

Confused Relationship between the Diocesans and the Religious caused by the administration of Temporal Goods

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Introduction

Recently an Archdiocese in Tamil Nadu had to face the apostolic intervention directed by the Congregation for the Evangelization of Peoples to settle a property dispute between the Archdiocese and a female religious congregation. Though the dispute is settled amicably, the damages it had caused in the ministerial relationship between the sisters and the diocesan priests may take much time to get healed. This property dispute between two public juridical persons has affected many of its both members sowing unknown hatred, disunity and sore relationship. Such scenario is not uncommon among the other dioceses in Tamil Nadu. With the view to avoid all the possible future issues centred on property, I would like to present this paper on the relationship between the diocesan priests and the religious in relation to temporal goods. This presentation is divided into the following four parts:

- i. The Juridical Understanding of Apostolate of the Religious.

- ii. The Diocesan Bishop's Duty and Right over the Religious.
- iii. The Norms concerning the Temporal Goods.
- iv. Contract to safeguard Mutual Relationship.

Though this presentation is not a detailed study on religious life, a sufficient understanding on the important aspects of religious life would throw more light on the ecclesiastical issues which we will analyse. The points discussed in this study concerns only the consecrated life and the societies of apostolic life. We do not include the secular institute in this discussion. Though the title of this present article seems to wear a negative gown, the concern of this paper is a different one. The main concern of this study is to facilitate or to enhance a better relationship between bishops and the religious congregations in a pastoral setup.

Preliminary Note on Religious Life

Who is a religious? What is religious life? As per c. 588, consecrated life, in itself, is 'neither clerical nor lay'. It is a special state of life linked in a special way to the church and to its mystery (C. 573). The life of the religious belongs to the life and holiness of the church (C. 574). The religious are the splendid sign in the church which foretells the future *parousia*, the heavenly glory (C. 573). The Code says that the religious life exists in the church for the honour of God, the building up of the church and the salvation of the world. The theological understanding of the religious life would state that the religious, both men and women, are called to follow Christ more closely; they are called to build up the church; and they are dedicated to seek perfection of charity in their apostolate.

The Important Characteristics of the Religious Life***Permanency***

Men and women who dedicate their lives for God do it for life time. Commitment and dedication of selves are not for a particular period of one's life. It is a lifelong commitment that is animated by the 'action of the Holy Spirit' (C. 573). For this reason only, the Code states that only for grave reasons the departure from institute for the perpetually professed may be possible. It states in strong terms namely, "A perpetually professed religious is not to seek an indult to leave the institute, except for very grave reasons, weighed before the Lord" (C. 691). The Code desires that this notion of permanency is to be taught adequately to the candidates during the formation period. During this formative period, the religious do understand the manner of life in the institute and form their mind and heart in order to dedicate themselves for life time (C. 599).

Though the Code marks permanency as one of the important characters of consecrated life, as per c. 684 § 5, with the permission of the Holy See one can transfer to a regular institute or to a society of apostolic life, or can transfer into other institutes.

While the life of the religious is permanent, the life of the institute is prone to transformation such as division, fusion, union, aggregation, amalgamation, suppression etc. (Cc. 579-585) as provisioned by the Code.

Common Life

Living a common life is another important characteristic of consecrated life. The members are called to lead a common life in a community. This fraternal life proper to each institute

unites all the members into a special family in Christ. The convergence of culture, language, life style of members etc., bear witness to an universal Catholic church. This fraternal union of the members, rooted and based in charity becomes the concrete example of universal reconciliation in Christ. The religious are called to share in common whatever they have or whatever they earn, and are to lead a common life under the authority of a superior (C. 596).

Vows

The hallmark that distinguishes the consecrated persons from the other members of Christ's faithful is the profession of evangelical counsels. The members profess the evangelical counsels of chastity, poverty and obedience in an institute (Cc. 577, 599-601). These evangelical counsels have a foundation on the life and teaching of Christ which the Code affirms saying that they are divine gifts received from Christ himself. The profession of vows is also distinguished as public and private. One may make a private vow. What distinguishes the public vow from the private one is that the public vows are taken publicly in front of the community of believers and it is accepted by the authority of the church (C. 576). Interpretation of these evangelical counsels and the legislation of their practice belong to the authority of the church (C. 576).

1. The Juridical Understanding of Life and Apostolate of Consecrated Persons

In order to avoid unwanted friction and hatred that lead to disunity among the members in a local church both the religious and the diocesan priests should grasp well the juridical notion of the life of consecrated persons and their apostolate. Here I would like to quote the recent interview of Pope Francis as reported in *La Civiltà Cattolica*, the Jesuit Italian

magazine. The Pope who served as the Archbishop of Buenos Aires and also the provincial of the Jesuits for so many years, knew quite well the complementarity of the ministries done by the diocesan priests and the religious in a particular diocese. The Pope said that “the charisms of the various institutes need to be respected and fostered because they are needed in dioceses.” He continues “I also know that the bishops are not always acquainted with the charisms and works of the religious [...] we bishops need to understand that consecrated persons are not functionaries but gifts that enrich dioceses” (Interview of Pope Francis to Fr. Spadaro S.J., 3rd Jan. 2014, La Civiltà Cattolica, Rome).

He too chided the religious institutes not in less term saying “If the religious decide one day to withdraw from one of their works due to a lack of manpower, the bishop often finds himself suddenly left with a hot potato in his hand.” He remarked that “dialogue between the bishop and religious must be rescued so that, due to a lack of understanding of their charisms, bishops do not view religious simply as useful instruments.” In this regard he opined that the document emanated from Congregation for Bishops and the Congregation for Religious in 1978, *Mutuae relationes* should be revised. With this background one could examine the following juridical notions on consecrated life.

- i. First of all, a religious community is lawfully constituted by its own statutes and constitution. A lawfully constituted community consists of the members and the superior who are bound by the proper law (C. 608).
- ii. While the constitution of a religious house belongs to the competent superior of the institute, its

establishment belongs to the discernment and right of the diocesan bishop (C. 609).

- iii. A religious community cannot exist in an unknown and unprescribed ecclesiastical territory. Each community member owns a domicile by living in a particular territory under the 'supervision of a diocesan bishop'. Therefore, I quote, "a house of a religious institute is established with the prior written consent of the diocesan bishop" (C. 609).
- iv. Prudence and responsibility are called for on the part of the diocesan bishop in establishing a religious community in his diocese. In establishing religious houses 'the welfare of the church and of the institute' must be kept in mind.
- v. One cannot start a religious house or an institution for monetary benefit alone without the prior consent of the diocesan bishop, who has the care of the souls in his jurisdiction.
- vi. It would be a *contra legem* practice that the religious first buy land and property somewhere and establish institutions etc., that fetch monetary benefit and then, later, seek permission from the diocesan bishop, compelling him to grant consent for such establishment. Here the above mentioned interview of the Pope is noteworthy. He admonishes the religious (foreign missionaries) not to run a 'novice trade' in Asian countries and cautions that the religious should be careful in crossing geographical and cultural boundaries, being sensitive to the social and cultural frontiers as well.

- vii. On the other hand, the diocesan curia also should understand that the lawful establishment of a religious community in a local diocese enjoys its right over the patrimony, apostolate of the Institute and the construction of a church with certain conditions (C. 611).
- viii. Whatever reasons may motivate the religious, they cannot start a different ministry after having obtained permission for a specific ministry in a diocese. C. 612 states the consent of the diocesan Bishop is required if a religious house is to be used for apostolic works other than for which it was established. For example, one cannot start a new educational ministry after getting an explicit permission for medical ministry. If such need were to arise the written consent of the diocesan bishop would be required always.

2. Diocesan Bishop's Duty over the Apostolate of the Religious

Having noted the above juridical notions, which, if followed would avoid all possible disputes between the religious and the diocesans, now, we will focus our attention on the role of a Bishop over pastoral ministries exercised in his diocese.

It is the prerogative right and duty of a diocesan bishop to oversee and co-ordinate the various pastoral ministries being carried out in his diocese. Consequently as per c. 678 in matters concerning "the care of souls, the public exercise of divine worship and other works of apostolate" the religious are subject to the authority of the Bishop whom they are bound to treat with sincere obedience and reverence. Again I

quote the Holy Father's words: "right to autonomy should never be considered as independence from the local church."

The Code wisely states that in the exercise of apostolate both the diocesan bishop and the religious superior should collaborate with mutual consultation (C. 678). While the religious cannot exercise ministry independently, distancing themselves from the common pastoral plan of the local diocese, the diocesan bishop also should not deny the new, adventurous and enterprising ministry of the religious who venture into such ministries according to the signs of the time.

In entering into such enterprising and challenging ministries, the religious should always journey towards the common pastoral plan of the local church. Instigation of a particular group of people against the authorities of a parish or a diocese and causing sharp disunity among the faithful are to be avoided. While all the religious and the diocesan priests strive together in establishing God's Kingdom that is based on justice and equal human dignity, care must be taken not to demoralize the pastoral unity of the diocese and to paralyze its ecclesial life. One's successful and enterprising ministry cannot be built over a dead church, or a crippled church.

It is also equally important that the diocesan priests and the local bishops respect the chrism, patrimony (C. 578) and the constitutional aspects of consecrated life. The parish priests cannot treat the religious as slaves, in particular the women religious. Gone are the days of 'altar around apostolates'. The religious today, under the guidance of the Holy Spirit, seek to perfect their state of life by entering into challenging and life giving ministries, thus making a leap over the stereo typed apostolate of yester years.

It is important that the parish priests respect the autonomy and the charism of the religious who minister in a parish territory. All are co-workers in Christ (Phil 2:25). All the ministers of Christ are to nourish the unity of one body, the church, the bride of Christ.

3. Norms Concerning Temporal Goods

One of the possible areas that could damage the existing fraternal collaboration of the diocesan priests and the religious is the property dispute. C. 1254 states that the Catholic Church has the inherent right to acquire, retain, administer and alienate temporal goods. Similarly c. 634 states that juridical persons such as Institutes, Provinces and Houses have the capacity to acquire, possess, administer and alienate temporal goods as per their own constitutions. In doing so, the religious should avoid all appearance of luxury, excessive gain and accumulation of goods (C. 634). In the administration of temporal goods the religious are governed by three norms, namely, the universal law, cc. 634-640 and their own proper law. While administering or acquiring temporal goods the religious are to keep in mind the precepts governing evangelical counsel of poverty (C. 635 § 2).

Sometimes a controversy may arise between the religious and the diocese over landed property and the administration of goods. What is more valuable is the united witness to Christ rather than accumulation of temporal goods. Dispute may arise when a particular religious is asked to leave the land or part with the property hitherto enjoyed. In such scenario, the provisions of law, the articles of agreement entered into, the principle of prescription, civil law prescription etc. should all be strictly observed, not leaving much room for pastoral charity and equity as well.

The prescription period of thirty years holds good only when the required conditions are met (Cc. 197-199). I would like to point out two important conditions of prescription, namely, prescription would be valid only when it is based on bona fide, good faith; secondly the owner of the property should have given up his or her ownership towards the property in question. Recent civil law jurisprudence says that one society cannot alienate its property to another society without a proper civil procedure. Here even the civil law prescription would not be valid. What can one registered society do is to give a property to another society for lease.

4. Contract to Safeguard Mutual Relationship

In order to avoid many litigations and civil cases, the code recommends both the parties to enter into a valid agreement which offers a juridical and legal strength to one's apostolate and one's temporal goods.

Works which the diocesan bishop entrusts to the religious are under the authority of the diocesan bishop. The agreement between the diocesan bishop and the competent superior should accurately and expressly define, among other things, the works to be done, the members to be assigned to, and the financial arrangements (C. 681 § 2).

Mutatis mutantis, with regard to the other works which the diocesan bishop does not entrust also needs a written contract in order to avoid all the future disputes between the religious and the diocese. This contract safeguards the interest of both the parties and offers juridical value to one's ministry. The religious need not consider that the act of entering into a contract with a diocese is tantamount to losing their autonomy. Mutual consultation is required at the

formulation of a bilateral contract (A model copy of contract is attached at the appendix).

5. Some Salient Jurisprudential Features Regarding the Patrimonial Dispute between A and B

Before the conclusion, this paper would like to point out certain salient features of apostolic visitation which a particular diocese faced in Tamilnadu last year.

- a. The Dicastery, Congregation for the Evangelization of Peoples, after carefully studying all the available documentation provided by both the parties and the draft of solution proposed by the impartial Mediator appointed by the Apostolic Nunciature for facilitating a just solution, issues a definitive solution to the case. In solving such an issue the Nunciature recommends both the parties 'to willingly accept the proposals of the Dicastery and readily implement it for promoting the common good of the Church and maintaining the good spirit of pastoral collaboration between the local church and the religious institute'.
- b. It also recommends that the final settlement should be made through a valid civil document.
- c. The Holy See states: "I would invite you to deal with the case either personally or through a delegate of yours, nominated ad hoc, so that no one else takes initiative nor pretends to have the legitimacy to interfere in the matter." Thus the Holy See strongly reprimands any religious congregation which unnecessarily involves as a third person into the dispute between the religious societies and the local dioceses in Tamil Nadu. It admonished through the

Apostolic Nunciature in India that "all the third party intervention should be withdrawn".

- d. It admonished the concerned party saying, "no ecclesiastical issue should be dragged before the civil court". Hence it directed the archbishop to ensure that both the parties withdraw all such civil cases and ordered the archbishop to take stringent actions if the parties do not withdraw all civil cases.
- e. In order to alienate a property, a proper sale agreement or a Gift Deed is a must.
- f. One Society (registered society in civil law) cannot gift a property to another society without completing a civil process.
- g. The Holy See gives much importance to the observance of the local civil laws regarding property disputes between juridical persons.
- h. Prescription of 30 years cannot be applied when there was interruption in the claim and which claim was not based on good faith (C. 1270).
- i. As per 1963 Limitation Act, no. 10, there is no limitation for filing a civil suit. At any time the religious person can recover the sale. The Trustee of a religious society is only a guardian and, therefore, he or she cannot part away with the property without a proper civil procedure. C. 1500 canonizes civil law. Hence civil procedures must be followed in matters of acquiring, administering, retaining and alienating properties.

- j. Any dispute between juridical persons should first be resolved through the local arbitration committee established by the local Episcopal Conference.
- k. A recommendation letter given by the Procurator of a diocese to a religious congregation for obtaining ration or electricity cannot be considered an alienation document.
- l. As per c. 1292, any extraordinary alienation of property needs the consent of the College of Consultors, the concerned parties and the Financial Committee.
- m. Acquiring, retaining, administering and alienating temporal goods belong to the Ordinaries or heads of the public juridic persons in accordance with the statutes.
- n. In respect of immovable properties all the public juridic persons are to follow Book V, "The Temporal Goods of the Church".

Conclusion

It is a fact that both the diocesan priests and the religious of male and female congregations are working for the building up of one body, Christ (1 Cor 12:12). LG 39 says that all members whether they are parish priests, laymen or religious - each in his own manner, participate in the sacramental nature of the Church. Likewise, each one, according to his proper role, must be a sign and instrument both of union with God and of the salvation of the world. While exercising one's ministry the ministers are called to exhibit greater concern for holiness. For LG 39 says that "all in the Church, whether

they belong to the hierarchy or are cared for by it, are called to holiness". Thus being the 'new people' in Christ, both the diocesans and the religious are invited not to act according to one's own flesh but in spirit (LG 9). The Spirit is the source of multiple gifts, the bond of marvellous unity, the light and beauty of creative power, the flame of love etc, (cf. LG 4; 7; 8; 9; 12; 18; 21). So foregoing all petty trifles and huge property disputes and with the assistance of the Spirit of God, both the religious and the diocesans, while exercising pastoral ministries in a territory, should strive towards pastoral collaboration and mutual fraternal relationship (Ps 133:1) so that the apostolate really benefits the poor, the suffering, the marginalized and the abandoned. Observance of the canonical norms detailed in this study would help in achieving the greater end, service to the poor.