The Vow of Poverty and the Holding of Property: A Canonical-Civil Appraisal

Roy Joseph Kaduppil*

1. Introduction

Dedicating oneself to Christ through the public vows of obedience, chastity and poverty is the hallmark of religious life together with a stable mode of common life in an institute approved by the Church. The religious life is a consecration. The word consecration emanated from two Latin terms: con and sacrare. Con expresses the intensive force and sacrare means to dedicate. Hence it means to make holy or sacred or to devote or to dedicate from profound feeling and it necessarily calls for a separation from the common to a sacred use. Thus etymological meaning itself discloses that the religious life is a self-giving and total dedication to God which springs from a definitive response to God. It is a free gift to God. This free self-surrender of a human person is expressed by the vows taken and observed voluntarily by the person responding to the special call of God. This self-surrender is not just for a moment to enter into this state of life but continues until the last breath.

* Dr Roy Joseph Kaduppil, Faculty at Institute of Eastern Canon Law, Paurastya Vidyapitham, Kottayam.
There is considerable scholarship on religious life and the living of evangelical counsels, especially the vow of poverty in the ecclesiastical literature, which have followed various lines of enquiry. This article sets out to contribute to the study on the canonical aspects of the observance of the vow of poverty in the Catholic religious institutes.

2. Various Forms of Consecrated Life and the Vow of Poverty

There are different forms of consecrated life in the Church. The Code of Canons of the Eastern Churches envisages nine different forms of consecrated life: five institutional and three individual. The former includes monasteries, orders, congregations, societies of common life in the manner of religious, secular institutes and the ascetics who belong to an institute of consecrated life; while consecrated virgins, consecrated widows and ascetics who do not belong to an institute of consecrated life constitute the latter group. The Code of Canon Law of the Latin Church divides them simply into two: religious and secular institutes.1 All these forms live the spirit of the evangelical counsels in varying degrees. Some of them take them as vows, certain others as promises, even among those who take the vows, for certain institutes it is public; for certain others it is only private.

3. What is a vow?

In common parlance vow is a pledge and hence it involves an assurance. In the ecclesiastical realm this is a unique pledge made to God. CCEO canon 889 defines and explains the concept of vow.

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1 The present legislations of the Church in the Eastern and Latin Codes differ substantially in their laws on consecrated life. But the previous legislations in motu proprio Postquam apostolicis litteris and CIC 1917 for the Easterners and Latins respectively, the canons did not differ much. For a detailed comparative study, see, Jobe Abbas, Two Codes in Comparison, Kanonika 7, Roma, 1997, 23-90.
The first paragraph of the canon that defines it states: “A vow is a deliberate and free promise made to God concerning a possible and better good.” The canon continues to assert that the person making the vow is obliged to fulfil it by virtue of religion. Vow involves a promise and this promise should definitely be made to God. That means any promise or commitment made to the Blessed Virgin Mary or to any other saints will not be a vow. The second element in the vow is that the subject of this promise should be subjectively and objectively possible. The subject matter of this vow can be an act or a thing. Whatever it be the vow should be for a better good.

Two qualities specified in the canon for the promise to become a vow are ‘deliberate’ and ‘free’. Deliberate means intentional. It should not be accidental or casual. Free means not out of any kind of coercion, internal or external, mental or physical. The act must be absolutely voluntary. If a vow is made out of grave and unjust fear or fraud, it is null by law itself (c. 889 §3).²

The second paragraph of the canon points out the eligible people who can make a vow. Anybody who has reached the age of reason is capable of making a vow unless he or she is not prohibited by law. For canon law the age of reason is seven years old (CCEO c. 909 §2). The mere fact that somebody has reached the age of reason will not entitle the candidate to make the vow. The law should permit them or they should have the juridical capability.³ That means the law can even fix a higher age for certain vows as in the case of religious vows,

² CCEO c.932 §2 states that “a juridic act placed out of some other force, grave fear, unjustly inflicted, or out of fraud is valid unless the law provides otherwise.” In this matter the law has provided otherwise and c. 889 §3 is an exception envisaged in this canon.

³ CCEO cc. 464 and 527 stipulate the juridical requirements for the validity of perpetual and temporary religious vows respectively.

⁴ To be admitted for profession whether it is temporary or perpetual one candidate should undergo novitiate. To be admitted to the novitiate if it is in monasteries with three year novitiate followed by perpetual profession, the
which requires a higher age.⁴

The vows are distinguished into public and private. A vow to be public should meet two requirements: a) it is to be accepted in the name of the Church, b) it is to be accepted by a legitimate ecclesiastical superior. Vows which lack any one of these or both these qualities are private vows.

How a vow comes to an end? There are different exigencies foreseen by the Code for the cessation of the vows. Six such situations enumerated in c. 891 are:

a) When the time appointed for the fulfilment of the vow lapses;
b) When there is a substantial change in the matter promised;
c) When the condition on the vow depends no longer exist;
d) When the purpose for which the vow was made ceases;
e) Through dispensation;⁵
f) Through commutation.⁶

4. Vow of Poverty in the Ecclesiastical History

There are a number of publications pointing out the legacy of consecrated life in the Church and all of them necessarily indicate that the consecrated life in the Church has historical, theological and juridical dimensions. Though this study concentrates primarily on the juridical aspects of the vow of poverty, for better clarity and conception a flash look into the historical and theological aspects of the vow of poverty seems to be beneficial. From the very commencement of the

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⁴ Vow of Poverty in the Ecclesiastical History

⁵ Dispensation is the relaxation of a merely ecclesiastical law in a special case (CCEO c. 1536 §1).

⁶ It is a substitution of the object of a particular vow with another object or with another obligation.
consecrated life marked by the eremitical life of St. Anthony of the Desert,\(^7\) one can identify the spirit of poverty or leaving the world and worldly riches in personal life and this spirit of poverty was evidently manifested in giving up temporal possessions. Not long after the time of St. Anthony of the Desert the eremitical life gave way to the coenobitic life which promoted the community life and there we notice an absolute prohibition of holding private property. St. Pachomius (292-348),\(^8\) St. Basil (330-379)\(^9\) and St. Benedict (480-547)\(^10\) imposed this rule over the followers. But in these lives, there was no trace of an express ‘vow of poverty’. The monastic profession demanded to avoid totally all that was unnecessary.\(^11\) Later by the time of Justinian, emerged the rule that all the property or goods held by the religious should belong to the monastery.\(^12\) This rule eventually became a law and the religious were legally forbidden to hold the private property.\(^13\) The vow of poverty and disability to hold the

\(^7\) St. Anthony of the Desert (251-356) is known as the father of all monks. He is known by various other epithets: St. Anthony, Antony the Great, Anthony of Egypt, Anthony the Abbot, Anthony the Anchorite, Anthony the Hermit and Anthony of Thebes. Athanasius of Alexandria is his first biographer and his writings and their Latin translations helped the spread of Christian monasticism.

\(^8\) St. Pachomius is recognized as the founder of Christian coenobitic monasticism. See more in Gawdat Gabra and Hany N. Takla, *Christianity and Monasticism in Upper Egypt*, American University in Cairo Press, 2010, p. 33.

\(^9\) St. Basil is also called Basil of Caesarea or St. Basil the Great. He is referred to as a Cappadocian Father together with Gregory of Nazianzus and Gregory of Nyssa. He established guidelines for monastic life focussing on community life, liturgical prayer and manual labour. In Eastern Christianity, he is known as a father of communal monasticism.

\(^10\) St. Benedict is also known as Benedict of Nursia. He is the patron saint of Europe. He is well known for “Rule of Saint Benedict”, which he wrote for his monks to follow. St. Benedict is regarded as the founder of Western Christian Monasticism. See, Carletti Giuseppe, *Life of St. Benedict*, Freeport, NY: Books for Libraries Press, 1971.

\(^11\) Victor De Buck, *De sollemnitate votorum praecipue paupertatis religiosae epistola ad fratrem suum Remigium*, Vromant, 1862, X.

\(^12\) Novel 5, iv sqq.; 123, xxxviii and xlii.

\(^13\) Opposed to this there are proofs for the religious holding property even in the twelfth century.
property gained more connection and strength by the French law which considered a religious as ‘civilly dead’.\textsuperscript{14}

It was in 1260, ever in the history, we find an express vow of renouncing all the private property during the religious profession.\textsuperscript{15} Still there was no limitation on the holding of common property for the religious communities. But by the emergence of mendicant orders in the thirteenth century we notice a step farther: renunciation of even the common properties except the convent. Some even went to the extreme of leaving the ownership of all the possessions even the indispensable to the Holy See.\textsuperscript{16} There was an increase in the number of mendicant orders on the basis of common poverty following the example of St. Francis and St. Dominic. This trend and rule of living on alms and spontaneous contributions of people were prevalent even among the clerics regular of sixteenth century. But the style of life and ministries of the clerics regular necessitated the possession of capitals for the order.\textsuperscript{17}

Though this absolute poverty and mendicant style of life were very much appealing and edifying to the people in the beginning, certain corruptions crept in eventually. It was seen as a means of safe living which resulted in idleness causing scandal to the faithful and others.


\textsuperscript{15} This is first found among the Order of Friars Minor, founded by St. Francis of Assisi, with the sanction of Pope Innocent III. Poverty as a vow, renouncing all the private property is introduced by the Constitutions of Narbonne promulgated by St. Bonaventure for the Friars Minor in 1260.

\textsuperscript{16} The Friars Minor went even to the extreme of assigning all their property to the Holy See even the indispensable.

\textsuperscript{17} Clerics regular were religious institutes whose members were clerics but bound by vows. They lived in community and engaged in various pastoral works such as education, preaching, administration of sacraments, other spiritual and corporal works of mercy etc. They have originated chiefly in the 16\textsuperscript{th} century. Main ones are Theatians (1524) and Society of Jesus (1540), Clerks regular of the Good Jesus and Barnabites.
This prompted the Council of Trent\textsuperscript{18} to pass a rule permitting all the monasteries to possess immovable properties and the income accruing from them.\textsuperscript{19}

Soon there emerged a distinction in the matter of holding property on the basis of the kind of vow distinguished as simple or solemn. A simple profession as a preparation for the final profession was first introduced by St. Igantius in his order and during this period of simple profession the candidates were permitted to retain their properties.\textsuperscript{20} Later this rule was extended to all orders of men by Pius IX and to all orders of women by Leo XIII.\textsuperscript{21} Those who were in simple vows were not canonically prohibited from acquiring and holding the private property and the prohibition was only upon the members with solemn vow. This proscription was seen as an effect of solemn vow. But it was not imposed as a strict rule. Even after the solemn vows some still continued the acquiring and possession of private properties.

5. Meaning and Spirit of the Vow of Poverty

The Second Vatican Council defines religious life in LG 43-44, PC 1-2, 12-14, LG 43-44. All these conciliar magisterial teachings view and explain the consecrated life as a gift of God, known as

\textsuperscript{18} Sess. XXV, c. iii, de reg.

\textsuperscript{19} Exception was granted to Friars Minor, Observantines and Capuchins. The Carmelites and Society of Jesus continued to observe the common poverty and they forbade the possession of assured incomes.

\textsuperscript{20} In 1541, Ignatius was commissioned to draw up the Constitutions of the Society and he completed its first draft between 1547 and 1550. The final form was drafted in the year 1552 with a number of changes. One of the main differences of this Constitution from the older orders was that the candidates are at first admitted to simple vows only and the solemn vows come much later.

\textsuperscript{21} We can notice certain exceptions in history to this rule. Following a rescript issued by the Penitentiary, dated 1 December, 1820 which was confirmed by the declaration to the bishops of Belgium on 31 July 1878, the religious in Belgium enjoyed the right of acquiring, possessing and administering properties even after solemn profession. The only condition was that they have to exercise this right observing total submission to their legitimate superiors. The religious in Holland also seemed to enjoy this right.
vocation, bestowed upon a person. And the person who is the protagonist of this gift responds to God through his or her self-giving and this self-giving leads to consecration. A consecrated life is the net result of the interaction between the call of God and the response of human person.

The Codes of Canon Law, though not strictly theological treatises, well integrates the doctrinal aspects of the concepts dealt with. This is particularly true of the Code of Canons of the Eastern Churches. Accordingly, the concept of religious life is defined in CCEO c. 410 in the following words:

The religious state is a stable manner of living in common in an institute approved by the Church, by which the Christian faithful, more closely following Christ, Teacher and Exemplar of Holiness, under the influence of the Holy Spirit, are consecrated by a new and special title through the public vows of obedience, chastity and poverty, observed in accord with the norm of the statutes under a legitimate superior, renounce the world and totally dedicate themselves to the attainment of perfect charity in the service of the Kingdom of God for the building up of the Church and the salvation of the world as a sign of the foretelling of heavenly glory.

This canon defines it more from a juridical point of view rather than a theological reality. Instead, CCEO c. 571 views the consecrated life as a gift of God.

There is a more detailed and profound theological vision of the consecrated life in the apostolic exhortation Vita Consecrata. It presents common life in religious life as “a God-enlightened space” (42) and the evangelical counsels as “a gift of the Holy Trinity” (20).

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22 The opening canon of every title and chapter is often a nut shell of the magisterial teaching of that topic.

23 Instead, CCEO c. 571 views the consecrated life as a gift of God.

In the religious consecration, the vow of poverty has a prominent place since the religious consecration itself is a renouncing of the world and the worldly pleasures for a greater cause. Renunciation of the world is expressed and revealed in one’s abandonment of visible and material things having some monitory value.\textsuperscript{25} Voluntary acceptance of the spirit of poverty is the vivid sign of the renunciation of the world. Hence the vow of poverty may be described as a promise made to God to renounce constantly the temporal goods to follow Christ, who denied himself in this world by embracing poverty voluntarily, more intensely. It includes the control of the independent use, acquisition, administration and disposal of such temporal goods. It is done in accordance with the rules and regulations of the religious institute, and subject to the authority of the superior. Any contrary act will be considered as infringement of the religious vows. A spirited life of the vow of poverty derogate a luxurious or superfluous life. But it is difficult to mark a line or the manner of living this vow since it is rather relative and the culture, time and such considerations become decisive in determining the necessity and luxury.

6. Religious Institutes and their Right to have Property

CCEO c. 423 states that all the religious institutes are juridic persons. All the juridic persons in the Church, irrespective of the fact whether they are aggregate of persons or things are entitled to acquire, possess, administer and alienate the property. All the properties of the juridic persons in the Church are called the ecclesiastical goods. Hence the temporal goods of the religious institutes are ecclesiastical goods. However the second part of c. 423\textsuperscript{26} specially mentions that it is up to the particular law of the religious institute in its typicon or statutes to

\textsuperscript{25} One cannot abandon the intellectual properties, talents, etc.

\textsuperscript{26} CCEO c. 423: [...] However, the typicon or statutes can exclude or restrict their capacity to acquire, possess, administer, and alienate temporal goods.
decide whether to exclude or to restrict the capacity of the religious institute with respect to the acquisition, possession, administration and alienation of the temporal goods.

CCEO c. 424 makes a special rule to protect the spirit of poverty in all religious institutes. It states: “In the typicon or statutes, norms are to be established concerning the use and administration of goods in order to foster, express and protect their own poverty.” It is clear from the canon that even when the law permits the religious institutes to have the temporal goods, the mind of the Church is that the relationship of the institute with these temporal goods should in no way impair the real spirit and observance of the vow of poverty. Priority is given not for the goods of the institute, instead for the observance of the vow by the individual members.

The Church has a set discipline with regard to its relationship with the temporal goods because the Church never considers them as an end but only as a means to the ends of the Church. This is true of the religious institutes also. In the Eastern canon law we find this discipline in Title XXIII which includes canons 1007-1054. Canon 425 very clearly states that the temporal goods of the religious institutes are governed by cc. 1007-1054 which are common to all the temporal goods of the Church unless the common law provides otherwise or it is evident from the nature of the matter. But here the matter under consideration is holding of property by the individual members of the religious institute who are under the obligation of vow of poverty.

7. **Obligation of the Vow of Poverty**

As it is mentioned in the introduction there are nine different forms of consecrated life: six institutional and three individual. All these forms of consecrated life are not bound by the vow of poverty. Instead, it binds only the institutional forms of consecrated life. Although all the six forms are bound to keep the spirit of poverty, it binds with its inherent obligations only those who take them as vows. For example, certain forms such as societies of apostolic life in the manner of religious
or secular institutes do not call for a vow of poverty; instead only a promise. Though both, the vow and promise are made to God and thereby incur an indebtedness to Him for its fulfilment, the obligation in vow is more rigorous than in promise. The institutional forms of societies of apostolic life in the manner of religious and secular institutes though they are institutional forms of consecrated life, their principal difference from the monasteries, orders and congregations is the way of living the evangelical counsels. They profess the evangelical counsels not as religious vows but in some other ways and forms.

Now our query is on the following questions:

a) Can a religious acquire, possess, administer and alienate private property even after the religious profession.

b) If somebody held some property even before the entry into the religious life what is to be done with it?

c) If a property is acquired by a professed member of religious life what is the legal condition of that property?

7.1. Holding of Private Properties and Religious Profession

A person definitively assumes the monastic state by perpetual profession of the three evangelical counsels. But this does not take place as soon as somebody is admitted to the monastery or order or congregation. It should be preceded by a certain formation period which includes a few years in preparation for the novitiate and then a few years in temporary profession. In the monasteries, the temporary profession is facultative, while it is obligatory in the orders and

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27 CCEO c. 462§1: The monastic state is definitively assumed by perpetual profession, which includes the three perpetual vows of obedience, chastity and poverty.

28 It is up to the typicon or statutes of the monasteries as well as orders and congregations to decide the tenure of this formation period that precedes the perpetual profession(CCEO cc. 449, 465, 471, 518, 526 and 536).
congregations.\textsuperscript{29} Then only he or she is admitted to the perpetual profession.\textsuperscript{30} Among these preparatory processes, the period of novitiate is especially important. Novitiate is an intense and immediate preparation for the taking of vows.\textsuperscript{31} Here begins special stipulations and discipline regarding the holding of private properties.

For better clarity and convenience, we examine the right to hold the property by a member of a religious institute, by dividing the whole period of religious life in three different phases: of admission into the religious institute, of temporary vows and of perpetual vows.

\textbf{7.1.1. Entry into a Religious Institute and the Holding of Property}

CCEO cc. 448-461 deal with the provisions for the admission to a Monastery \textit{sui iuris} and the novitiate. It is through the vows one becomes the member of an institute. The serious and immediate preparation for taking vows in a religious institute begins with the novitiate. But as soon as a person expresses a wish to join the institute he or she will not be admitted to the novitiate. Canon 449 provisions a preparatory period before the novitiate. It states: “Before being admitted to the novitiate, a candidate must live in a monastery under the special care of an experienced member for a period of time determined in the typicon.” There is a similar legislation in c. 518 regarding the orders and congregations.\textsuperscript{32} Hence this preparatory

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\item In orders and congregations, for the validity of perpetual profession, it should be preceded by temporary profession (CCEO c. 532).
\item The previous Eastern legislation in \textit{Postquam apostolicis litteris} distinguished the professions as minor and major. But the present legislation makes use of two other terminologies: temporary and perpetual professions. Cfr. \textit{PA} c. 115.
\item This time of preparation and training is set apart for intense study, prayer and community life. Time is spent to study more about the monastery or order or congregation, its charisma and to test whether somebody has real call to this particular life. Deepening relationship with God and at the same time attainment of self-awareness are the main goals of this formation period. The legislations of the Church as they appear in CCEO cc. 459 §1 and 525 §1 and CIC cc. 646 and 652 precisely state the scope of this period of formation.
\item This period is generally known as aspirancy and postulancy.
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period before novitiate is obligatory in monasteries, orders and congregations. But to decide the time period and manner of formation are left to the typicon or statutes of these religious institutes. The law of the Church is silent about the holding or renunciation of the private properties during this time. That means as long as one is in the formation of this preparatory period he or she can acquire, possess, administer or alienate the properties.

However, the ecclesiastical restrictions on holding or renouncing temporalities begin with the entry into the novitiate. Regarding a novice in a monastery, c. 460 states: “A novice cannot validly renounce his or her goods in any manner or burden the same with obligations…” According to c. 525 §1 this is applicable also to orders and congregations.33 The meaning is very clear from the words of the canon itself. Burdening with obligation means imposing any liability through mortgages, bonds, leases or any such liens. This means the mind of the law is that whatever properties are there at the disposal of a candidate for religious life they should remain unharmed with him or her itself. To be short, to enter the novitiate of monasteries, orders and congregations, a candidate is not required to abandon his or her private property. Nonetheless, making any changes in its ownership is not permitted.

7.1.2. Temporary Profession and Holding of Property

In the traditional treatises on religious, we come across discussions on different degrees of religious profession and they are expressed by the distinct designations such as simple and solemn vows or simple profession and solemn profession. But the present legislation distinguishes them as private and public vows on the basis of the manner they are taken and as temporary and perpetual on the basis of the time period they endure. One becomes a permanent member of a

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33 CCEO c. 525 §1: Those things prescribed in cann. 459-461 are also valid in orders and congregations.
religious institute only by the perpetual profession. Temporary profession and vows are taken as a probation before the perpetual. It is mandatory in the order and congregations while it is optional in monasteries. The monasteries can decide to have it or not. If they choose to have the temporary vows, the enactments in common law regarding the temporary vows are applicable also for the monasteries under the provision of c. 465 which states: “what is prescribed by common law regarding temporary profession is also valid for monasteries in which this profession, in accord with the typicon, is made in advance of perpetual profession.”

The laws regarding the temporary vows are equally valid for orders and congregations and also for the monasteries with temporary vows. Hence the discipline related to the holding of property during the temporary vows are same for these three institutes of consecrated life.

7.1.2.1. Cession of the administration of the Properties

CCEO c. 525 §2 obliges the novice to take a legal disposition regarding their properties before he or she makes the temporary profession. This is applicable to orders, congregations and to the monasteries having temporary profession. The canon clearly states that the novices before the temporary profession, must surrender or relinquish to somebody whom they wish the administration of the property they actually have and will have during this period of time. This cession or formal giving up of the rights is for the whole time period of the temporary profession. This cession also includes the use and revenue derived from that property. The canon reads: “Before making temporary profession, novices must cede to whom they wish, for the entire time in which they are bound by the same profession, the administration of the goods they actually have and those that may accrue to them later, and they must dispose freely of their use and

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34 CCEO c. 462 §1.
35 CCEO c. 526. Regarding monasteries c. 465.
revenue.” Even here, only the administration of the temporal goods is transferred to somebody of his or her choice. The ownership is still with the member in temporary profession. Theoretically speaking, the law does not prohibit also the acquisition of the temporal goods because the canon added the clause “and those that may accrue to them later.” The only prohibition is the administration of their property thereby its use and the utilization of the revenue generated from them. Still the owner of the property is the temporarily professed member. To whom novice should cede the administration of his or her property is absolutely a free choice of the candidate and the law does not require any consent or consultation with any superior authority.

7.1.2.2. Ownership of the Temporal Goods Acquired before the Temporary Vows

Canon 529 is on the juridical effects of temporary profession. The canon after stating in its first paragraph that the temporary profession renders the acts contrary to the vows illicit, but not invalid; in its subsequent paragraphs deal with the proprietary rights of the one in temporary profession. This is applicable also to the monasteries having temporary profession. §2 of the canon states: “This profession does not deprive the member of ownership of his or her goods nor of the capacity to acquire other goods. However, the member is not permitted gratuitously to give up ownership of his or her goods through an act *inter vivos*.”

By the fact that somebody has made the temporary profession, he or she is not deprived of the ownership of the property at his or her disposal. Moreover, this profession does not take away the capacity to acquire other goods. Restrictions are imposed upon the administration of these temporal goods as mentioned above as well as on the alienation of such properties. The temporarily professed member is not permitted to gratuitously give up his or her ownership of the goods through an act *inter vivos* such as an outright gift of goods or

36 *Act Inter vivos* is the transferring of ownership while the donor is alive.
a title deed to land.

7.1.2.3. Properties Acquired during Temporary Vows

Canon 529 §3 envisages acquirement of the temporal goods by the one in temporary profession. Who will be the owner of the properties acquired by a member while he or she is in temporary vows? The general rule is that whatever a member while in temporary profession acquires in personal effort or in consideration of the order or congregation, they are all acquired for the congregation or for the institute. If the member claims that it is a personal acquisition it is to be proven. Unless the contrary is legitimately proven the presumption is that the member acquired it for the order or congregation. The canon states:

Nevertheless, whatever a member in temporary vows acquires through his or her effort or in consideration of the order or congregation, the member acquires for the order or institute itself; unless the contrary is legitimately proven, the member is presumed to acquire in consideration of the order or congregation.

7.1.2.4. Making Changes of Dispositions while in Temporary Vows

Canon 529 §4 is actually a complement to c. 525 §2 which obliges the novice before taking the temporary profession to cede to whom they wish the administration of the goods they already have and the future income that may accrue to them. Here this fourth paragraph states that if the one in temporary profession wants to make any change in this cession for any reason, he or she cannot do it arbitrarily on his or her own. But this change is to be done with the consent of the respective major superior if that change is not in favour of the order or congregation. That means if it is in a province, then with the consent of the provincial superior, or if not with the consent of the superior general. The letters of the canon reveals that if at least regarding a significant part of the goods is in favour of the order or
congregation, the member can make changes in the cession even without the consent of the major superior. The cession and such dispositions have effect only as long as the member remains in the institute. If this particular member decides to depart from the order or congregation all these dispositions will cease to have effect and the goods will be directly under his or her disposal.37

7.1.2.5. Liabilities Incurred by one in Temporary Vows

Paragraph five of c. 529 is on the liabilities incurred by a member in temporary profession. He or she will be held responsible for any debt or other obligations contracted by him or her personally. However, if it is owing to a business done for the order or congregation with the permission of the concerned superiors, they will not be held responsible, instead the order or the congregation.

7.1.3. Perpetual Profession and Holding of Property

The definite and permanent membership in a monastery, order or congregation is assumed by the perpetual profession.38 Canon 466 is on the juridical effects of perpetual profession in monasteries. It states: “Perpetual monastic profession renders acts that are contrary to the vows invalid if the acts can be nullified.” Though this canon does not seem to be anything regarding the properties evidently, in its further analysis it is obvious that most of the times this is pertaining to certain actions related to money. According to this canon these actions will be considered valid if they cannot be nullified because they are invalid if they can be nullified. For example, a transaction done by a professed member either of a monastery or order without the necessary

37 CCEO c. 529 §4: […] The cession and disposition of this type, however, cease to have force upon departure from the order or congregation.

38 CCEO c. 462 §1: The monastic state is definitely assumed by perpetual profession, which includes the three perpetual vows of obedience, chastity and poverty.

CCEO c. 531: By perpetual profession, a member definitively assumes the religious state, loses his or her own eparchy, and is fully aggregated to the order or congregation.
permission according to the laws and discipline of the same, if it is valid and justified according to the civil law, that means the act cannot be nullified, then it will be considered valid.

Canon 466 is applicable also to the orders because the perpetual profession in monasteries and orders are equal in accordance with c. 533\textsuperscript{39} and it specially mentions that cc. 466-468 are applicable to orders also. These canons are directly on the acquisition and administration of the properties of a perpetually professed member. Hence the disciplinary laws concerning the acquisition, possession, administration and alienation of the temporal goods by a perpetually professed member are equal in monasteries and orders while the discipline in congregations differ substantially in certain matters like the renunciation of the properties or the last will.

### 7.1.3.1. Renunciation of Temporal Goods before Perpetual Profession

Canon 467\textsuperscript{40} establishes that the candidate to perpetual profession should renounce totally all the goods at his or her disposal. The Code fixed a certain time period within which the candidate for final profession has to renounce all his or her goods. The time period fixed is within sixty days before profession. In favour of whom these goods are to be renounced? It is absolutely the freedom of the one who is professing. To whomsoever the candidate wishes. It can be the monastery or the order or any of his relatives or friends or anybody else. But there should be a condition attached that the profession subsequently follows. That means if in any case, the profession does not take place this leaving of goods will not be valid and true.

\textsuperscript{39} CCEO c. 533: In orders, perpetual profession is equivalent to perpetual monastic profession; thus cann. 466-468 are valid regarding it.

\textsuperscript{40} CCEO c. 467 §1: A candidate for perpetual monastic profession must, within sixty days before profession, renounce in favour of whomever the candidate wishes all goods that he or she has on the condition that the profession subsequently takes place; a renunciation made before this time is by the law itself null.
property remains unaffected. This may be the reason why the second paragraph of this canon particularly mentions that the civil transactions are to be made not before the profession but only after the profession because it may be difficult to change the civil dispositions immediately, in case it is to be changed. A renunciation made before this time is null by law itself. This provision is true for the orders also because c. 533 states that “In orders, perpetual profession is equivalent to perpetual monastic profession; thus cann. 466-468 are valid regarding it.” The parallel legislation is found in CIC 668 §4. It is noticeable that the perpetual profession in the congregations does not call for such a renunciation of the temporal goods of the member.41

The renunciation deed made before the perpetual profession need not have a civil effect. The second paragraph of c. 467 states, “Once profession has been made, all necessary steps are to be taken at once so that the renunciation also becomes effective in civil law.” The civil registration of the property according to the legal provisions of the state is to be fulfilled to have the civil effect of the renunciation.

7.1.3.2. Temporal Goods Acquired after the Perpetual Profession

It is natural that a perpetually professed member may continue to have revenues or in some way accumulated properties on him or her by way of varied means such as salaries, pensions, insurance benefits, bequest in the will, etc. In monasteries (c. 468 §1) and in orders (c. 533) all the temporal goods accrued on the perpetually professed member on whatever title are acquired for the religious institute. This means, after the perpetual profession the member has no private earnings or properties. It can happen that he or she acquires properties under various capacities and titles. But they are all totally acquired on behalf of the religious institute. Or in other words, the perpetually professed member and the juridic person of the religious institute are identified in this matter of acquisition of the properties.

41 The juridical effects of perpetual profession in the Congregations will be dealt with later in this article.
7.1.3.3. Liabilities Incurred by a Perpetually Professed Member

If all the properties acquired by the professed member are properties of the religious institute, what about the liabilities incurred by a perpetually professed member? Second paragraph of c. 468 foresaw such an eventuality and made clear legislation on it. It states: “The monastery must be responsible for the debts and obligations that the member has contracted with the permission of the superior; if the member has contracted the debts without the permission of the superior, however, the member himself or herself must be responsible.” Here the canon makes a distinction between debts and obligations contracted by a perpetually professed member with the permission of the superior and without the permission of the superior. The religious institute is responsible for the former and the member personally is responsible for the latter. This has allusion also to the vow of obedience.

7.1.3.4. Illegitimate Acts of a Perpetually Professed Member

The third paragraph of canon 468 has stipulated even a further contingency: “It remains firm, however, that against one who has profited from the contract entered into, an action can always be brought.” Though the religious institute is not responsible for the illegitimate acts performed by the member without the permission of the superior, it is every probable that the one who profited out of the contract will be held answerable and an action can be brought against it. That means if the institute has profited out of the illegitimate contract of the member, the institute has to answer for it. Before canon law and the civil law the institute will be held responsible.

7.1.3.5. A Religious Becoming a Patriarch, Bishop or Exarch and the Vow of Poverty

The Code foresees the possibility of a religious becoming a patriarch, bishop or exarch and makes necessary legislations in c. 431 §§2 & 3. Though they are elevated to the office of a patriarch, bishop or exarch they remain bound by the vows and other obligations of the profession (§2, 1°). But the same number of the canon exempt
them from those obligations which one prudently judges as cannot be reconciled with his dignity.

The third paragraph of c. 431 stipulates precisely on observance of their vow of poverty. According to the canon, if he has lost the capacity to acquire the temporal goods on account of his profession, by the acceptance of these offices, he is relaxed from that prohibition and is entitled to have the use, revenue and the administration of the goods accrued to him. As per cc. 467 and 533 members of monasteries and orders have to renounce all the properties before the final profession and after the final profession he loses the capacity to acquire the temporal goods for him personally. But for the members of congregations this renunciation is according to the provisions of their statutes (c. 534). This being the general rule affecting the religious, according to the provisions of c. 431 §3, a religious who becomes a patriarch, bishop or exarch can have the use, revenue and administration of the goods that come to him. Whatever the patriarch, eparchial bishop, or exarch acquires will be for the patriarchal Church, the eparchy or the exarchy respectively. If the bishop is only a titular bishop, whatever he acquires is for the monastery or order. However, if he has not lost the ownership of the property by reason of profession, for example, according to the statutory provision of a congregation, he recovers its use, revenue and administration. Those things he acquires afterwards, will belong to him personally.

7.1.3.6. Transfer of a Perpetually Professed Member and the Property Rights

The law permits a member of a religious institute to transfer to another religious institute. From a monastery to another monastery of the same confederation or of another confederation or to an order or to a congregation. When such lawful transfers take place, all the temporal goods acquired by the member remains with the same institute. They are not transferred (c. 488 §4). The canon states: “The monastery sui iuris from which the member transfers is to keep the goods that
have been already acquired by it because of the member […].” However, dowry,⁴² if there is any, is to be transferred to the new religious institute the member is transferring on the day of transfer itself. Nevertheless, the revenues accrued on this dowry need not be transferred as per the stipulations of the canon: “[…] With respect to the dowry, it belongs to the monastery to which the transfer is made, from the day of transfer, without the revenues that have already accrued.” The parallel legislation for the Roman Church is in CIC c. 684 §§3-4.

On account of canon 545 §4 this rule is true of orders as well as congregations because while treating on the transfer of members of order and congregations to another order or congregation or to a monastery sui iuris, it states: “Regarding goods and dowry, can. 488 §4 is to be observed.”

7.1.4. Claims of the Separated Members

A member of a religious institute may be separated from the institute in two ways: leaving the institute willingly and through dismissal from the institute (cc. 503, 553). The former is a volunteer act while the latter is imposed. CCEO c. 503 legislated on the claims of the separated members.⁴³ Whatever be the way of being separated from the institute, the member has no right to make any financial claim from the institute for his or her services there. Canon 503 §1 states: “One who leaves a monastery legitimately or has been dismissed from it legitimately can request nothing from the monastery for any work done in it.” However, the law itself in c. 503 §2 recommends that the

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⁴² Dowry is money or security offered for the support of a religious. See, c. 454.
⁴³ CCEO c. 503 §1: One who leaves a monastery legitimately or has been dismissed from it legitimately can request nothing from the monastery for any work done in it.

Regarding orders and congregations, c. 553: The dismissal of a member in perpetual vows is within the competence of the superior general; in other respects, cann. 500-503 are to be observed.
separated member is to be treated with equity even financially.\textsuperscript{44} This is fairly done in almost all the institutes.

By virtue of c. 553 the precept in c. 503 is applicable also in orders and congregations.\textsuperscript{45} But the fact that there is such an ecclesiastical law prohibiting the member to make any claim for the services rendered does not prevent that member to move civilly and it is not necessary that the civil court sustains the provisions of canon law. The parallel legislation can be found in CIC c. 702.

\textit{7.1.5. Obligation of Making a Will}

The obligation of making a will affects only the members of a congregation. Canon 530 states that the members of the congregation are obliged to make a will and testament at least before perpetual profession.\textsuperscript{46} They are free to make it even before. This is the deadline. The canon specially mentions that the will should be valid also according to the civil law. Otherwise the execution of the will may be challenged after the death of the member. It is specially mentioned for the congregations because in monasteries and orders in accordance with canon 467, the members of orders and monasteries have to renounce all their properties before the perpetual profession\textsuperscript{47} and immediately after the profession they have to take actions to make this renunciation civilly also valid. The congregations does not require such a renunciation before the perpetual profession. That means a perpetually professed member of a congregation is not forbidden to hold the temporal goods, which he/she inherited or acquired before

\textsuperscript{44} C. 503 §2: Nevertheless, the institute is to observe equity and charity toward a member who is separated from it.

\textsuperscript{45} Regarding dismissal from an order or congregation, c. 553: The dismissal of a member in perpetual vows is within the competence of the superior general; in other respects, cann. 500-503 are to be observed.

\textsuperscript{46} The previous Eastern legislation in PA 103 §3 required the novices in the religious institutes to make a free will regarding the property already at their disposal and the properties they would acquire in the future.

\textsuperscript{47} Canon 467 applies to orders also according to c. 533.
the profession. Whatever he or she acquired after the temporary vows are acquired for the religious institute. What is meant above is not the properties the member acquires after the temporary profession but the already acquired properties before the temporary profession. For the Latins the parallel legislation is in CIC c. 668 §1.

7.1.6. Canonical Effects of Perpetual Profession in Congregations

Canon 534 is on the canonical effects of perpetual profession in the congregations. The first number of the canon states that all the juridical effects of temporary profession detailed in c. 529 remain valid also for the perpetual profession. The only exception is any provision made by the common law.\(^4\) 534, 2° stipulates that the major superior with the consent of his or her council, can concede to a member in perpetual vows who requests permission to cede his or her goods, with due regard for the norms of prudence. In a congregation the perpetual profession does not oblige a member to renounce his or her property. But if somebody wants to make such a renunciation, it is possible and this number of the canon makes a provision for it. There is still another possibility of making a rule for the whole congregation. It is through making a law in the statutes as per c. 534, 3°. The general synaxis of the congregation, if it finds opportune, can introduce in the statutes a provision for the obligatory renunciation of the patrimony of a member already acquired and would be acquired. However this obligatory renunciation of the property cannot be done before the perpetual profession in the congregations. But in monasteries and orders it can be done even before the perpetual profession (c. 467 §1). CIC has parallel in c. 668 §4.

\(^4\) To cite an example for the common law providing otherwise is that according to 529 §1, temporary profession renders acts contrary to the vows illicit, but not invalid. Thus if a member in temporary profession attempts a marriage, the marriage will be valid but illicit. Regarding attempting marriage, the common law in c. 805 states: “persons who are bound by a public perpetual vow of chastity in a religious institute invalidly attempt marriage.”
7.1.7. Penal Actions for the Violation of the Vow of Poverty

Imposing penalties for the violation is an important means of enforcing a law. Violation of the vow of poverty is also subject to punishments. Though the Code does not state anything specifically on the violation of vow of poverty, one can trace provisions for it from different canons of the Code. While dealing with the dismissal of monks, c. 498 §1 states, “After divesting himself or herself of the monastic habit, a member who is the cause of imminent and most grave external scandal or harm to the monastery can be expelled immediately by the superior of the monastery sui iuris with the consent of the council.” The violation of the vow of poverty and its spirit can sometimes be the cause of imminent and most grave scandal or harm to the monastery. And in such situations the law permits the superior to dismiss such a monk immediately with the consent of the council.

The law is more precise where it deals with the dismissal from the orders and congregations. Canon 551 states that what is prescribed in cc. 497 and 498 regarding the dismissal of the monks are applicable also for the members of orders and congregations. In addition, c. 552 §1, 2° presents the possible reasons for the dismissal of a member of an order or congregation in temporary vows. According to the canon the lack of religious spirit, which can be scandal to others, is a sufficient reason for dismissal. However, the penal precept is to be served to them before moving with the dismissal. That means the penal action should be preceded by repeated warnings, with salutary penance and they should have been in vain. Grave, external and immutable acts contrary to the vow of poverty will definitely amount to the lack of religious spirit.

Above all, while enumerating the penalties for individual delicts in the second chapter of title XXVII on Penal Sanctions in the Church, c. 1466 states, “A cleric, religious or member of a society of common life in the manner of religious who exercises a trade or business contrary to the prescripts of the canons is to be punished with an appropriate
penalty.” According to this canon, a member of a religious institute with a vow of poverty, if surpasses the limits marked by the canons of the Code is liable to be punished.

8. Vow of Poverty and Civil Jurisprudence

India being a secular State, its esteemed Constitution maintains and respects the separation between the two plainly distinct domains of human life: secular and spiritual. The spiritual realm is chiefly steered by religions and in general, the State does not meddle with the matters related to religion such as religious life, worship, religious practices and customs, etc. But in the infringement of civil rights, which involves religious issues, the intervention of the judiciary becomes inevitable. In such situations of settling the litigations, the civil courts are called upon to state, interpret and apply certain rules and regulations related exclusively to certain religions and religious practices. One such situation is dealing with the consecrated life in the Catholic Church and especially the observance of the vow of poverty and various implications of this religious practice.

Before proceeding to examine the verdicts of the Courts, it is beneficial to point out the rational basis of their intervention. The right to religion is a constitutional right. The preamble of the esteemed Indian Constitution ensures liberty of thought, expression, belief, faith and worship to all the citizens. Then articles 25 and 26 are specifically on the freedom of religion. Article 25 (1) states: “Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.”

The religious freedom mentioned in this article is highly individualistic and this individualistic character has been found further developed in various upper courts’ decisions. In 1995, referring to Halsbury’s Laws of England, the Supreme Court of India stated: “A church is formed by the voluntary association of individuals”
extended this conception to all religious bodies. But slightly differing from this individualistic perspective, the Bombay High Court defined religion as follows: “whatever binds a man to his own conscience and whatever moral or ethical principle regulate[s] the lives of men believing in that theistic conscience or religious belief that alone can constitute religion as understood in the Constitution.” This definition which limited religion to the domain of conscience was broadened by the Supreme Court of India when it stated: “A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.”

Article 26 of the Indian Constitution recognizes the religious communities which are termed “religious denominations.” Thus the law acknowledges absolute religious freedom in the intimacy of individuals and recognizes that this religious freedom may take various public forms through religious practice or by taking part in religious collectivisations and institutions.

8. 1. Observations of Certain Verdicts of the Upper Courts of India

Here an attempt is made to comment on a few observations made and conclusions reached by a couple of judgments pronounced by the upper courts of India on the observance of the vow of poverty in the Catholic consecrated life and certain issues related to it. Since


these judgments constitute a vast corpus of texts, albeit furnishes us with very rich legal resources, I don’t dare to reproduce them wholly except their pertinent remarks related to our topic of consideration.

8.1.1. Verdict Issued by the High Court of Judicature at Madras

Case: Institute of the Franciscan Missionaries of Mary Vs Union of India on 22 December, 2016: Coram Honourable T.S Sivagnanam W.P No. 37565 of 2015

The common issue to be settled was to whether the respondent, the Income Tax Department, is justified in insisting upon recovery of tax at source from the salary payable to nuns/fathers/priests working in various teaching institutions established and administered by the petitioners. The legal issue for consideration was whether tax has to be deducted at source from the salary payable to priests and nuns working in teaching and non-teaching posts in various institutions run by religious congregation or diocese.

After having cited a few precedents, of the higher courts, the honourable Madras High Court stated the following observation:

31. Thus the legal principles deductible from these decisions is that a monk or nun cannot acquire or have any proprietary rights upon embracing into a religious order, the same operates as a civil death, they can make no contract and incapable of inheriting any assets. […] The salaries or fees received by the nuns and priests are sought to be subjected to tax deducted at source on the ground that it is being received as wages or remuneration for the qualification of particular individual and it is on her/his own volition income

is diverted to the diocese or congregation to which he/she belongs and it is because of application of income. Thus, we need to apply the correct test to ascertain as to what is the nature of income. […] If these tests are applied to the facts of the present case, there can hardly be any doubt to the fact that the fee paid to those Nuns and Priests never reaches their hands and reaches the congregation or diocese to which they belong. (Emphases here and elsewhere are mine).

The Honourable High Court in this judgment has made the following observation referring to a decision of the Madurai Bench of Madras High Court:

32. […] Accordingly, the writ petitions were disposed of by directing the individual priests and nuns to give an undertaking affidavit to the Income Tax Department that their salary should be paid by the Government directly to the congregation or diocese to which they belong and similar affidavit should be filed before the Joint Director of Collegiate Education, District Educational Officer, District Elementary Educational Officer and Pay and Accounts Officer by the congregation and the individuals and the Income Tax Department on receipt of such affidavit and upon their satisfaction were directed to issue a certificate or a letter to the Government of Tamil Nadu stating that tax need not be deducted at source from the salaries payable to the priests and nuns because they are not being paid to the individual but to the congregation or the diocese.

The above mentioned esteemed High Court placed on record its disagreement with the decision of the High Court of Kerala in the Case of Fr. Sabu P. Thomas and another vs. Union of India and others in W.P (C). No. 22299 of 2014 (J), holding the position that the receipts in the said cases are amounts by way of salary and pension which accrued to the individuals concerned and it does not accrue to
the congregation to which they are members. While accepting the precepts of Canon Law which required them to entrust the amount so received to the religious congregation of which they form a part, it was held that the said obligation is only an obligation based on personal law, would not clothe the religious congregation with the legal right to receive the salary/pension directly from the Government/employer without involving the member. Hence, it was held that the entrustment of the amounts received by the member to the congregation would amount only to application of income by the member in favour of the congregation and it will not be a case of diversion of income by way of overriding title. Then the judgment observed:

36. [...] In Fr. Sabu P. Thomas’ case though the Court accepted the fact that the precepts of Canon Law required the nuns and priests to entrust the amounts received by them to the religious congregation, yet held that it is a case of application of income as the congregation had no legal right to receive the salary/pension. However, the test to be applied cannot be without giving due regard to the personal law, in the instant case the precepts of Canon Law. Therefore, the Income Tax Department are duty bound to examine as to whether such income reaches the nuns and priests as their income. The revenue cannot dispute the fact that on account of vows taken by the nuns and priests especially the vow of poverty, the income has to reach the congregation to which they belong. [...] It is clear that by virtue of the precepts of Canon Law the salaries cannot be treated as income in the hands of the priests and nuns. It is not the case of the revenue that based on such obligation the persons who embrace religious order part with a portion of the receipts, retaining a portion to themselves nor it is the case of the revenue that such receipts lie in the hands of these priests and nuns to be treated as income in their hands. In the case of the salaries paid to the priests and nuns, though paid for discharging
the duties either teaching or non-teaching, even if they were to collect it and they do so does not partake their income but for and behalf of the congregation.

The judgment also referred to a finding reached by the Madras High Court in the case of Roman Catholic Society vs. Regional P.F. Commissioner, Madras and stated:

37. [...] that after they enter the religious order and take the vow of poverty, they are considered only as fictitious person as their entrance to the religious order operates as civil death and they cannot acquire property, keep property and dispose of property. Therefore, it was held that unless they received salary, the question of payment of contribution towards the employees’ provident fund would not arise. Further, it was observed that the Nun teachers who are employed in the school are not receiving salary nor they are entitled to receive salary and whatever amount which was earmarked for them was sent to the congregation and therefore, the Nun teachers do not have any access to the said amount and therefore not liable to remit employees’ provident fund contribution.

As to the application of Canon Law to the religious and the obligation of respecting the provisions of Canon Law even by the civil authorities, the judgment stated:

38. Thus the question would be whether the precepts of Canon Law to which the nuns and priests are bound over could be ignored by the revenue and take a stand that the salaries are paid to the nuns and priests and has to be treated as income in the hands. In the considered view of this Court, the answer to such question should be in the negative. [...].

39. To test the correctness of this submission once again, we are required to fall back and what would be the test to determine the transaction as a case of application of income
or diversion of income by overriding title. When the revenue does not deny the fact that the priests and nuns can own no asset to themselves on account of the precepts of Canon Law, the obligation which they are bound over cannot be ignored by the Department. On account of the vow of poverty taken by the priests and nuns and by virtue of the operation of the Canon Law, none of them are entitled to own any properties or hold any income to themselves and this being a condition implicit in the religious order, cannot be brushed aside. By virtue of the personal law which operates in the field the income gets diverted directly to the Societies and Institutions even before it reaches the concerned priests or nuns. Therefore the test is not with regard to qualifications or the individual capacities of those priests and nuns but the test in the instant case is whether tax is liable to be deducted at source. When the revenue states that the amounts are paid over by the Government to the Societies and Institutions by virtue of option exercised by the priests and nuns, it is required to be seen as to whether it is an option exercised by the priests and nuns post receipt of the salaries. Factually it has been established that as soon as they become members of the religious order the precepts of Canon Law operate by virtue of said personal law there is no exercise of option by the priests or nuns but it is an obligation as per their codified law. This has been taken into consideration by the Central Board and has clarified that fees received by the missionaries has been made over to the congregation concerned, there is overriding title to the fee which would entitle the missionaries to exemption from payment of tax. […]

After having considered all the acts and facts, the honourable court pronounced the final verdict stating:
45. For all the above reasons, all the writ petitions are allowed and it is held that no tax can be deducted at source from the salaries and other monetary benefits effected to persons who are the members of the religious congregation and it would be sufficient if the head of the Institution concerned certifies the names of the staff members, who were members of the religious body and the period during which they have served and the designation of the post.

8.1.2. **Verdict of the Kerala High Court**

Division Bench of K.J Mathew and K.N Kurup:


This is a judgment often referred to. The case was an appeal before the Kerala High Court on the question whether the Mother Superior of a Holy Order of Catholic nuns is the legal representative of a deceased religious sister of that congregation? In the examination of this case the esteemed Kerala High Court has made a few pertinent observations. Concerning the legal effects of a nun joining a religious order. The judgment observed:

This being the general consequence of becoming a monk or nun and joining the Holy Order it has to be taken that with the taking of the perpetual vow the person concerned ceases to have any connection with the members of the natural family. So far as the natural family is concerned the woman is taken as dead and, therefore, her parents and other members specified in rule 79, Part III, K.S.R. are not taken as blood relations thereafter. Consequently, even though such category of persons are alive, the legal effect of a person becoming a nun is that she cannot thereafter be considered as having a father or mother or other relatives mentioned in Rule 79.
Regarding the income generated by a professed member, the Court observed:

7. The deceased joined the Holy Order of the Sacred Heart Congregation after renouncing her natural family. As soon as she professed the perpetual vow she ceased to be a member of her natural family and became a member of the Holy Order. **She had embraced a life of poverty, chastity and obedience.** The convent became her family and the Mother Superior became the head of the family as well as her legal representative. **All her income by way of her salary and other benefits will devolve on the convent,** of which the Mother Superior is the Administrator. Therefore, the Mother Superior being the head of the convent is entitled to claim compensation on account of the death of the deceased.

The judgment referred to the articles of the Constitution of the religious institute quoted in the counter affidavit filed by the Mother superior, regarding the observance of the vow of poverty and took it as one of the argumentations to decide the mother superior as the legal representative of the deceased sister to receive the compensation. The judgment observed:

8. [...]Article 37 of the Constitution of the Sacred Heart Congregation is as follows: Whatever a religious receives as gifts, donations or acquires through her labour belongs to the community. We must be obedient to the lawful superiors in the use of material goods, we do not become free from our obligations to observe evangelical poverty, simply on the ground of having secured a permission. Superiors are to meet the needs of the Sisters.

For the above reasons we hold that **the petitioner is the legal representative of the deceased and was entitled to maintain the claim before the Tribunal.**
Further, on the properties acquired by a professed member, the verdict stated:

9. [...] Entering religious orders resulted in the eyes of the Church is death to the world. From the time of her entrance into the Holy Order she could not acquire anything and she acted only as a means of receiving for the benefit of the Holy Order. By becoming a member of the Holy Order she becomes a member of the family consisting of the Mother Superior and other members of that Holy Order. [...].

8.1.3. Verdict of the Kerala High Court

Division Bench of B. Eradi and V.Iyer
Case: Mother Superior, Adoration ... vs D.E.O. And Ors. on 28 February, 1976
Equivalent citations: (1977) IILLJ 450 Ker
Judgment of Viswanatha Iyer, J.

In this verdict, two original petitions are considered and disposed of together as a common question arises for consideration in them. They are cases filed in O.P. No 3184 of 1974 and in O.P. No. 3249 of 1975. In the former, the petitioner is the Mother Superior of Adoration Convent, Kanjiramattom. One Sr. Mariakutty Thomas, who made her perpetual vows in 1949 in this congregation, was High School teacher. According to Rule 80, Part III of the Kerala Service Rules, every officer on completion of five years of qualifying service should nominate a person to receive any gratuity that may be sanctioned under Rules 75 and 77 and any gratuity to which she is eligible under Rule 74 and not paid to her before death. In terms of the Rules she nominated the Mother Superior, Adoration Convent, Kanjiramattam as the person entitled to receive any gratuity that may be sanctioned by Government in the event of her death in service or after retirement without receipt of such benefits, in that nomination she had specifically mentioned that she has no family in terms of Rule 79 of the Rules and,
therefore, she is nominating the Mother Superior under Rule 80. After the death of Sister Mariakutty Thomas the petitioner herein applied before the D.E.O., Kottayam, to get the death-cum-retirement gratuity due to the deceased. Along with the application she also forwarded an heirship certificate from the Tahsildar, Kottayam, to the effect that the petitioner is the person entitled to receive the amount due. This certificate was issued after due investigation and enquiry and publication in the Gazette of the request made by the petitioner for an heirship certificate. The District Educational Officer, Kottayam, by his order dated 18.6.1973 accorded sanction to the petitioner to receive the gratuity amount due to the deceased. But, the Accountant General objected to the disbursement of the amount on the ground that the nomination of the petitioner is not in order as the nominee does not come under the term “family” defined in Rule 79 of Part III, K.S.R. According to the petitioner, consequent on Mariakutty Thomas becoming a nun and joining the Holy Order, category of persons specified in Rule 79, Part III, K.S.R. have ceased to be her relatives included in the definition of the term “family” in the Rules. The question for consideration is whether this contention is sustainable in law.

In the latter case the petitioner was the Mother Superior of St. Joseph’s Convent, Tripunithura. One Rev. Sister Mourina was a member of this convent and was the Headmistress of St. Mary’s L.P.S., Tripunithura, she retired from service on 21.9.1971 and died on 23.11.1971 before she received the pension benefits. She had nominated the petitioner to receive the pension benefits. The petitioner’s application for the disbursement of the pension benefits was rejected by the Government by their order dated 31.1.1974 on the ground that the petitioner does not come under the category of members who are reckoned as belonging to the family of the deceased under Rule 79, Part III, K.S.R. This is challenged in this original petition.

The question under consideration was whether the nomination of the petitioner in each of the cases is invalid for the reason that there are persons alive who satisfy the definition of the word (“family”) in
Rule 79, Part III, K.S.R. Rules 79 and 80 read as follows:

79. ‘Family’ for the purposes of this section will include the following relatives of the officer:

(a) wife, in the case of a male officer; (b) husband, in the case of a female officer; (c) sons; (d) unmarried divorced and widowed daughters; (e) brothers below the age of 18 years and unmarried or widowed sisters; (f) father; (g) mother; (h) married daughters; and (i) children of a pre-deceased son.

In the verdict the honourable Kerala High Court observed:

80. An officer shall, as soon as he completes five years of qualifying service, make a nomination conferring on one or more persons the right to receive any gratuity that may be sanctioned under Rules 75 and 77 and any gratuity which having become admissible to him under Rule 74 has not been paid to him before death. While a nomination as also any change therein will normally be made by an officer during service, he may make a nomination after retirement but before getting payment, in case he so desires. If at the time of making the nomination, the officer has a family, the nomination shall not be in favour of any person or persons other than the members of his family.

Then the judgement proceeded to explain the religious life in the following words:

[…] The religious life is “described as a particular expression of the love of God through a following of Christ. It is approved by the Church as a public state of life by the profession of poverty, chastity and obedience through public vows and by some form of separation from the world, practised for the sake and service of the world. Religious profession is an act by which a person embraces the religious state by taking the three public vows of poverty, chastity and obedience. This is really an
agreement made with the religious order which, when accepted by the competent superior, creates a whole series of reciprocal rights and obligations between the religious order and the religious. […] Before the perpetual vow is taken the professed must renounce in favour of the person whom he or she likes, all the property which he or she actually possesses on condition however of his/her solemn profession subsequently taking place. After the solemn profession is taken all property which may come to the religious in any manner whatsoever accrues to the order according to the Constitution and if the Order cannot acquire or own any property it becomes the property of the Holy See.”

The Court further observed:

A monk or nun cannot acquire or have any proprietary rights. When a man becomes ‘professed in religion’, his heir at once inherits from him any land that he has, and, if he has made a will, it takes effect at once as though they were naturally dead. […] In the eye of ecclesiastical law the monk who became a proprietarius, the monk, that is, who arrogated to himself any proprietary rights or the separate enjoyment of any wealth, committed about as bad an offence as he could commit. […] A monk or nun could make no contract. But he or she is capable of acting as the agent of his or her sovereign and even in litigation he or she could appear as the superior’s attorney.

Quoting from the Continental Legal History Series, Vol. III, Para. 585, the judgment stated:

[…] Entering Religious Orders resulted in the eyes of the church in death to the world. From this it should have been concluded that from the time of the entrance into a monastery the monk could not acquire anything, and that the possessions which he had at that time should pass to his heirs.
The judgment made observations on the legal effects of the vows with regard to the proprietary rights. It stated:

[…] Any “religious” in simple minor vows, must before joining the profession make a will disposing of all his or her property and cannot retain any property which later comes to them. It automatically becomes the property of the order to which he or she belongs.[…] The man who becomes an ascetic severs his connection with the members of his natural family and being adopted by his preceptor becomes, so to say, a spiritual son of the latter.

After considering all the facts and the laws applied to these facts the judgment was pronounced in favour of the petitioners and stated as follows:

This being the general consequence of becoming a monk or nun and joining the holy order it has to be taken that with the taking of the perpetual vow the person concerned ceases to have any connection with the members of the natural family. So far as the natural family is concerned the woman is taken as dead and, therefore, her parents and other members specified in Rule 79, Part III, K.S.R are not taken as blood relations thereafter. Consequently even though such category of persons are alive, the legal effect of a person becoming a nun is that she cannot thereafter be considered as having a father or mother or other relatives mentioned in Rule 79. From this it follows that there is no impediment to nominate the petitioner under Rule 80 of Part III, K S.R. The objection of the Accountant General, therefore, against the nomination of the mother superior (petitioner in each of the cases) is legally unsustainable. The result is that the amount of pension and gratuity due to the deceased mentioned in each of the cases is due to the petitioner in each of the cases. The orders to the contrary passed by the Accountant General, the District Educational Officer and the Government are quashed and it
is declared that the petitioner in each of the cases is entitled to receive the gratuity and the pension benefits due to the deceased. The respondents are directed to pay the amount which the deceased was eligible to the petitioner in each of the cases. The original petitions are, therefore, allowed. But, in the circumstances, we make no order as to costs.

9. Conclusion

While entirely in agreement with the fact that this study did not contribute any innovation to the canonical studies, my specific purpose is to highlight the fact that the disciplinary issues related to the observance of the vow of poverty and its inherent spirit and style are not owing to the absence of disciplinary enactments in the Church; instead thanks to the failure in their proper application and execution. The civil legal systems, though they do not accept and recognize canon law as such as a system of law for the members of the Church, respects and take them into consideration while dealing with the cases involving the stipulations of canon law. It is to be specially noted that the vast majority of the members of the religious communities take both the letter and spirit of the law to heart and live in accordance with the profession they have made. Though very insignificant in number, the voice and vices of a few get predominance and priority in today’s swiftly secularizing world and it may pave way for the undue and unnecessary interference of the civil authorities with their straining and tightening enactments against the Church. This negligence in making timely responses to them will entail far-reaching consequences in various facets of ecclesial life, ending up in the vow of property and merely holding of poverty in their religious life.