

THE CHANGES IN BOOK VI – ON SANCTIONS: ARE THEY MORE STRINGENT THAN PASTORAL?

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The Catholic Church at least in recent twenty years has been very much challenged by the secular society for the misconducts of Clerics in the area of sexual offences. All the more it was a serious accusation levelled against the Hierarchy that the Church does not take serious steps against the offenders. Many were accused, taken to task in the civil court and penalized with a heavy fine at times burdening the dioceses. To listen to the silent cry of the victims, to repair the damage caused to them and to accept the very serious offences on the part of the Church have been the task of hierarchy often echoed in the statements of the Popes. Feeling sorry for the damage caused to the victims alone will not improve the situation. Instead, the Church hierarchy needs to draw new guidelines.

In order to respond very seriously to the impending situation of this kind, Pope Francis from the beginning of his Pontificate made constant efforts to instill in the mind of Clerics that these offences are against the very dignity of human life and such may destroy completely the future of minors when they become victims. Besides, he also attempted to make new regulations. Of course revising the Book VI of CIC was initiated by Pope Benedict XVI in 2007. The revision was completed and the new norms were promulgated by Pope Francis by his Apostolic Constitution *Pascite Gregem Dei* on 23 May 2021 and they come to effect from 8th of December 2021. The changes in Book VI reflect seriously the aspiration of the Second Vatican council (Lumen Gentium, n.27) and incorporated some of the norms given in *Motu Proprio* Apostolic Letter *Vos estis Lux Mundi* of 7 May 2019.

The revision in the Book VI becomes necessary in order to address to the new situation in the Church; to respond positively to repair the damage; to restitute justice to the damaged and to avoid scandal to the Church. We need to evaluate the revision in a broader perspective than focusing our attention only on specific offences such as minor abuses.

One of the main objectives of the sanctions in the Church is the reform of the offender. This aspect takes into account the background and personal and psychological condition before and after the offence committed. In analyzing these aspects, one may often find the accused in a safe and protected zone ignoring the damage caused to the affected. Safeguarding the offender: is it pastoral? Ignoring the affected or delaying justice: is it pastoral?

A. AIMS OF SANCTIONS IN THE CHURCH

The revision in CIC c.1311§ 2 speaks about the aims of sanctions in the Church. This new paragraph bases its foundation on Lumen Gentium 27 referring the role of pastors to exercise their pastoral office not only by correction, persuasion and example but also by authority and sacred power. They need to safeguard and promote both the common good and the individual good through pastoral charity, examples of life, advice and exhortation and also imposition or declaration of penalties. Imposing or declaring penalties has become one of the different modes of pastoral office. And it has a specific goal – restoration of justice, reform of the offender and repair of scandal.

B. ROLE OF THE JUDGE IN THE APPLICATION OF PENALTIES

In imposing or declaring penalties, the Code has given discretionary power to the Judge/ Ecclesiastical Superior either to mitigate the severity of penalties or to substitute it with penal remedies and penance. In some areas, the discretion is on the judge, while in some other instances, the Code itself foresees the possibility of mitigating the penalties.

1. The Situations foreseen by Law mitigating the penalty
 - a. When offence committed by one lacking the use of reason due to culpable drunkenness or other mental disturbances provided such drunkenness was not aroused in order to commit the offence (c.1326 § 1 n.4).
 - b. There are 10 situations enumerated in c.1324 § 1 and in all these situations, the offender is not to be bound by *latae sententiae* penalty but lesser penalties or penance for the purpose of **repentance or repair of scandal** c.1324 § 3.
2. Situation foreseen by law demanding more serious penalty

The discretionary power is not only to lessen the penalty but also increase it with a more severe penalty.

- a. There are certain situations in which the judge must inflict more serious punishment and among whom the new situation inserted in the revision is willful drunkenness to commit the offence or through passion which was deliberately stimulated or nourished (c.1326 § 1 n.4).
 - b. In these situations, if the penalty is discretionary, it becomes obligatory c.1326 § 3.
3. Discretion of the Judge
 - a. The judge in imposing the penalty, can postpone to a more opportune time if immediate punishment may bring a greater evil. In doing so, he/she should value the urgent need to repair the scandal. If urgent need to repair the scandal arises, then postponing punishment should not be the option c.1344 § n.1.

- b. The judge can refrain from inflicting any punishment if the offender has reformed and restoration of justice and repair of the scandal already done. If not, a lesser penalty or penance can be imposed c.1345.

C. CHANGES IN PENALTIES

Penalties, as we know, are of two kinds: Medicinal and Expiratory. Medicinal penalties are censures aimed at mainly the reform of the offender while the expiatory penalties aimed at restoring justice and repairing the scandal. Both are pastoral in application.

- 1. **Censures** are of three kinds: excommunication, interdict and suspension. They are either *latae sententiae* or *ferendae sententiae*.

- a. Excommunication:

- i. Prohibition from active participation in liturgical celebrations c.1331 § 1 n.4

In some of the excommunicated cases, the offender though not celebrating the sacraments may actively participate especially if he is a cleric. Such a situation was not foreseen in the Code of 1983. Now the excommunicated person is prohibited from taking an active part in the celebrations of sacraments, sacramental and other ceremonies of liturgical worship. An example for the last could be a solemn celebration of Vespers during the novena days.

- ii. Prohibition for remuneration c.1331 § 2 n.4

The offender does not acquire any remuneration in virtue of merely ecclesiastical title c.1331 §2 n.4. Exercise of an office is different from holding a respected title which might have been granted due to a special service. Such title may allow him to receive remuneration. The excommunicated cannot avail such a remuneration only from the ecclesiastical title.

- b. Interdict c.1332 § 2

The difference is that the offender does not loose communion with the Church. Here in the change, the universal law allows the particular law or precepts of Ecclesiastical Superior to define the interdict. It allows also laying other prohibitions – prohibiting from certain other particular rights.

- c. Suspension c.1335 § 1

With regard to the suspension, the competent authority besides imposing or declaring censure, can also impose expiatory penalties if it is necessary to restore justice and repair scandal.

2. Expiatory Penalties

Expiatory penalty is aimed more at restoration of justice and repair of scandal than reform of the offender. It can be given for a determined or indeterminate time. Cessation of the penalty arises when its aim is achieved. The Code envisages four kinds of expiatory penalties: order, prohibition, deprivation and dismissal from the clerical state.

The changes:

- The competent authority/ judge may impose an order to pay a fine or sum of money for the Church's purpose in accordance with the guidelines established by the Episcopal Conference. C. 1336 § 2 n.2.
- Among the prohibition, what is added in the revision is prohibition against wearing ecclesiastical dress c. 1336 § 3 n.7. Hence the dismissed religious or cleric may be prevented from wearing the religious habit or clerical dress/collar.
- Penal transfer to another office which was enumerated in the Code of 1983 is now omitted.
- The offender can be deprived of all ecclesiastical remuneration or part of it. In this case, the role of Episcopal conference is important to establish guidelines. However, a cleric should not be left out without his sustenance.
- All the same the expiatory penalties mentioned in c.1336 § 3 cannot be under the pain of nullity c.1338 § 5.

3. Penal Remedies and Penances

Penal remedy is an admonition, warning or correction given when someone is in proximate occasion of committing an offence or when there is a serious suspicion that the offence has been committed. These measures are given before the accused is found guilty of an offence.

Penal precept is a judicial or administrative decree which imposes the accused either to do something or to avoid something. It is given when corrections on more occasions do not have any impact on the offender or when one cannot expect any effect after corrections. c.1339 § 4.

When the offender is in a condition of relapsing into the same or similar offences, the Ordinary can impose over and above the expiatory penalty a measure of vigilance with a separate decree. c.1339 § 5.

Penal precepts and vigilance which were in the Code of 1917 and dropped in the Code of 1987 are now once again inserted in the revision.

D. PRESCRIPTION

Prescription is a method of extinguishing the criminal action. A criminal action in the context of judicial process is a juridical right to defend or vindicate one's right. Here comes prescription i.e., time limit given by Universal law enabling the affected to resort to the Tribunal within the limited time. Failure in doing so, the affected cannot any more make use such a right.

Prescription for criminal action

- Normally the prescription for criminal offence runs for **three years** unless the offences are reserved to the Congregation for the Doctrine of Faith (Minor abuses).
- Prescription of **Seven years** for specific criminal offence such as:
 - o unlawful alienation of ecclesiastical goods or stealing them (c.1376),
 - o Giving or promising to give something to someone in ecclesiastical office so that such a person may act unlawfully or fail to act (both who gives and who receives) c.1377 § 1
 - o Receiving or demanding an offering more than what is specified during the exercise of one's office c.1377 § 2
 - o Abuse of ecclesiastical power, function or an office c.1378 § 1
 - o Through culpable negligence doing something or avoiding something – an act of ecclesiastical power in such a way that there is a harm to another or scandal is created c. 1378 § 2
 - o Cleric or religious engaging in trading or business contrary to the provision of the canons c.1393 § 1
 - o Cleric attempting marriage even if civilly besides being dismissed from his office (c.194 § 1 n.3) and dismissal of religious from the Institute (c.694 §1 n.2)
 - o Cleric living in concubine or scandalous living with offences against 6th commandment c.1395 § 1
 - o Cleric abusing one's authority committing an offence against 6th commandment or forcing someone to perform or submit to sexual acts c. 1395 § 3
 - o A member of institute of consecrated life or of society of apostolic life committing an offence against 6th commandment with a minor or with a person habitually imperfect in the use of reason c.1398 /2
- Prescription of **20 years** for an offence against minor by a cleric – 1398/1
- The time of prescription is interrupted and suspended for **three years** when the offender is summoned by the tribunal. When this period has expired or when suspension has been interrupted through cessation of penal process, the time runs through once again continuously c.1362 § 3.

E. CHANGES IN PARTICULAR OFFENCES

1. Apostasy: Earlier it is referred to cleric and now it is more inclusive the word ‘cleric’ is replaced with ‘**he or she**’ meaning that any section of Christ’s Faithful – Cleric, religious or lay incurring *latae sententiae* excommunication reserved to the Apostolic See c.1364 § 1.
2. The section includes further offences against faith c.1365
 - a. A person teaching a doctrine condemned by the Roman Pontiff or by an Ecumenical Council
 - b. Teaching or holding anything against the sacred magisterium c.750
 - c. Not accepting any teaching by the Supreme Pontiff, College of Bishops when exercising their authentic magisterium in matters of faith and morals although not as definite doctrine c.752
 - d. A person who appeals to an Ecumenical Council or College of Bishops against an act of Roman Pontiff c.1366
 - e. A person in public or in his writings or in social media utters blasphemy or makes grave harm to public or teaches against morals or excites hatred or contempt against the Church c. 1368
3. Offences against Church Authorities with the penalties mentioned in c.1336 §§2-4
 - a. A person violates obligation imposed by a penalty c.1371 § 2
 - b. A person violated pontifical secret c.1371 § 4
 - c. A person fails to observe the duty of executing a sentence c.1371 § 5
 - d. A person neglects in reporting an offence c.1371 § 6
4. Offences with regard to finance
 - a. Stealing ecclesiastical goods or preventing their proceeds i.e., income etc. c.1376 § 1 n.2
 - b. Alienation of ecclesiastical goods without consultation, consent or permission c.1376 § 1 n.2
 - c. Carrying out such financial administration without consultation, consent or permission.
 - d. If the above offences done with grave personal culpability or grave negligence in administration of ecclesiastical goods, deprivation of office would be an additional expiatory penalty c.1376 § 2 nn.1 & 2. But the yardstick to measure the gravity is not clear. As the grave culpability or grave negligence can be decided by the ecclesiastical superior, there may arise problems in implementing these provisions.
 - e. Culpable negligence in the administration of one’s office or function to the extent of causing harm to another or cause scandal by doing something or omitting something (the offender will be punished with expiatory penalty as in c.1336 §§ 2-4 and with a duty to repair the damage caused) c.1378 § 2.

5. Offences against Sacraments

- a. Attempting to confer sacred order on a woman or to receive it by a woman incurs *latae sententiae* excommunication; the cleric with dismissal of clerical state c.1379 § 3
- b. Administering Sacraments to those who are prohibited from receiving incurs suspension and other expiatory penalties of c.1336 §§ 2-4
- c. Consecrating for sacrilegious purpose one or both species within the Eucharistic celebration or outside it incurs dismissal from the clerical state c.1382 § 2
- d. Recording with any technical device what is said during the time of sacramental confession either real or simulated or divulging it by means of social communication incurs penalty according to the gravity; if cleric dismissal from the clerical state c.1386 § 3.

6. Offences against Special Obligations

- a. A Cleric is bound to carry out his office with an obligation of residence c.283. And c.1392 speaks about voluntary and unlawful abandonment of sacred ministry for six months continuously with the intention of withdrawing himself from the competent Church authority.
- b. If any religious keeps himself/herself away from the Institute unlawfully for one year, such a person can be dismissed from the Institute c. 694 § 1 n.3.
- c. Cleric or religious meddling with the administration of temporal goods of lay people without the permission of the proper ordinary as per c.285 § 4 or commits an offence in financial matter apart from the cases already foreseen by the law incurs expiatory penalty c.1336 §§ 2-4.

7. Offences against Human life and dignity

- a. By Clerics:
 - i. Abortion, homicide, abduction, imprisonment, mutilation or grave wounds caused by a cleric deserving dismissal from the clerical state c.1397 § 3.
 - ii. Offences against Minors incurring a just penalty and also dismissal from clerical state:
 1. Cleric with an offence against minor abuse
 2. Cleric grooming or inducing a minor or a person habitually lacking use of reason to expose himself/herself pornographically or to take part in pornographic exhibitions, whether real or simulated
 3. Cleric acquiring, retaining, exhibiting or distributing, in whatever manner and by whatever technology, pornographic images of minors or of persons losing habitually use of reason

- b. By Members of Institute of Consecrated life and Society of Apostolic life/
Lay person in Office c.1398 § 2

A member of institute of consecrated life/ society of apostolic life or any lay person holding dignity or an office or a function in the church commits:

1. An offence against the minor
2. Abusing one's authority or by force or threats one commits an offence against 6th commandment – punished with expiatory penalties as in c.1336 §§ 2-4 and also with other penalties according to the gravity of the offence.

F. CRITICAL APPRAISAL

1. Due stress on Common good

The revision balances the aims of sanctions in the Church. Enough stress was laid on censures to order to aim at the reform of the offender. As said in c.1311 § 2, a well balance is maintained between the good of the community and of individual members of Christ's Faithful. On many occasions the phrase 'repair the damage, repair the harm or repair the scandal' are used (cc.1324 § 3; 1335 § 1; 1343; 1344 § n.1; 1345; 1349; 1359 § 4; 1377 §2 & 1378 §§ 1 & 2). Thus the revision gives due importance for the repair of scandal caused by offences and thereby attempting to establish the common good.

2. Focus on Culpability of the offender

One is presumed to be innocent until the commission is proved (c.1321 § 1). No one can be punished unless there is an external violation of a law or precept gravely imputable by reason of malice or of culpability. The culpability can become lesser when the offences are carried out under certain situations – for example under drunkenness or other stimulation (c.1324 § 1). But such drunkenness or other mental disturbances if induced in order to commit the offence, aggravates making the judge to impose more severe penalty (c. 1326 § 4).

3. Monitory Burden

In civil court, imposing a fine or a sum of money as a penalty has been a common practice. But now the revision in Book VI has also made it as one of the ways of expiatory penalties (c.1336 § 2 n.2). In the same way depriving the offender from economic benefits or remuneration either wholly or in part has become now one of the ways of expiatory penalties under the category deprivation. In these two instances, we need to have guidelines from the Episcopal conferences. The intention is to have a uniform policy in a region or in a country.

4. Maladministration in Financial matters

The revision has added its importance on right administration of ecclesiastical goods. The Book V on Temporal goods has laid down norms how the temporal goods are to be administered. By adding a few more canons imposing additional penalties in the revision of Book VI, the law giver wants serious actions to be taken against those who transgress their responsibility in administering the ecclesiastical goods. For example stealing the ecclesiastical goods or preventing the benefits of the goods (interest etc.), negligence in following the right procedure in alienating temporal goods, receiving or promising something for an unlawful administration and getting more money than stipulated for the administration are some of the areas which are to be rather strictly implemented when finance is involved. When clerics or religious are interested in getting associated with lay people in administering their temporal goods having an obligation of rendering an account or signing a promissory note or undertaking any surety, the revision comes with a clear reference saying that they are to be punished with expiatory penalties with an obligation of repairing the harm (c.1393 § 2).

5. New Sanctions on Sacraments

The Code of 1983 was silent on any attempt to confer a sacred order on a woman. In order to make it clear, it is added in the revision and such a person who confers or who receives incur *latae sententiae* excommunication reserved to the Apostolic See; if cleric dismissed from the clerical state (c.1379 § 3).

Consecrating for a sacrilegious purpose either the single or both the species both within or outside the Mass is a serious offence demanding just penalty of also dismissal from the clerical state.

Another a very serious situation is addressed with regard to the sacramental confession. If the matter is recorded by any technical device either by the confessor or the penitent or any one, it is a serious offence demanding grave penalty and if cleric dismissal from the clerical state (c.1386 § 3). This is to safeguard the sacramental seal of confession in the present context when anything and everything can be recorded without the knowledge of the other.

6. Offences against Human Life, Dignity and Liberty

The word ‘dignity’ is added in the title fixing the offences in the context of violation of human dignity. Right to life, dignity and liberty is one of the fundamental rights recognized by all the civil societies. It has been already articulated in the Ten Commandments. Abortion for example is considered an offence directly against right to Human life. If a cleric is involved in such an offence, severe penalty of dismissal from the clerical state is envisaged.

By including the offences against Minors under this Title, the law giver wants to emphasize that these offences are against dignity and liberty of persons victimized. They are against liberty because Minors, those who lack use of reasons habitually or those whom the law recognizes equal protection are vulnerable section in the society and they cannot

defend themselves. They are not free to make decisions on these matters. It is needless to say that these offences are committed against the liberty of the victims. Further these sexual offences against minors are against their dignity from the view point of the damage and trauma these offences cause in their life with more severe and serious enduring effects. Such offences can be committed by clerics, religious or lay person of both the sex.

The revision addresses another situation in which abuse of power can play a vital role. Those who hold reputable position or an authority may commit sexual offences either with minors or with adults. Here the adults are also under their clutches because those in position exert a certain amount of pressure forcing their subjects to yield to their desire. Certain pressure in the form of force, threats or abuse of authority may take out the freedom of the victim to get involved with the offences rendering them to be either passively cooperating or allowing to be abused without their willingness. These situations are well addressed in the revision.

CONCLUSION

Lumen Gentium, n. 27 refers that the pastors exercise their function also with authority and sacred power. In the Apostolic Constitution *Pascite Gregem Dei*, Pope Francis underlines that the responsibility of correct application of penal norms belongs to the Pastors and Superiors of singular community. It cannot be separated from the Pastoral office entrusted to them. Negligence in administering justice with charity by the bishops is a failure in carrying out their duties honestly and faithfully (*Vos Estis Lux Mundi*). Hence application of justice is needed in those situations in which either common good or individual good is at stake, it further belongs to the realm of pastoral function and hence the revision in the Book VI are more pastoral. The Penalties for the Particular Offences in Book VI might resemble more stringent. As there are many ways of correcting the probable offender either before the offence could actually be committed or when there is a suspicion that the offence has been committed or after the offence is committed, the penal norms are more pastoral than stringent.