

Presented by

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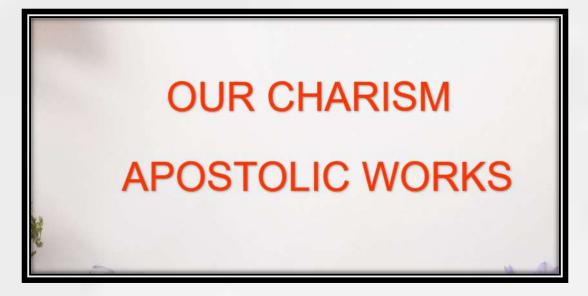


An institute of consecrated life or a society of apostolic life (ICL & SAL), though founded with a particular charism with its proper character and autonomy, the service of that charism is always for the whole Church. The religious exercise their ministry thus concretely in the particular churches whose pastoral authority is entrusted to bishops who are the visible source and foundation of unity in their own dioceses (cf. LG 23, 45). The bishops are responsible and coordinators for all the apostolic works - including that of the religious - carried out in their respective dioceses.





If the exercise of the apostolic works by the religious in a particular church is always enriching the mission of the Christ in the diocese, it is not often without any conflict and misunderstanding in the way and manner these apostolates — whether proper to the institute or entrusted to them by the bishop — are carried out. The cause of this conflict often lies in the non-fulfillment of the expectations from either side, that are often presumed and not explicitly known to the other party.







Thus a written agreement or contract between the diocesan bishop and the major superior of the religious institute concerning the apostolates the religious accept to carry out in the diocese would solve the conflict and misunderstanding and improve the relationship between the diocesan bishop and the religious working in the diocese, making the mission of the religious more effective.







To understand and appreciate a proper contract to be concluded between the diocesan bishop and the major superior, the presentation, first of all, concentrates on the apostolates that come directly under the jurisdiction of the diocesan bishop; then it moves on to the apostalates that the diocesan bishop could entrust to the religious which calls for a written agreement. The third part will look into the elements that are to be added in a contract. Finally, the presentation will underline the importance and necessity to make an agreement or contract while entrusting a parish or an ecclesiastical office to the religious by the diocesan bishop.



### 1. Matters that are subject to the Diocesan Bishop

The diocesan bishop has the prerogative in directing all apostolic works in his diocese (cf. cann. 394, 680 CIC; can. 203 *CCEO*). It is also his responsibility to ensure observance of proper ecclesiastical discipline in matter pertaining to Christian worship, such as the ministry of the word, the celebration of the sacraments and sacramentals, the worship of God and the cult of saints (cf. can. 392 §1). Thus the religious are not completely free agents in the exercise of the apostolic works, even those proper to the institute (cf. can. 611, 2°).





The provision of can. 678 §1 CIC (can. 415 §1 CCEO) accords

The Jurisdiction to the bishops over the religious in matters concerning

the care of souls,

the public exercise of divine worship,

and other works of apostolates.







The conciliar decree on the Pastoral office of Bishops in the Church, which is the source of this canon, gives a more detailed list of matters for which the religious, whether exempt or not, are subject to the local ordinary: public worship, the care of souls, preaching to the people, the religious and moral education, catechetical instruction and liturgical formation of the faithful, especially of children, comportment proper to the clerical state, and various activities relating to the exercise of their sacred apostolates (CD 35, 4, ref. also MR 44). Can. 415 §1 CCEO enumerates all these matters while speaking of the submission of the religious to the power of local hierarch.







An office which carries with it the full care of souls, for which the exercise of the order of priesthood is required, can be conferred only to a priest (can. 150).

The expression "care of souls" (cura animarum) is

not technically applied

to persons other than priests,

although

deacons and lay persons

can participate in its exercise (cf. can. 517 §2).





The care of souls which is also known as

Sacred apostolate (CD 35, ES I 25),

Holy apostolate (PC 8, 2)

and is involved in carrying out

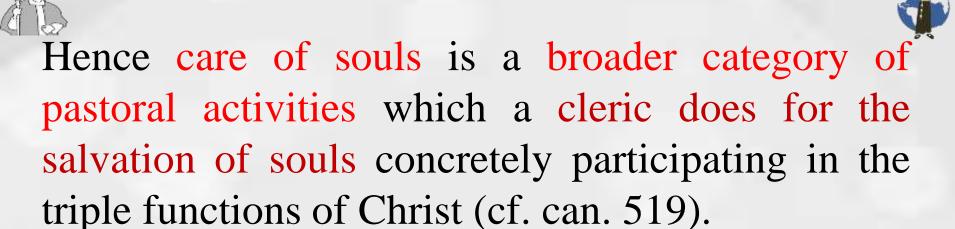
the triple functions of Christ –

sanctifying,

teaching and

governing.

It is carried out in multiple ways in which the pastor and those who assist him minister to the community of Christian faithful which is a parish.



The religious who are clerics come under the pastoral authority of the diocesan bishop and other religious who are not clerics too have the obligation to obey the diocesan bishop in so far as they share in the triple functions of Christ based on common priesthood and through their religious consecration.



#### 1.2. The Public Exercise of Divine Worship



The public exercise of divine worship means the public exercise of sacraments and sacramentals in which all Christ's faithful participate in the priesthood of Christ, and so are made holy and offer public worship to God.

The divine worship to be public,

- (i) it must be offered in the name of the Church,
- (ii)
- (ii) it must be administered by the persons lawfully deputed, and

(iii) it is carried out through approved liturgical norms (can. 834 §2 *CIC*, can. 668 *CCEO*).





Divine worship in its very nature is

public and

done in the name of the Church

even if it is conducted without people's participation.

#### Hence:

private Mass,
liturgy of Hours, etc.
are public exercise of divine worship.

In all these areas the religious are under the pastoral guidance of the bishop.



### 1.3. Other works of apostolates



While *CIC* uses the phrase "other works of apostolate", *CCEO* uses the phrase "various works that regard the apostolate"

To cover all works of charity and piety which are not covered in the above two categories,

such as schools and other educational institutions, hospitals, old age homes, orphanages, centres of social apostolate, etc.

In fact, the bishop/ eparchial bishop is to foster various forms of the apostolate in his diocese/ eparchy (can. 394 *CIC*, can. 203 §1 *CCEO*).



## 2. Works which the diocesan bishop entrusts to the religious



When the bishop invites a particular religious institute into his diocese,

he may entrust certain apostolate

besides allowing them

to carry out the apostolates that are proper to their charism,

for which a written consent of the diocesan bishop is required (cann. 609 §1, 611, 2° CIC; cann. 436 §2, 437 §1, 509 CCEO).



## 2.1. Works proper to Religious Institute (opera propria)



The apostolic work that is proper to or belongs to a institute is that

which was undertaken by the founder or foundress and original members or was subsequently introduced for special reasons and

eventually came to be part of the patrimony of the institute.

And this is found in the constitutions of the institute or society (can. 587 §2).





Thus, this form of apostolic work becomes something integral and inherent in the charism without which the witnessing presence cannot be evident for that particular religious institute or society. When this charism is received by the hierarchy as authentic, the Church has approved their apostolate to be carried out throughout the Church. Although it is an integral aspect of the charism of the institute, the specific apostolate is carried out by the religious institute in the name of the Church and in communion with the Church.





#### The religious have the right

to engage in these works of the institute in accordance with the can. 611, 2° (can. 437 §1 *CCEO*)

unless limiting conditions have been agreed at the time

- \* the institute/society established a house in a specific place,
- \* and are mentioned in the document of consent
- \* signed by the diocesan bishop or by his delegate.





When religious community has been, for example, invited into a diocese by a diocesan bishop to establish a secondary school,

presuming that education is an apostolic enterprise proper to it,

the authority or power of the bishop with respect to that school is

subject to certain limitations.





Here, the apostolic work is proper to the institute/society; it belongs to the community even if it does not own the property or building.

In fact, a religious institute

must remain faithful to the mission and works proper to it and promote them with adequate adaptations necessitated by social, cultural, professional, and political factors, without deviating,

but in conformity with the patrimony of the institute (can. 677 §1).





These mission and works (proper to them)

depend on the governance of the superiors of the institute

who shall carry out their task or ruling them and directing them

in accordance with the constitutions, although in actual practice they are under the jurisdiction of the local ordinary (*ES* I 29, 1; *MR* 56).







### 2.2. Works entrusted to Religious (opera concredita)

The diocesan bishop while inviting a religious institute into his diocese he may entrust certain apostolates to the religious – to the institute as such or to individual religious. For these apostolates the religious are under the authority and direction of the diocesan bishop, that is, under his guidance and moderation, to his pastoral vigilance and visitation (cann. 681 §1, 683 *CIC*; cann. 282 §2, 543 *CCEO*).





While entrusting the apostolates to the religious, the diocesan bishop must take into consideration that such works are compatible with the character and purpose of the religious institute;

he is not to commend something that is alien to their charism.

The entrusted work, even if, is of kind which is also proper to the institute,

yet it comes under the authority of the diocesan bishop.





"Those works, however, even though they be proper and special to the institute, which are entrusted by the local ordinary shall be subject to his authority and direction, without prejudice to the right of the religious superiors to supervise the way of life and the members and even, together with the local ordinary, the execution of the task is entrusted to them" (ES I 29, 2).





If a religious institute is, for example, is asked to staff a parochial elementary school, or a diocesan high school, every aspect of this apostolic work is subject to the authority of the diocesan bishop.

This work is said to be entrusted to, not proper to the religious institute/society carrying out the apostolate.





Various types of works are entrustable to the religious by the bishop, such as:

Parish priest,

parochial vicars for a parish not entrusted to the community,

Deans,

Episcopal vicars,

assistants to groups of Catholic Action,

secretaries of pastoral organizations,

diocesan directors,

teachers in Catholic Universities,

professional catechists,

directors of Catholic College, etc. (MR 58).





The bishop may entrust a work to the institute or community as such,

parish or specialized form of apostolate, or to an individual religious or a group of religious.

For the former, the institute as such assumes responsibility for the task entrusted to them. The work here goes beyond the individual religious whom the superior may assign to it. Whereas for the latter case, the institute as such will not assume the responsibility though the religious are appointed in consultation with and the consent of the competent superior.

# 3. Written Agreement or Contract for entrusting the Diocesan Apostolates to the ICL and SAL

When the diocesan bishop entrusts to religious the apostolates, the provision of can. 681 §2 demands that a written agreement or contract (*conventio scripta*) is to be made between the diocesan bishop and the competent superior of the ICL or SAL. In *CIC* 1917 there was no parallel provision to this effect.

In 1969 Sacred Congregation for Evangelization of peoples has prescribed that a written agreement to be made between the local ordinaries and missionary institutes or societies when undertaking mission works in a particular church.





This document also had an "appendix" giving a schema for the agreement (*Schemata contractuum*).

After the Second Vatican Council, *Ecclesiae sanctae* I - the Norms for implementing the conciliar decree *Christus Dominus* – in 1966 required

a written agreement between the local ordinary and competent superior of the institute for a work of apostolate entrusted to any religious institute by the diocesan bishop (*ES* I 30, 1).





In fact, can. 681 §2 repeats virtually *verbatim* the content of the norm of the *Ecclesiae sanctae*.

*CCEO* has no canon comparable to the norm of written agreement for the entrusted works by the diocesan bishop to the religious.

It speaks of a written agreement between the eparchial bishop and the major superior of the religious institute or society of common life in the manner of religious only for the erection of a parish in the church of the above said institute or society (can 282 §2 *CCEO*).





Later the Directives for mutual relations between bishops and religious in the Church *Mutuae relationes* by the Sacred Congregation for Religious and Secular Institutes in 1978 in its no. 57b also stipulated the requirement of the written agreement between the local ordinary and the competent superior of the institute for the apostolates entrusted to the religious by the bishop.



#### 3.1. Contents of the Contract



The contract must deal with at least three aspects of the works entrusted:

- (i) a description of the work of the apostolate and manner of its execution,
- (ii) personal issues, and (iii) financial arrangements.

When can. 682 §2 obliges these three points are to be expressly and accurately defined, it reads 'among other things' (*inter alia*). That means, the list given in the canon is not exhaustive. Other issues somewhat tangential or unique issues should be included in the contract. The contract can contain further matters as desired by the bishop and the religious superior according to each type of agreement and circumstance of each case.



## 3.1.1. Description of the apostolate and manner of its execution



The contract must define, first of all, without ambiguity the type of ministry or apostolate which the bishop wants the religious to accomplish in his diocese and how it is to be carried out concretely in a given circumstance. The mission and the goal of the work in question should be clearly stated and the line of authority and responsibility expressly agreed upon. Accountability, evaluation and planning must also be added in the contract, besides special conditions if any from the side of the bishop or of the superior.



#### 3.1.2. Personal issues



The second point in the contact concerns the members to be assigned for the apostolate entrusted. It must state clearly the number of religious and their qualifications needed for particular task, their rights and obligations, hours of service, holidays, vacations, community prayer and retreat. It must also have clause, if needed, for any obligatory or expected service to the parish or to some other diocesan institutions or to the religious institute above the normal duties of the apostolic work.





The process of appointment, transfer and promotion are to be spelled out.

It is useful to include the clause regarding the continuance or discontinuance of the religious in the work if he or she is in the state of "leave of absence" or "exclaustration" or "dismissal" from the institute and the connected financial arrangements and responsibilities.



### 3.1.3. Financial Arrangement



The agreement should include, with regard to financial arrangement,

the salary or its equivalent,

housing or housing allowance,

travel and transportation,

equipment and furnishing connected with work,

health and retirement benefits,

insurance,

continuing education or on-going formation,

sabbatical provisions,

sick leave, etc.





The bishop may offer

a few teaching posts in the diocesan schools as source of maintenance for the religious.

Viability of programme is carried out either by foreign projects or by diocesan regular contribution or allowing them to run a school/institution, the income of which can be meant also for maintenance of the personnel employed for a specific apostolate.

If the bishop is entrusting a parish or an institution, investment and income are to be clearly dealt in the agreement.



#### 3.1.4. Other Matters



The expression "among other things" (*inter alia*) in can. 681 §2 indicates that the agreement can contain further matters as desired by the bishop and religious superior according to each type of agreement and circumstances of each case.

There may exist a formulated schema or outline of agreement to be made at the diocesan, regional or national level of the Church. However, that should not inhibit the bishop or the superior from insisting upon added details which they perceive as needed or useful.





It can provide here for the means of solving the possible disputes arising from agreement and avoiding civil litigations in certain contentious cases.

Procedures for making changes in agreement, its reward, withdrawal or cessation could be indicated.

The period of time in advance to inform the other party should find its place in the contract, when a bishop wishes to relieve a religious institute or its members of any diocesan activity which has been entrusted to it, or the religious institute finds itself unable to continue to run any given undertaking.





If any land is either donated or given on lease by the diocese to the religious institute for a specific purpose, the conditions are to be laid down in the agreement about its use and title: whether the ownership of land is transferred? Who pays the property tax and whose name – in the name of the diocese or institute – the tax is to be paid? Can the purpose of the use of the land be changed? It must also be précised the required details regarding the possible investment and improvement which the religious make. In case, the agreement expires, or terminated with due process before the time of expiry, to whom the properties will belong and how the compensation is to be made for the other party.





Under certain circumstances, a particular ministry, due to the nature of its work, may require that it be registered under the civil law, as a corporate body. In such a case, it is to be foreseen in the agreement the matters to be included in the 'Memorandum of Associations" or "Trust Deed", or in any other legal instrument, with regard to the name, the president, the executive members, objectives, etc., and the manner of drafting its Bye-laws.

Finally the agreement carries the date on which it will come into effect, the duration, and the signatures of the competent authorities of both the parties with at least two witnesses from both sides.



## 3.2. Mutual Consultation to frame the Contract

Before the bishop entrusts to any religious institute an apostolate, there must be process of negotiation and mutual consultation which will help to arrive at a clear agreement on many relevant matters (MR 57c). Thus, the Diocesan bishop is to proceed by way of mutual consultation in directing the apostolic works to the religious (can. 678 §3) to avoid unnecessary dispute or conflict of competence in future. "Constant dialogue between the superiors of the institutes of consecrated life and societies of apostolic life and bishop is most valuable in order to promote mutual understanding which is necessary precondition for effective cooperation especially in pastoral matters" (VC 51).





The bishop should recognize, esteem and welcome the gifts of religious institute and the society. The superiors, on their part, are to offer their spiritual and pastoral sources in building up the life and holiness of the diocese. This mutual trust and cooperation witness to ecclesial communion and bring quality service to all in the diocese (cf. VC 48-50). It is from this mutual appreciation, recognition and respect should proceed the entrusting of the diocesan apostolate to the religious institute. In the process of discussion and negotiation, there may emerge different points from either side and both the sides are to consider them for effective ministry. And these points are to be added in the written agreement or contract in the section of 'other things'.



### 3.3. The Nature of the Contract



The written agreement or contract to which the provision of can. 681 §2 refers is a juridical instrument canonically institutionalized for the benefit of both bishop and religious in the apostolate of the diocese and for assuring the reciprocal rights and obligations involved in it. But it is not, strictly speaking, a legal contract canonized by the Code (can. 1290 *CIC*; can. 1034 *CCEO*).





However, to better understand certain juridical aspect of the *conventio scripta* of can. 681 §2, it is useful to keep in mind the meaning, nature and purpose of a contract in general. In Indian civil law, "an agreement enforceable by law is a contract". A contract is generally described as an agreement of two or more persons to establish, regulate or dissolve a juridical bond between them. And more simply stated, a contract is an agreement which creates obligations and rights for the parties. Sec. 2 (h) of Indian Contract Act, 1872.





However, it is to be kept in mind that the civil law of the place on legal contacts and its canonization by the Code (can. 1290 CIC; can. 1034 CCEO) cannot be applied to the cases of the *conventio scripta* prescribed by can. 681 §2. For, it is not strictly a legal contract, and as such it cannot, and does not create obligations and rights before the civil law. Consequently, there is no question of seeking commutative justice before the civil court, nor file a suit in the court to solve the litigations arising from the issues of agreement.





The provision of can. 681 §2 reads "a written agreement is to be made between the bishop and competent superior of the institute". Can persons other than the bishop and the superior properly representing the diocese and religious community or institute make agreement? In modern civil law, if an agent or representative enters into contract with a third party, he creates rights and duties directly between the principal and the third party, and himself incurs neither.





This principle is applicable in the case of written agreement of this canon. So the vicar general or Episcopal vicar or any other person empowered by the diocesan bishop for the matter, and the local superior or individual religious with the consent or with the delegated power of major superior in accord with the proper law of the institute, can very well constitute the competent party standing for juridical person of the diocese and religious institute.



# 4. Agreement or Contract for conferring Ecclesiastical Office upon the Religious



Canon 682 §1 gives the possibility for the diocesan bishop to confer an ecclesiastical office upon a member of a religious institute in his diocese. This conferral of ecclesiastical office, besides the expected cooperation and collaboration in the one mission of Christ in a particular Church between the bishop and the religious, brings out well the apostolic dimension of religious life and ecclesiastical position of religious in the diocesan family; their active insertion and involvement, dedicated collaboration and qualified service will make the diocese flourish in its mission.





What is an ecclesiastical office? As per the provision of the 1917 Code, an ecclesiastical office, in broad sense means any function or role (munus) legitimately performed for a spiritual purpose. In the strict sense, however it is divinely or ecclesiastically ordered responsibility, constituted in a stable manner, conferred according to the norms of the sacred canons, entailing at least some participation in ecclesiastical power whether of orders or of jurisdiction (can. 145 §1 CIC 1917).





By law itself ecclesiastical office was always to be understood in the strict sense, unless it appears otherwise from the context of the words (can. 145 §2 CIC 1917). But the Vatican II changed this idea of ecclesiastical office; from then on an ecclesiastical office is understood as any function (munus) which has been conferred with stability for a spiritual purpose (PO 20, cf. LG 33 and 37), i.e. the broad sense of the CIC 1917, omitting any reference to the power of orders or of jurisdiction. Thus, CIC 1983 defines "an ecclesiastical office is any post which by divine or ecclesiastical disposition is established in a stable manner to further a spiritual purpose" (can. 145 §1 *CIC*; can. 936 §1 *CCEO*).



# 4.1. Conferral of an ecclesiastical office upon a Religious



Canon 682 §1 that regulates the conferral of an ecclesiastical office upon a religious, is taken almost *verbatim* from *ES* I 31-32.

This post conciliar document, in fact, (*ES* I 31) requires a written agreement or employment contract when a task is assigned to a religious by the local ordinary.





Mutuae relationes in discussing offices that may be entrusted to the religious, notes that a written agreement may be necessary for certain office to protect the stability of the office and the devolution of goods in case the office or undertaking should be suppressed or discontinued (cf. MR 58 a).

But can. 682 is silent on the matter of written agreement or contract while conferral of an ecclesiastical office to a member of a religious institute or a member of the society of apostolic life (can. 738 *CIC*).



# 4.1.1. Appointment of a religious to an ecclesiastical office.



The appointment of a religious to an ecclesiastical office is done by way or presentation (can. 682 §1).

The major superior indicates or presents the religious for the office in question in accordance with the provision of law (cann.158-163), and the bishop makes the appointment, for it is the prerogative of the diocesan bishop to make appointment to ecclesiastical office in his own particular Church (can. 157).

The bishop may know sometimes a priest religious qualified for some office – superintendent of schools, judicial vicar, director of religious education, Episcopal vicar for religious, etc. But he cannot appoint without the consent of the major superior.



## 4.1.2. Removal of a religious from the office



Either the bishop who appointed the religious or the superior who presented or consented to member's accepting office can remove him or her from an ecclesiastical office (can. 682 §2). The canon simply says that they can do it at discretion (ad nutum). As to causes or reasons for removal the canon is silent. ES I 32 states that there exists a grave cause for this removal. However, neither party is required to reveal to the other reasons for his action. During the formulation of can. 682 §2, there was a proposal in coetus to include gravis iusta de causa. But the majority members proposed to suppress it and emphasized the ad nutum aspect of this removal.





MR also verbally referred to the provision of ES I while speaking of the removal of the religious from an ecclesiastical office (MR 58).

The general norm also prescribes that when an office is conferred upon someone in accordance with the provisions of law by the competent authority, this authority can remove that person from the office only for a just cause (can. 193 §3 *CIC*; can. 975 §2 *CCEO*).

This just cause (*iusta causa*) for the removal might be serious misconduct or scandal, incompetency or overriding need of religious for a service elsewhere, or even within the religious institute.





The bishop does not need the consent to remove a religious from the office, which he can do with mere notification to the superior. In the same way, the religious superior with prior notice being given to the appointing authority can remove the religious from the office.

The law does not require the consent of the either, nor does it mention the necessity of giving reason. However, it is prudent and must be mentioned in the agreement that the authority taking such action of removing the religious must give prior notice to the other authority.

The appropriate time limit to issue such notification could be specified in the agreement.



## 4.2. Entrustment of a Parish to the religious institute



The diocesan bishop can with the consent of the competent superior entrusts a parish to a clerical religious institute or to a clerical society of apostolic life. He can also erect the parish in a church of the institute or society. In such case, it is essential that a detailed contract be made between the diocesan bishop and the competent superior (can. 520 §2 CIC; can. 282 §2 CCEO). This contract must set out the principles governing the appointment of pastor and parochial vicar(s), ownership and administration of property; it should also contain norms governing the notice to be given and the arrangements to be made if a decision is taken by the institute or society to withdraw from the parish.



### **Conclusion**



The religious state is not 'a kind of middle way between the clerical and lay conditions of life', but comes from both as a special gift for the entire Church (MR 10, cf. also LG 43, can. 207 §2). "In effect, the consecrated life is at the very heart of the Church as a decisive element for her mission, since it 'manifests the inner nature of the Christian calling' and the striving of the whole Church as Bride towards union with her one Spouse" (VC 3).

The apostolic activity of the religious is properly an ecclesial activity, whatever be the nature. "The bishop, as father and shepherd of the particular Church in all its aspects, welcomes the various expressions of consecrated life as a grace. It will therefore be his concern to support consecrated persons, so that, while always remaining faithful to the inspiration of their founder, they may open themselves to an ever more fruitful spiritual and pastoral cooperation according to the needs of the diocese" (AS 98, cf. also VC 49, PG 50). Consequently, the bishop, inviting the religious into his diocese, entrusts to them certain apostolates properly diocesan to the institute as such, and/ or confers certain ecclesiastical offices upon the individual religious.



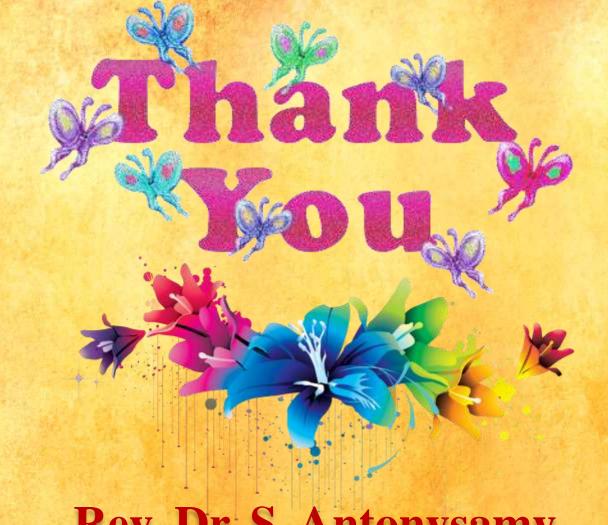


It is an undeniable fact that there could arise conflicts, controversies and misunderstandings between the diocesan authorities and the religious in their collaborative ministry, as both the diocese and religious are not purely made up divine elements; they are also made up of human elements. Hence, as prescribed by the universal legislator of the Church, it is always earnestly recommended that a proper written agreement or contract (conventio scripta) be drawn up between both the parties for a smooth functioning.





The purpose of such agreements is certainly not a restriction on the parties in the negative sense, but it is to make both the parties comfortable with each other so that the mission doesn't suffer. Such agreement assures the certainty and the stability of the entrusted mission, helps understand the mind of both the parties at the outset, lessens the unforeseen disputes, provides mechanism to resolve the future conflicts, and leads towards a win-win situation without competing with each other, not forgetting the ultimate aim of the Church which is salus animarum.



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