virtue of his office he possesses supreme, full, immediate, and universal ordinary power in the Church, which he is always able to exercise freely (c. 331).

¹³⁸ J. PULICKAL, *Superior*, in *A Dictionary of Canon Law*, p. 371.

received from God through the ministry of the Church, must be exercised in the spirit of service¹³⁹. The powers and duties of Superiors are conferred and regulated by common law and the proper law of each institute. The proper law should establish clearly the limits of authority to be exercised by Superiors at each level¹⁴⁰. The Code dedicates canons 617 – 630 to speak about various elements in relation to Superiors who are also called as moderators and distinguishes them into three levels: General (also called Supreme Moderator), Provincial and Local¹⁴¹. However, these three levels of Superiors could be grouped in three categories: 1) Major Superiors, 2) Local Superiors and 3) Delegated Superiors.

3.5.2.1 Major Superiors

Major Superiors are those who govern an entire institute, or a province or a part equivalent to a province, or an autonomous house; the Vicars of the above are also Major Superiors. To these are added the Abbot Primate and the Superior of a monastic congregation, though these do not have all the authority which the universal law gives to Major Superiors¹⁴².

Though all the above mentioned are Major Superiors, the Supreme Moderator is the Highest Superior, having authority over the entire institute according to the constitutions. The other Superiors have power within the limits of their office. In many institutes the Highest Superior is called President or Superior General according to the constitutions¹⁴³. The universal law reserves certain powers only to the Supreme Moderator and even though all the Major Superiors exercise proper ordinary power, all are subordinate to the Supreme Mod-

¹³⁹ Cf. S. L. HOLLAND, *Internal Governance in Consecrated Life*, p. 43.

¹⁴⁰ Cf. E. GAMBARI, *Religious Life according to Vatican II and the New Code of Canon Law*, pp. 541 - 542.

¹⁴¹ Cf. V. KOLUTHARA, *Rightful Autonomy of Religious Institutes*, p. 74.

¹⁴² c. 620, CIC/1983.

¹⁴³ Cf. COMMUNICATIONES, 25 (1993), p. 285.

erator¹⁴⁴. The Supreme Moderator is designated by canonical election, which is regulated by c. 119 and cc. 164 – 179 and by the complementary norms of the proper law of the institute¹⁴⁵.

Vicars of the Supreme Moderator and the Major Superiors mentioned above are also Major Superiors. Their power falls under the same canonical restrictions just as that of their respective moderators, although they enjoy it in virtue of office. Although their power is equivalent to that of their moderators, their authority, however, is subordinate in virtue of their office as assistants¹⁴⁶. These vicars assume the office as moderators only in case of an absence on the part of their respective Superiors¹⁴⁷.

3.5.2.2 *Local Superiors*

The Superiors of particular houses of the institute are called local Superiors, who have authority over each house on the local level¹⁴⁸. However, every community of whatever size is subject to its need for animation, encouragement to fidelity in common life and their specific mission. So, the role and presence of a Local Superior should be determined according to the situation, need, values and capabilities of the group¹⁴⁹.

The Superior of the local house has the responsibility to carry out the needs of the members in relation to spiritual and material aspects as mentioned in c. 610¹⁵⁰. In relation to this responsibility, c. 567 § 1 gives the right to the Local Superior in a lay religious institute, after consulting the community members, to propose to the Bishop, a

¹⁴⁴ Cf. F. G. MORRISEY, *The Relationship between Superiors in a Religious Institute*, in *Consecrated Life*, 23 (2001), pp. 137 – 138.

¹⁴⁵ Cf. c. 625 § 1, CIC/1983.

¹⁴⁶ Cf. V. DE PAOLIS, *La Vita Consacrata nella Chiesa*, pp. 196 – 199.

¹⁴⁷ Cf. E. GAMBARI, *Religious Life According to Vatican II and the New Code of Canon Law*, p. 559.

¹⁴⁸ Cf. J. F. GALLEN, *Typical Constitutions and Directory of Autonomous Religious Houses*, p. 761.

¹⁴⁹ Cf. S. L. HOLLAND, *Religious House according to Canon 608*, in *The Jurist*, 50 (1990), p. 551.

¹⁵⁰ Cf. J. F. GALLEN, *Canon Law for Religious: An Explanation*, Alba House, New York 1983, p. 49.

priest of their choice as their chaplain. As the Local Superiors have personal authority over the members of the house and others are obliged to obey them¹⁵¹. If a member's act becomes grave scandal and if delay in dealing with the matter will cause great danger, the Local Superior with the consent of his or her council can expel the member from the house (c. 703 § 1). As the members of the house obey the Local Superior, in the same way the Local Superiors are subordinated to both their immediate Major Superior and the Supreme Moderator. Regarding decision making on the local level, the determination of councils and their meetings with the Local Superior depends on the need of the local community¹⁵².

3.5.2.3 *Delegated Superiors*

The Superiors who are delegated, by the Major Superior either for one act or for a number of cases, the administrative power attached by law to his office, are called delegated Superiors. They don't have an ordinary power and they are without the conferral of an ecclesiastical office (c. 131 § 1). While an ecclesiastical office always brings with it well specified faculties, in delegation the nature, the extent and the duration of the power are from time to time established in detail by the delegator (cc. 133, 142 § 1). Delegation permits the office bearers to lessen the burden of their office and to make flexible the exercise of governance. The executive power of governance can be delegated only to clerics or to colleges capable of jurisdiction. For the validity of the delegation, express or tacit acceptance is necessary. The delegated power in the general form is to be interpreted in a broad sense, the delegated power in the special form, on the other hand, in a strict sense, in any case, however, every delegated power includes those faculties without which it cannot be exercised. The delegated power ceases by the fulfillment of the mandate, by the lapse of time, by the

¹⁵¹ Cf. M. M. MODDE, *Religious Houses and Governance*, in HITE, HOLLAND - WARD (eds.), *A Handbook of Canons 573 – 746: Religious Institutes, Secular Institutes, Societies of the Apostolic Life*, p. 87.

¹⁵² Cf. D. J. ANDRÉS, *Superiors and Councils*, in MARZOA, MIRAS AND RODRÍGUEZ – OCAÑA (eds.), in *Exegetical Commentary on the Code of Canon Law*, vol. 2, pp. 1624 - 1627.

revocation on the part of the delegator and by the resignation of the delegate, communicated to the delegator and accepted by him¹⁵³.

3.5.3 Councils

Council is an organ of consultation. It is a group of persons which assists the one who is in authority. It is not a juridical person and the members are not Superiors¹⁵⁴. C. 627 § 1 has made it a general law: «Superiors are to have their own council, in accordance with the constitutions, and they must make use of it in the exercise of their office». This applies to all Superiors at every level: General, Provincial, organs equivalent to Province and Local. The designation of the councilors is left to the proper law of each institute. However, in a centralized institute, mostly the General Chapter elects the General Councilors¹⁵⁵.

The twofold functions of the council are giving advice or consent to Superiors, thereby providing them with an expanding vision and helping them not to abuse the authority they possess¹⁵⁶. Strictly the council is not a representative body of the institute or Society. In the council, the Superior takes the decision since the council is neither a collegial organ¹⁵⁷ nor the Superior is *primus inter pares*¹⁵⁸. The council mainly discharges its function of participation in governance by a deliberative or consultative vote, depending on each case. Deliberative refers to the consent and the consultative refers to the advice. Proper law, guided by the common law should specify it¹⁵⁹. The vote of the council does not have a collegial characteristic decision even when the Superior votes as well, unless the law explicitly states oth-

¹⁵³ Cf. M. WIJLENS, *Juridical Acts*, in J. BEAL, J. CORIDEN AND T. GREEN (eds.), *New Commentary on the Code of Canon Law*, pp. 186 – 192.

¹⁵⁴ Cf. V. DE PAOLIS, *La Vita Consacrata nella Chiesa*, pp. 215 – 216.

¹⁵⁵ Cf. J. F. GALLEN, *Typical Constitutions and Directory of Autonomous Religious Houses*, p. 761.

¹⁵⁶ Cf. S. L. HOLLAND, *Internal Governance in Consecrated Life*, p. 44.

¹⁵⁷ Cf. E. MC DONOUGH, *The Role of Councils in Religious Governance*, in *Review for Religious*, 55 (1996), p. 536.

¹⁵⁸ Cf. T. PAZHAYAMPALLIL, *Pastoral Guide*, vol. 3, pp. 863 - 865.

¹⁵⁹ Cf. c. 127, CIC/1983.

erwise as in c. 699. If consent is required and the council does not consent, the moderator cannot proceed further. Conversely, if the council gives the desired consent, the Superior may even decide not to proceed¹⁶⁰.

Today besides the ordinary council which functions habitually or permanently, an extraordinary council providing wider representation, has been introduced which includes a greater number of members who meet occasionally for the more important acts which are of interest to the entire Institute or Province¹⁶¹.

3.5.4 Chapter

Chapter is another organ of governance in institutes or Societies. This organ of governance, like other organs has its own history which is as old as religious life and which has gradually developed through the centuries. In the light of the exhortations of the fathers of the Second Vatican Council, 1983 Code dedicates cc. 631 – 633 precisely dealing with Chapters. The Chapter could be General, Provincial or Local on the basis of the level on which it operates and its power is extended to everything within its proper sphere¹⁶². Technically speaking, although a Chapter does not govern, it constitutes the highest internal authority while in session¹⁶³. Among these three kinds, c. 631 § 1 - explains nature, power and functions of the General Chapter which should be a representative body of an entire Society or an institute¹⁶⁴ has the power to make commendable renewal in the life of the members of a Society or an institute.

¹⁶⁰ Cf. M. M. MODDE, *Religious Houses and Governance*, pp. 82 – 85.

¹⁶¹ Cf. E. GAMBARI, *Religious Life according to Vatican II and the New Code of Canon Law*, p. 554.

¹⁶² Cf. A. MONTAN, *Gli Istituti di Vita Consacrata e le Società di Vita Apostolica*, in GIANFRANCO GHIRLANDA, VELASIO DE PAOLIS AND AGOSTINO MONTAN (eds.), *Il Codice del Vaticano II: La Vita Consacrata*, Edizioni Dehoniane Bologna, Bologna 1983, p. 171.

¹⁶³ Cf. E. MC DONOUGH, *Basic Governance Structures in Religious Institutes*, p. 929.

¹⁶⁴ Cf. T. PAZHAYAMPALLIL, *Pastoral Guide*, vol. 3, pp. 862 - 863.

Conclusion

The Church in many ways carried out the mission of Christ and consecrated life was one among them. It was considered as the best means to witness Christ in the world by the early Christians. The later history of the Church bears witness that when those living Religious Life found it difficult to carry out the mission entrusted to the Church, some likeminded men and women through the inspiration of the Holy Spirit brought about a new way of life and also taking up new way of Apostolate but resembling consecrated life adhering to the time, need and place to bear witness to Christ and actively to carry out the mission which is entrusted to the Church.

These groups were recognized by the Church, at various times by different names and the present legislation recognized them as SAL and designated special juridical nature and purpose, fundamental juridical structures, functions to foster the purpose of their existence and sustain rights and obligations. Along with canonical approval, the Church has set aside a set of procedures of governance because no structure or function can bring out maximum expected result unless guided by laws. These laws included those which were enacted and executed by the Church as well as by each individual Society according to their nature and patrimony. These laws were executed through various organs of governance as we have seen above.

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