

Catholic Church Disputes in the Civil Courts of India

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Introduction

Disputes are everywhere. The religious communities are of no exception. Just like any other religious community, the Catholic Church too has so many internal as well as external disputes. Generally, these disputes are settled amicably, but sometimes they are taken to the civil courts for the settlement. The number of Catholic Church disputes ending up in civil courts has increased dramatically in this modern time.

Unfortunately, many of the most contentious conflicts in secular courts arise in the context of schism among members of the Catholic Church. The schism may be the result of theological disagreement, personality conflict, or secular political division transferred to the religious unit. Many such conflicts find their way into secular courts under the guise of property disputes, *viz.*, which of two or more competing groups is entitled to the occupancy, use, and control of property of the Church.

In fact, the civil courts in India do not want to discuss on the internal disputes of the Church. With regard to religion, the Indian Government maintains an attitude of strict

neutrality. Broadly speaking, our Constitution renders to religion the things that belong to religion and to the State the things that belong to the State. The borderline is not easy to draw; but it is to be drawn, without fear or favour, by independent judges.

It has been repeatedly affirmed in several occasions by the courts themselves that they do not like to decide matters of the doctrine of the Church. The jurisprudence shows that the courts have unanimously refused to decide ecclesiastical matters like creeds, the proper mode of exercising one's belief, Church discipline, tenets, general Church policy and the appointment and transfer of ministers, the appointment of bishops etc. In such matters, the state and its courts have no legitimate concern or jurisdiction.

When the courts hear the Church cases, generally speaking, they uphold the spiritual and ecclesiastical supremacy of the Church authorities. They also noted that the individual Churches or the Christians are free to take up their cases to the respective court for settlement of their issues.

The laws relating to Christians in India are manifold. The ecclesiastical law has its overwhelming significance in the ecclesiastical field and to a certain extent they have their impact on the personal law as recognized by civil law of Christians in India. There are different areas like marriage, divorce, adoption, guardianship, custody of children, maintenance, restitution of conjugal rights, judicial separation, alimony, succession, sacramental effect of marriage and administration of Church and its properties where the ecclesiastical law has to meet and interact with the civil law regime. Almost the entire spectrum is covered

by civil law. The civil law defines the contours of the civil conduct and prescribes penalties for the violation of the norms laid down by the civil law and the civil court.

Thus, the civil courts of India have decided time to time on the problems related to marriage, divorce, succession, adoption, ownership of the churches, transfer of priests, succession right of the property of the priests, use of loud speakers in the Church, etc. There is always a tension between civil law and ecclesiastical law in certain issues of the Church and also there is a problem of recognizing Canon Law as the personal law of the Christians in India.

1. Canon Law in the Civil Courts of Middle Ages

In the Middle Ages, in England and in Europe, Canon Law was used in Church courts to decide many types of cases that in modern times are decided by civil courts, including criminal offenses. This was because most English Christians did not make a great distinction between secular and spiritual offenses. Crimes that were tried by the Church included adultery, blasphemy, slander, heresy, money lending, and gambling. From the late 14th to the early 16th centuries, Church courts also heard many breach-of-faith cases concerning contracts, as well as inheritance and marriage-related cases.

Criminal trial procedures in Medieval Church courts were the source of some features that found their way into common law. Although witnesses were considered the best source of proof of a crime under Canon Law, suspected offenders could also be tried because of public fame (suspicion in the community that they had committed a crime). An enquiry made up of twelve men—a forerunner of royal courts' grand

juries—said under oath whether public suspicion existed. If none did, then a judge had no authority to proceed. After establishing public fame, the court's next step was canonical purgation, in which the accused person swore an oath that she or he was innocent. Proof of innocence was accomplished by compurgation, in which several oath helpers would swear that they believed the oath was true. People who objected to the purgation of an accused person had the chance to prove their accusation of guilt.

However, in these countries, the use of Canon Law in governmental decisions is not well documented. In the early 15th century, commissions of the English Parliament made use of canonical procedures and Canon Law experts to decide issues involving laws of war, diplomacy, and other questions. For example, in England, Parliament's justification for deposing King Richard II seems to have been based on Papal Bulls (decrees). Slowly when the nation states emerged and many nations became democratic and secular, the influence of Canon Law on civil law was discouraged. Modern legal systems rely on the principles of secularism and democracy.

2. Difference between Canon Law and Indian Civil Law

It is to be admitted that Canon Law is not always appreciated by many in a common law country like India. The Canon Law is based on principles of faith. However, it may be these principles of law and faith that are difficult for people to accept, not the laws that define the legal application of these principles.

In every legal system, the following two questions are important: Who has the final authority to determine and what

a given law means? In a common law nation, the judiciary has the last word on the interpretation to be accorded a specific legal provision (a power distinguishable from the legislature's, or even the peoples' power to change the text of the law itself). But, in a 'Roman' or civil law system, the legislator himself generally has the power of 'authentically interpreting' legal texts. Neither the judicial supremacy approach nor the legislative supremacy approach is right or wrong. Both systems have long and worthy records in upholding the rule of law. But they obviously operate in very different ways, and lawyers well-trained in one tradition are at serious risk of mishandling the provisions of the other unless they understand and accept the difference, in rather the same way that drivers who are used to driving on the right side of the road are highly accident-prone when they go to a country that drives on the left. It says nothing about their basic skills behind the wheel, but it says much for the problems encountered when trying to cope with a 'foreign' way of doing things. Canon Law draws much more heavily from the classical Roman or civil legal tradition, and not from the Anglo-American common law tradition and as a consequence many canonical interpretive principles differ from those to which common law attorneys are accustomed.

3. Similarity between Canon Law and Indian Civil Law

Indian legal system is based on English common law. Various Acts introduced by the British are still in effect in modified form today. Much of contemporary Indian law shows substantial European and American influence. However ancient India represented a distinct tradition of law. It had a historically independent legal theory and practice.

Both Indian civil law and Canon Law hold to the principle that one is presumed innocent until guilt is proven. For this reason both jurisdictions put great store by due process. Similarly both the laws afford people basic rights. Among those afforded to 'Christ's faithful' are: The right to good reputation and privacy (C. 220), the right to due process and to be judged according to law applied with equity (C. 221).

The Church claims the right 'to constrain with penal sanctions of Christ's faithful who commit offences' (C. 1311) and to that end the Canon Law incorporates a section on penal law and the process involved therein. Among other things, the penal section of Canon Law stipulates that the preliminary investigation prior to a criminal trial must not call into question anyone's good name (C. 1717, 2°) and that the acts of such an investigation are to be kept confidential unless they are necessary for the penal process (C. 1719). Making a report to the civil authority about what turns out to be a frivolous, unfounded or false and malicious complaint, prior to the completion of the preliminary canonical investigation that established that fact, serves no end but the unwarranted and unlawful destruction of somebody's good name.

By the end of the twentieth century, secular law had eclipsed Canon Law in most aspects of public life. Inter-body disagreements within the Church are now often handled administratively rather than by a tribunal, but within the confines of Canon Law. However, the tribunal is still the only place where Catholics can secure a marriage annulment, and each diocese must maintain a tribunal for this purpose. Divorced Catholics who have been denied an annulment can appeal as far as the Sacred Roman Rota.

4. Canonization of Secular Law

Most of the Church related problems are now settled in the secular courts. The reason is that the Catholic Church is not only a spiritual reality, but also a material entity and it is dependent on secular types of organization, financial models, and juridical structures to accomplish its mission in the world. The Catholic Church utilizes various legal institutes from the secular law to assist in its mission. It has canonized the secular law in certain areas in order to be in tune with the modern world. The canon law demands every Catholic Christian to observe the civil law of his/her country and suggests how both canon law and civil law can go together.

There is nothing in Canon Law which inhibits or prohibits the citizen's right to exercise those rights which he or she enjoys under the constitution of India. In fact, Canon Law urges the observance of civil Law except when it is clear that it is 'contrary to divine law'. A general principle is presented through c. 22 of the Code of Canon Law: "When the law of the Church remits some issue to the civil law, the latter is to be observed with the same effects in Canon Law, in so far as it is not contrary to divine law, and provided it is not otherwise stipulated in Canon Law."

By this principle we can affirm that some situations in the life of the People of God are best regulated in accordance with the law of the State in which they live. The current Code of Canon Law refers many of these matters to the particular civil legislation of the land, for example, Rights of a minor subject to parents or guardians (C. 98 §2), Adoption of children (C. 110), Acquiring or losing of a subjective right (C. 197), Civil effects of marriage (C. 1059), Engagement of

marriage (C. 1062 §1), Administration of church property (C. 1284 §2 3°), Contracts and alienation (C. 1290).

C. 22 is an innovation of the Code of Canon Law and it makes clear that, in some situations, the civil law is considered as a supplementary or subsidiary source of law. Where it applies, the civil laws are to be observed with the same effects in Canon Law. However, matters cannot be left to civil law if its prescriptions are contrary to divine law, or if Canon Law has made other provisions.

5. Church Disputes and Indian Civil Courts

Ubi jus ibi remediem (every right has a remedy) is one of the basic principles of law. It is a settled law that the exclusion of the civil court's jurisdiction cannot be readily inferred and that such exclusion must be expressly provided in clear terms or be clear by implied terms of the Act.¹

Section 9 of the Civil Procedure Code signifies this principle² and the Supreme Court of India has spelled out the jurisprudential basis of this Section.³ According to the Court, it is structured on the basic principle of a civilized jurisprudence that absence of machinery for enforcement of right renders it nugatory. The Court observed thus: "No court can refuse to entertain a suit if it is of description mentioned in the section. That is amplified by use of expression 'all suits of civil nature'. The word 'civil' according to dictionary means relating to the citizen as an individual, civil rights".⁴

5.1. Jurisdiction of the Courts

In the case of *Patriarch of Antioch vs Moran Mar Thoma*,⁵ it has been decided that all civil suits even related to the Church disputes come under civil jurisdiction. Hence, the civil courts

have the right and the duty to interpret all ecclesiastical law in so far as they have to apply them.⁶

The civil Courts also have the obligation to study Canon Law, the law of the Church as well since right interpretation of the law requires more than a literal understanding of the text of the law.

The Supreme Court also noted that the individual Churches are free to take up their cases to the respective court for settlement of their issues.⁷ Courts have the obligation to study Canon Law as well since right interpretation of the law requires more than a literal understanding of the text of the law.

5.2. Canon Law as the Personal Law of the Christians in India

Canon Law is recognised as the personal law of Catholics in India.⁸ A careful analysis of the provisions of Canon Law would show that this proposition is the accepted position in Canon Law itself.⁹

By c. 1108 of the Code of Canon Law, Catholics are bound to observe the form of marriage prescribed by the Canon Law. The form of the marriage is, therefore, essential to the validity of the marriage, and the Canon Law impliedly forbids any marriage which is not sacramental as well as a contractual one. Canon Law provides that unless the parties marry in the form required by the Church, there is no marriage as required by the law. The form of marriage is part of the personal law of the parties and by reason of section 88 of the Indian Christian Marriage Act of 1872, the personal law applies in such matters.¹⁰ However, cc. 1672 and 1152 concede the right of the civil authority to make laws as to the

civil effects of matrimony. Therefore, there is no scope for any conflict between the civil law and Canon Law.

In the case of *George Sebastian vs Molly Joseph*, the High Court of Kerala held that personal law, i.e., Canon Law 'stands clipped to the extent statutory law has stepped' in. It was laid down that "when the ecclesiastical court grants annulment or divorce, the church authorities would still continue under a disability to perform or solemnise a second marriage for any of the parties until the marriage is dissolved or annulled in accordance with the statutory law in force in this regard".¹¹ This decision of the High Court was challenged before the Honourable Supreme Court which affirmed the decision of the Special Bench of the High Court.¹²

The legal status of Canon Law in the Indian legal system is no more than that of the rules and regulations of a body incorporate. For this basic reason, Canon Law cannot claim supremacy over the law of the land and it necessarily remains subservient to the civil law.

5.3. Validity of Marriages and Annulment

Church courts are tribunals within the structure of the Church. They adjudicate disputes of an ecclesiastical nature which may not be adjudicated in civil courts. Canon Law is the personal law to be applied in determining the validity of the marriage of Roman Catholics.¹³

The Church tribunals cannot adjudicate upon those matters so as to affect the civil rights of the parties to the marriage. Whatever be the jurisdiction of the Church tribunal in ecclesiastical matters, it cannot affect the civil rights of the parties. Rights flowing out of a legal marriage cannot be interfered in by the Church tribunal.¹⁴

Marriage between the parties creates civil rights and the ecclesiastical tribunals have no jurisdiction to annul marriages involving the civil rights of the parties. There cannot be an implicit claim that Canon Law is tantamount to the public law of a sovereign power like the state, which can circumscribe and regulate civil rights.¹⁵

5.4. Authority of the Bishops to Formulate the Rules for Church Bodies

The civil court in Mangalore has dismissed a Catholic lay group's attempt to challenge the authority of bishops to formulate rules for Church bodies. The group, which claims 230 members, says several clauses in the constitution of the diocese, promulgated on November 2, 2010, are discriminatory and unethical. The court dismissed the action on February 2011, calling it 'unmaintainable'.

The association's president Alban Menezes said his group has the right to approach the judiciary to rectify discriminatory norms. The group mainly objects to the rule that prohibits parishioners, who file cases against the Church, priests and Church bodies, from becoming members of pastoral councils. The 104-page constitution also bars tenant parishioners from becoming members of parish councils, finance committees and other Church bodies.

5.5. Religious Processions without Affecting Peace and Public Order

In this case of Acharya Jagdishwaranand Avudhuta vs Commissioner of Police, Calcutta,¹⁶ the Supreme Court held that the performing the 'tandava dance' with fatal weapons and human skulls in processions or at public places, by the Ananda Margis, could not be considered as an essential ceremony of their religion.

The Supreme Court held that prohibition of such demonstration in consonance with section 144 of the Criminal Procedure Code was justified. It was declared that such an order does not violate the right to freedom of religion as guaranteed under the Constitution of India.

The order of the Supreme Court did not ban the demonstrations or prayer gatherings of the Ananda Margis, but it prohibited possession of trishuls, daggers and skulls during the processions, so as to safeguard public interest.

5.6. Prayers at Houses

According to the Madras High Court, neither revenue officials in their capacity as Executive Magistrates nor police could insist on obtaining their permission for conducting prayers in a peaceful manner inside religious institutions.

People practicing a particular religion, be it Hinduism, Christianity or Islam, cannot be prevented from assembling in a dwelling place for conducting prayers and there is no necessity for them to obtain prior permission from any authority.

If such prayers led to public nuisance such as noise pollution, then it would always be open to the authorities to take necessary action under the provisions of the relevant statutes such as the Noise Pollution (Regulation and Control) Rules, 2000.

Further, such action could be taken only after the authorities, on the basis of concrete evidence, arrive at a subjective satisfaction that there had been an infringement of the right of other residents around the dwelling place and therefore they have to step in to maintain public order.

Frivolous complaints to restrict the freedom to practise and profess any religion should not be entertained. As long as the petitioner or the members of his family and others did not indulge in any activity forbidden under law or their actions were not contrary to public order, morality and health or such other restrictions, there could not be any interference with his right to religion.

Disposing of a writ petition filed in the Madurai Bench, Justice R.S. Ramanathan stated that religious worship without affecting public order, morality and health was a fundamental right guaranteed under Article 25(1) of the Constitution.

5.7. Use of Loud Speakers in the Church Premises

The Supreme Court of India held that the custom of religious prayers through use of loudspeaker is not an essential element of any religion. Religious freedom is subject to public order, health and morality. Restriction can be imposed on the use of loudspeakers for religious prayers if such use results in noise pollution.¹⁷

5.8. Church Temporalities

a. Right of the Diocesan Bishop

The legal competent person of the diocesan and parish temporalities is the diocesan bishop.¹⁸ Therefore, the control of the temporalities in the diocese is vested in the bishop.¹⁹ The Church is a voluntary association and its members are bound by its discipline or rules, which in the case of Catholic Church is represented by its Canon Law. The diocesan bishop has the right to appoint a priest as administrator of the Church's property.²⁰ The Parish priest appointed by the bishop has the right over the parish properties.

b. Right of the Laity or the Parishioners

The proprietors of a parish Church are not the parishioners.²¹ In the case of Roman Catholic Bishop of Trichinopoly vs Amirthaswami Pillai,²² the High Court of Madras directed for the handing over of possession of the church to the representatives of Roman Catholics of Varaganeri village, subject to the spiritual authority of the Bishop of Trichinopoly. The Court was considering the religious aspects of the matter and the question arose when the church was taken over by minority community people, and whether it was necessary to issue any direction for the handing over the possession of the church to the plaintiffs in the suit. The facts of that case make it clear that the church was not consecrated, but only dedicated in accordance with the Roman Catholic rites and it was found as a matter of fact and on the basis of subsequent agreement between the community people and the Bishop that the Bishop was authorised only to depute a priest for the conduct of daily masses and on days of obligation and for the conduct of other religious services. In other words, on the basis of settlement of dispute, the church was dedicated for general public of Roman Catholic and maintained by a committee of Catholics who had control over it for that purpose. In that factual situation, the Court held that since the church was maintained by a committee of Community people who had control over the church and its affairs, the possession should be handed over to the plaintiffs, the representatives of that community.

However, there are rulings which support that the parishioners have the right to have the possession of the Church and its temporalities. The Kerala High Court has backed laity's right over church property and it ruled that Parishioners have rights over church property. Justice K. Vinod

Chandran gave the ruling while hearing a case over property rights between parishioners and church authorities of Mukkad Thirukukdumba Church, Sakthikulangara, Kollam. Parishioners, independently or together as a Committee of Administration are competent to represent the Parish and claim rights over the property of the church, the Kerala High Court ruled.

As per Canon Law, Church property is vested in the hands of the Bishop or the Vicar and clearly mandates consent from either the Bishop or the Vicar for initiating litigation before any Court of Law. The court held in its judgment that the competence of the plaintiff (parishioners) cannot be doubted even going by the Canon Law; less so by the law applicable to the land.

The Court observed further: "Canon Law, as it exists now, realizes the fences erected by Civil Law and continuously veers away from any transgression thereof". The Court also pointed out that Canon Law was discussed only to answer the right of the parishioners and it should not be understood that Canon Law would over ride the Civil Law of the Land. Canon Law can have theological or ecclesiastical implication to the parties, but such personal law cannot have any legal impact, the Judge quoted from Full Bench decisions of the High Court that was later upheld by the Supreme Court.

Each case has to be studied in detail to have the proper understanding of the rationale of the courts. The courts have made the distinction clearly between the Church consecrated and the Church dedicated.

c. Administration of the Church and the Religious Services

The secular administration of the church is well defined in the Canon Law. C. 1214 defines the term, 'church' to mean

a sacred building intended for divine worship, to which the faithful have right of access for the exercise, especially the public exercise, of divine worship. C. 1215 provides that no church is to be built without the express and written consent of the diocesan Bishop and before granting the permission, the diocesan Bishop is required to consult the council of priests and the rectors of neighbouring churches and then, he is to decide that the new church can serve the good of souls and that necessary means will be available to build the church and to provide for divine worship. C. 1217 provides that as soon as possible after completion of the building the new church is to be dedicated or at least blessed following the laws of the sacred liturgy and churches, especially cathedrals and parish churches are to be dedicated by a solemn rite. C. 1218 provides that each church is to have its own title and once the church has been dedicated this title cannot be changed. C. 1219 provides that all acts of divine worship may be carried on in a church which has been lawfully dedicated or blessed, without prejudice to parochial rights.

There are problems with regard to the secular administration of the Church. Sometimes people of some villages file suit in the civil courts claiming the right to the secular administration of the Church and the religious worship.

i. The Reservation of Places in the Church

The case of Michael Pillai vs Rt. Rev. Bartle²³ dealt with the question of custom prevailing among the Roman Catholic people who claimed an exclusive right to sit in and worship in a particular portion of the church during time of the service and to take part in certain duties connected with the church services. The High Court of Madras held this claim as legally

unsustainable. It held that as soon as a Church is consecrated, the church becomes the property of the Bishop and other church authorities irrespective of the fact that any particular worshipper or worshippers contributed to the construction of the church.

The High Court of Madras also held that according to Canon Law a Roman Catholic Church becomes, as soon as it is consecrated, the property of the church authorities, irrespective of the fact that any particular worshipper or worshippers contributed to its construction. The Bishop and other church authorities have the exclusive right to the internal management of the church, whether relating to secular or religious matters, such as accommodating the congregation inside the church and prescribing the part to be taken by the congregation in the services and the ceremonies.

ii. The Members of the Voluntary Association are bound by its Rules

In the case of *Gaspari Louis vs Gonsalves*,²⁴ the High Court of Madras held that if a person voluntarily joins in a particular association, the person would be bound by the rules which have been framed for the internal discipline and for the management of its affairs. The Court held as: "We may say at once that we think any analogies drawn from the decisions relating to the property of the English Established Church are not really applicable to the present case. The Church of England is properly described as 'established' just because of this unique feature about it, that it is subjected to the ordinary courts of law not only as to matters temporal but even as to matters of doctrine. This is due to a variety of historical causes which need not now be examined. The Roman Catholic Church is not an Established Church. It is what is described as a voluntary association in the English cases; and the result of

those cases of which the most important are Long V. The Bishop of Cape Town (1863) 1 Moo. P.C. (N.S.) 411 and Merriman V. Williams (1882) L.R.7 A.C. 484 seems to be this: If you join a voluntary association you will be bound by any rules which it had framed for its internal discipline and for the management of its affairs”.

The Supreme Court in *Most Rev. P. M. A. Metropolitan vs Moran Mar Marthoma*²⁵ held as: “A church is formed by the voluntary association of individuals. And the churches in the commonwealth are voluntary body organised on a consensual basis - their rights apart from statutes will be protected by the courts and their discipline enforced exactly as in the case of any other voluntary body whose existence is legally recognised”.

iii. No Worship contrary to the Rituals of the Roman Catholic Church

In the case of *Roman Catholic Bishop of Trichinopoly vs Amirthaswami Pillai*,²⁶ the High Court of Madras held that the people would not be allowed to use the Catholic church for worship which is not in accordance with the Roman Catholic ritual and therefore, and could not be allowed to introduce therein priests of another Church for the purpose of conducting worship. The facts of that case are, a Roman Catholic Church was constructed in the place called, Varaganery and was dedicated for the religious worship in accordance with Roman Catholic rites. It was also found as fact that the church was built by the Roman Catholics of a particular caste community and it was used by all Roman Catholics as being dedicated to the general public of Roman Catholics. A dispute arose when minority of the said community obtained possession of the church and arranged for masses according to the rites of the Syrian church. Other people of the same community people

filed a suit and when the matter came up before this Court on appeal, this Court held that the minority or even the majority of the Roman Catholics of Varaganeri would not be allowed to use the church for worship which is not in accordance with the Roman Catholic ritual and therefore, could not be allowed to introduce therein priests of another Church for the purpose of conducting worship. The Court held that the plaintiffs in the suit which was filed in the representative capacity are entitled to injunction restraining the defendants and their adherents from interfering with the Church and the conduct of the religious services held therein.

iv. Dual Authority of the Administration is not allowed

In the case of C. S. Robert And A.S. Arokiaraj, Trustees And Representatives of Catholic Public of Vakampatti vs M. Kanagappan And Ors. on 29/4/2003, the question regarding the temporal or administrative power over the Church and the exercise of the said administrative power was discussed. There was no dispute regarding the exercise of spiritual power of the church by Papacy through its local representatives, the Episcopate and the local Parish Priest.

In this case, the High court of Madras has referred the Canon Law and also the Commentaries on the Canon Law. C 1214 makes it clear that the faithful have the right of access to the church for divine worship. If the administrative control of the church remains with the Roman Catholic public of Vakkampatti village, then there will be a possibility of dual authority in the administration of the church one on the religious matters and another on administrative matters and the vesting of dual authority in a Roman Catholic Church would be contrary to the Canon Law. Further, the Court has

seen the effect of consecration. A sacred building would not become fit for worship immediately after its construction and only after the sacred building is dedicated or blessed following the laws of the sacred liturgy, it would become fit for divine worship. If the dual authority is recognised, then a situation may arise that the church and its properties may be put to use by the person who constructed the church, not for the objects intended to be carried on in the church. It may also lead to a situation that there may be transfer of property to third parties thereby endangering the very existence of the church itself. C. 1222 provides that if the church cannot be used for divine worship and there is no possibility of its being restored, the diocesan Bishop may allow it to be used for some secular, but not unbecoming purpose.

v. Consecration of the Church

The High Court of Madras stated further that a reading of various provisions of the Canon Law postulates that a detailed procedure has been made for the administration of the church and its properties and so long as the church retains the status of a Roman Catholic church, in the court's view, the diocesan Bishop alone would have the right in both the spiritual and the temporal matters in respect of the church and its properties. The Church in question, by its very nature, has been constructed only from the donations made mostly by the members following Christian religion and from the fact of contribution for the construction of the church by the public, it does not mean that the properties should be transferred to the public or held by the public. When a building is constructed for the purpose of divine worship, it would become a church only after the fulfilment of certain formalities prescribed in the Canon Law and there must be an express

and written consent of the diocesan Bishop and there must be dedication or blessing following the law of sacred liturgy. Once a sacred building becomes a church under the Canon Law, the faithful will have a right of access for divine worship. The Canon Law contemplates the complete existence of a church.

vi. Recognition of the Private Juridical Persons in the Administration of the Church

Chapter II of Title VI of the Canon Law deals with juridical persons and c. 116 provides that public juridical persons are aggregates of persons or of things which are established by the competent ecclesiastical authority so that, within the limits allotted to them in the name of the church, and in accordance with the provisions of law, they might fulfil the specific task entrusted to them for the public good and other juridical persons are private. Sub-clause (2) of c. 116 provides that public juridical persons are given this personality either by the law itself or by a special decree of the competent authority expressly granting it and the private juridical persons are given this personality only by a special decree of the competent authority expressly granting it. In other words, private juridical persons are given the juridical personality not by law, but only by a special decree of the competent authority expressly granting it. Sub-clause (3) of c. 114 provides that the competent ecclesiastical authority is not to confer juridical personality except on those aggregates of persons or of things which aim at a genuinely useful purpose and which, all things considered, have the means which are foreseen to be sufficient to achieve the purpose in view. Therefore, the submission that with regard to the temporal goods belonging to private juridical persons, the Canon Law cannot prevail is

not acceptable, as the expression, 'private juridical person' in Canon Law has a significant meaning and to regard a group of persons as private juridical persons, the juridical personality should be given that status by a special decree of the competent authority expressly granting it.

The Canon Law has made some distinction between the spiritual and temporal powers of the Papacy and the temporal powers of church vest in the Pope whose authority might be delegated to a Bishop to the extent of a particular diocese. Therefore we hold that once the church in question was constructed and consecrated by the Bishop of Trichy Diocese, the church and its properties would vest in the Pope and Bishop as a delegate of the Pope, the title to the spiritual and temporal powers over the church and its properties. Though the church was constructed with the funds mostly provided by the Roman Catholic public of Vakkampatti village, when the church was consecrated according to the Roman Catholic rites, the church and its properties would vest in the bishop of the diocese.

Cc. 1254 and 1257 make it clear that the Catholic Church has the inherent right, independently of any secular power to acquire, retain, administer and alienate temporal goods, in pursuit of its proper objectives and all temporal goods would be regulated by the canons as well as by their own statutes. Sub-clause (2) of c. 1257 provides that unless it is otherwise expressly provided, temporal goods belonging to a private juridical person are regulated by its own statutes, not by these canons. Sub-clause (2) of c. 1257 deals only with the temporal goods belonging to a private juridical person, and a body of Roman Catholic public in the village are not private juridical persons within the meaning of Canon Law.

Conclusion

The Indian civil jurisprudence shows that the church disputes are not easy to settle as they are meddled with Canon Law. Unfortunately, the civil lawyers are not well versed with Canon Law and so the Christian community is helpless sometimes and is judged solely by the civil law.

According to the spirit of the Bible, God does not condone the State trespassing into Church affairs to resolve such a dispute. Civil Courts certainly have the authority to rule on matters of civil law between two individuals of the Christian faith – on a property or contract dispute.

Civil Courts will intervene in church related disputes, but they will defer to established church authority. A court's decision cannot be based on doctrine, but must be based on 'neutral principles of law'. For example, the court may award the property to the majority, or divide the property in accordance with the members, or use some other method which doesn't involve examining doctrine. But if the church has its own procedure to settle the matter, the courts will generally defer to the church and will require this procedure to be followed. If no method of resolving disputes is established, the court will be left with no choice but to decide the matter in accordance with these 'neutral principles'.

The Church in India should have a way to arbitrate disputes. In order to resolve a dispute internally and without going to court, the church bylaws should provide a procedure to follow when a dispute arises. If a controversy cannot be settled locally, the bylaws should contain a method to resolve the matter by convening an arbitration council to settle it within the fellowship of the larger church.

Not all problems will be solved by developing an arbitration procedure. But every time a court battle involves a church, the world sees only divisiveness and animosity - the ugliness of the flesh instead of a portrait of the love of Christ. To the degree the Church can avoid such disputes by prior agreement, it will have increased its ability to serve not only to the people who are against it but also to the entire world.

(Endnotes)

¹ Dhulabhai V. State of MP, AIR, 1969, sc, 78.

² "Courts to try all civil suits unless barred - The court shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Explanation I: A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies. Explanation II: For the purpose of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

³ P.M. A. Metropolitan and others V. Moran Mar Thomas Mathews, 1995, Supp (4), scc, 286.

⁴ Ibid., at p, 318, paragraph 29.

⁵ Patriarch of Antioch V. Moran Mar Thoma, Supreme Court Journal, 1995, Vol. 3, p. 94.

⁶ Madras High Court Journal, 1967, p. 251.

⁷ Most Rev. P.M. A. Metropolitan and others V. Moran Mar Thomas Mathews, op.cit.

⁸ Lakshmi Sanyal V. S.K. Dhar, AIR, 1972, SC 2667, Paragraph 10.

⁹ Cf. CIC, 1672 and 1152 ; CCEO, c. 1358 and 863.

¹⁰ Eappen Punnen V. Koruthu Maria, 10, TLR, 95.

¹¹ George Sebastian V. Molly Joseph, 1994 (2), KLT, 387, AIR, 1995, Ker. 16.

¹² Molly Joseph V. George Sebastian, AIR, 1997, SC, 109.

¹³ Lakshmi Sanyal V. S.K. Dhar, AIR, 1972, SC 2667; Leema V. Dilip Humar, KLT, 1992 (1), p. 651 and AIR, 1993, Ker. 57.

¹⁴ Kurien V. Alphonsa, KLT, 1986, p. 731-733.

¹⁵ Jose V. Alice, KLT, 1988 (2), p. 893

¹⁶ *Acharya Jagdishwaranand Avudhuta V. Commissioner of Police, Calcutta*, (1984) 4, SCC 522.

¹⁷ *Church of God (Full Gospel) in India V. K.K.R.Majestic Colony Welfare Association & Others*, INSC, 458, 30 August 2000; *Church of God (Full Gospel) V. The Government of Tamil Nadu*, 2002, RD-TN 155, 28 February, 2003.

¹⁸ *PMA Metropolitan V. Moran Mar Marthoma*, AIR, 1995, SC, 2001-2074, (2048)

¹⁹ *K.S. Mathai V. State of Kerala*, KLT, 1981, CRP n° 32361/81L.

²⁰ *Gasnari Louis V. Rev.Fr. C.P. Gonsalves*, Madras Law Journal, 35, 1918, 408.

²¹ *John Rozario V. Kochunny Thampan*, SA, 132, 1083.

²² *Roman Catholic Bishop of Trichinopoly V. Amirthaswami Pillai*, 1944 (I), MLJ, 157.

²³ *Michael Pillai V. Rt. Rev. Bartle*, 39, ILR, Madras, 1056.

²⁴ *Gaspari Louis V. Gonsalves*, 35, MLJ, 407.

²⁵ *Most Rev. P.M.A. Metropolitan V. Moran Mar Marthoma*, 1995, Supp. (4), SCC, 286.

²⁶ *Roman Catholic Bishop of Trichinopoly V. Amirthaswami Pillai*, 1944 (I), MLJ, 157.