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REVERENTIAL FEAR AS A GROUND OF MARRIAGE NULLITY WITH PARTICULAR REFERENCE TO THE INDIAN CULTURE

by
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ABSTRACT

Marriage is an intimate interpersonal bond, a juridic reality, between a man and a woman, who are legally *habiles*, and it comes into being through their mutual, free and irrevocable consent expressed in accord with the norm of law (cf. *CIC*, c. 1057; *CCEO*, c. 817). This mutual consent can be affected by several intrinsic and external factors which can render it null or invalid. One among these factors is grave fear imposed from without, which the person is not able to resist except by choosing marriage, and this no doubt invalidates the marriage. One form of grave fear implied in canon 1103 of the Latin Code and canon 825 of the Eastern Code is reverential fear. The effect of reverential fear on the choices one makes is determined largely by the culture of people.

The system of arranged marriages is so deeply rooted in Indian culture that, even today, almost ninety-five percent of the marriages are contracted in accord with that system. Although this system has its own merits within the context of a particular culture, it is not without its negative impact on the freedom of the Christian faithful in the choice of their life-partners. This is particularly evident in cases of reverential fear.

The specific question we responded to in our thesis is: What is the impact of reverential fear, which is deeply rooted in the Indian culture, on matrimonial consent? We have organized our response to this question under four sub-questions and the response to these questions is developed in four chapters.

In the first chapter we deal with the interpretation of ecclesial law in light of culture. The second chapter deals with the nature and the elements of matrimonial consent. The third chapter is a study of reverential fear as a ground of marriage nullity with particular reference to the factors that underlie reverential fear in the Indian cultural context. The focus of the fourth chapter is canonical jurisprudence on reverential fear.

What we have discovered in our study is that there is a very close link between culture and law, and that a proper understanding of the cultural background of a person or of a community is very important to provide a just and equitable interpretation of law, marriage law in particular, and to apply it to a concrete case.

Hence, a careful analysis of various cultural factors which impinge on matrimonial consent leads us to conclude that cultural factors can have a serious impact on the consent of the spouses and, indeed, the culturally rooted reverential fear can substantially affect the freedom of choice of marriage itself and/or of the marriage partner.

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ABBREVIATIONS

AAS	*Acta Apostolicae Sedis*
art.	Article
c., cc.	Canon (s)
CA	PIUS XII, *Motu proprio Crebrae allatae*
CCE	*Catechismus Catholicae Ecclesiae*
CCEO	*Codex canonum Ecclesiarum orientalium*
CCEO Comm	G. NEDUNGATT (ed.), *A Guide to the Eastern Code*
CCLA	CAPARROS, E., et al. (eds.), *Code of Canon Law Annotated*
CD	*Cultural Dynamics*
CIC	*Codex iuris canonici* 1983
CIC/17	*Codex iuris canonici* 1917
CLS	Canon Law Studies
CLSA	Canon Law Society of America
CLSA Comm 1	CORIDEN, J.A., T.J. GREEN, D.E. HEINTSCHEL (eds.), *The Code of CanonLaw: A Text and Commentary*
CLSA Comm 2	BEAL, J.P., J.A. CORIDEN, T.J. GREEN (eds.), *New Commentary on the Code of Canon Law*
CLSA Proceedings	*Proceedings of the Annual Convention of the Canon Law Society of America*
CLSGBI Comm	SHEEHY, G. et al. (eds.), *The Canon Law: Letter & Spirit*
CS Dec.	*Coram Sabattani, decisiones ineditae*
DC	*Dignitas connubii*
EIC	*Ephemerides iuris canonici*
ELT	*Eastern Legal Thought*

Exegetical Comm	MARZOA, Á., J. MIRAS, R. RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS (gen. ed. of English trans.), *Exegetical Commentary*
FLANNERY	A. FLANNERY (gen. ed.), *Vatican Council II: The Conciliar and Post-Conciliar Documents*, vol. 1, new rev. ed., Northport, NY, Costello Pub. Co., 1998
GS	SECOND VATICAN COUNCIL, Pastoral Constitution *Gaudium et spes*
IE	*Ius ecclesiae*
IJSF	*International Journal of Sociology of Family*
JCD diss.	Doctoral dissertation in Canon Law
ME	*Monitor ecclesiasticus*
no., n., nn.	Number (s)
ORe	*L'Osservatore romano*, Weekly Edition in English
PCCICR	PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNESCENDO
PCCICOR	PONTIFICIA COMMISSIO CODICI IURIS CANONICI ORIENTALIS RECOGNESCENDO
RRT Dec.	SACRAE ROMANAE ROTAE, *Decisiones seu sententiae*; TRIBUNAL APOSTOLICUM SACRAE ROMANAE ROTAE, *Decisiones seu sententiae*; TRIBUNAL APOSTOLICUM ROTAE ROMANAE, *Decisiones seu sententiae*; APOSTOLICUM ROTAE ROMANAE TRIBUNAL, *Decisiones seu sententiae*; ROTAE ROMANAE TRIBUNAL, *Decisiones seu sententiae*
StC	*Studia canonica*
vol., vols.	Volume (s)

GENERAL INTRODUCTION

One of the most fundamental choices every human being has the natural right to make is the choice of one's status in life. To be legitimate, this choice must be deliberate and free. This is clearly stated in c. 219 of the Latin Code and c. 22 of the Eastern Code. The prescript of these canons reads, "All the Christian faithful have the right to be free from any kind of coercion in choosing a state in life." The choice of a state in life can be a juridic act, such as marriage. To be valid, a juridic act must be, besides the *habilitas* of the subject of the act, a human act, that is, one made with sufficient knowledge of its object and internal freedom to choose it. This is implied in c.124, §1 (*CCEO*, c. 931, §1). Any factor, whether internal or external, which substantially impedes the internal freedom, invalidates the juridic act. Grave fear has been designated by law as one such factor, which can interfere with one's freedom needed to place a valid juridic act. However, fear *per se* does not invalidate a juridic act unless the law establishes otherwise (c. 125, §2; *CCEO* c. 932, §2).

Marriage is a natural state, one that is open to every human being, and it is chosen and sealed by the mutual consent of the spouses (c. 1057; *CCEO*, c. 817). This consent is a juridic act. Therefore, it must be a free will act on the part of each spouse. Although, as stated above, fear *per se* does not constitute a factor that invalidates a juridic act, c. 1103 (*CCEO*, c. 825) establishes that a consent elicited by reason of grave fear imposed from without, which the person has no other escape than by choosing marriage, invalidates marriage. The authentic interpretation of 6 August 1987 by the Pontifical Council for Legislative Texts on the prescript of c. 1103 has affirmed that the norm of the canon is of natural law, therefore, applicable also to marriages of non-Catholics. Hence, understood

within its juridical parameters, fear can invalidate matrimonial consent and it does so by force of natural law itself.

One form of grave fear implied in c. 1103 (*CCEO*, c. 825) is reverential fear. The source of this fear is the filial respect and gratitude children owe to their parents, which in turn can create trepidation of mind in the process of making a choice, particularly the choice of marriage and of the marriage partner. The effect of this factor on the choices one makes is determined largely by the culture of people. Thus, for example, in the Western culture the choice of partner in marriage is made by the parties themselves, but in most Southeast Asian cultures (e.g., India) such a choice is made by the parents or "significant others"[1] of the prospective spouses. In most instances, the parties acquiesce to the choice made by parents or by relatives. The following concrete example illustrates this situation.

Recently one of the diocesan tribunals in India had to deal with a marriage nullity case involving a marriage arranged in accord with the Indian culture. The woman was relatively well-educated; she had a degree in civil law and worked as a clerk-cashier in one of the reputed Indian banks. The man had no university education and was employed as a scan technician in a small firm. The families of both parties had known each other for a long time, and therefore agreed to seal the alliance. As the level of education and employment status of the respondent were not acceptable to the woman, she did not like this alliance right from the start. But the alliance was approved by her uncle, a priest she considered as her guardian. Therefore, in deference to him, she consented to marry. Not too long after the wedding, this marriage failed and the woman petitioned the diocesan

[1] The expression "significant others" includes in Indian culture not only close relatives but also those who have significant influence on the people.

tribunal to declare her marriage null on the ground of reverential fear. In her *libellus*, she alleged that her consent was the product of reverential fear, especially her fear of indignation on the part of her uncle priest. This is a typical case of reverential fear encountered frequently in the Indian culture.

It is not too difficult for one to see from the above case how culture impacts on the matrimonial consent of the spouses. A human being is a product of culture, and his or her mind is invariably conditioned by cultural influences. The system of arranged marriages is so deeply rooted in Indian culture that even today almost ninety-five percent of marriages celebrated are products of the system. Although most unions thus entered last a long time, there are many that fail within a very short period of time after the wedding. These failed marriages are the ones which appear from time to time at our tribunals for redress.

On the one hand, the Church rightly upholds the inviolability of personal freedom in the choice of one's state in life. On the other hand, the Church respects and accepts what is good and valuable in every culture. Although the system of arranged marriages has its own merits within the context of a particular culture, it is not without its negative impact on the freedom of Christian faithful in the act of choosing their life partners. This is particularly evident in cases of reverential fear. In these cases, the reverence and respect one owes to his or her parents or significant others interfere with the natural right of a person to choose freely his or her life partner. This is, indeed, a fact, not an abstract theory. Thus, culture obviously exerts significant influence on the consent of the parties.

The fundamental goal of our project is to identify, define, and determine how a particular culturally rooted reverential fear could influence the freedom of choice of

marriage and of the marriage partner. Two basic values are at stake in this crucial choice, namely the freedom of each party to choose marriage itself and his or her own marriage partner, and the sacredness and validity of the matrimonial bond. The law strives to safeguard and promote both these values. Any study of a factor that touches on these values must take into consideration different aspects of matrimonial consent.

There are some scientific studies and articles published on reverential fear. But so far we have not come across any major study exclusively on reverential fear as a ground of marriage nullity with particular reference to the Indian culture:

J.V. Sangmeister, in his doctoral dissertation, *Force and Fear as Precluding Matrimonial Consent: An Historical Synopsis and Commentary*,[2] analyzes the canonical effects of force and fear on matrimonial consent according to c. 1087 of the 1917 Code of Canon Law. The theme of reverential fear is treated explicitly in the third part of the study, but it is limited to the clarification of *pure reverential fear* and *qualified reverential fear*. It does not say anything about how this ground must always be examined within the context of a culture. In his doctoral dissertation, *Reverential Fear in Matrimonial Cases in Asiatic Countries, Rota Cases: A Historical Synopsis and a Commentary*,[3] R.F. Knopke focuses on how matrimonial consent is being affected by cultural factors in the Far Eastern countries, especially when reverential fear is involved. The study is based principally on the Rotal cases originating from China, Korea, and

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[2] J.V. SANGMEISTER, *Force and Fear as Precluding Matrimonial Consent: An Historical Synopsis and Commentary*, Canon Law Studies (= CLS), no. 80, Washington, DC, The Catholic University of America , 1932.

[3] R.F. KNOPKE, *Reverential Fear in Matrimonial Cases in Asiatic Countries, Rota Cases: A Historical Synopsis and a Commentary*, CLS, no. 294, Washington, DC, The Catholic University of America, 1949.

Manchuria from 1911 to 1930. Although the specific focus of this thesis is on reverential fear and its impact on matrimonial consent, the range of customs and practices dealt with is limited exclusively to countries of the Far East, and particularly to China. J.G. Chatham, in his doctoral thesis, *Force and Fear as Invalidating Marriage: The Element of Injustice*,[4] examines in detail the historical development of the various problems related to the law on force and fear. There is a detailed interpretation of c. 1087 of the 1917 Code in the commentary. The author speaks about the peculiar injustice of reverential fear when it is inflicted directly.

T.J. Kirupaharan's doctoral dissertation, *Reverential Fear in Matrimonial Consent: A Study Based on Canon 1103 with Particular Reference to Arranged Marriages among the Tamils of Jaffna in Sri Lanka*,[5] concentrates on the problem of reverential fear as a species of force and fear in arranged marriages among the Tamils of Jaffna in Sri Lanka. The analysis of jurisprudence on reverential fear is quite limited. A. Mendonça, in his scientifically written article, "The Importance of Considering Cultural Contexts in Adjudicating Marriage Nullity Cases, with Special Reference to South East Asian Countries,"[6] emphasizes the importance of considering cultural contexts in adjudging marriage nullity cases with special reference to South East Asian Countries. In light of his research in doctrine and jurisprudence, the author concentrates on the impact of various

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[4] J.G. CHATHAM, *Force and Fear as Invalidating Marriage: The Element of Injustice*, CLS, no. 310, Washington, DC, The Catholic University of America, 1950.

[5] T.J. KIRUPAHARAN, *Reverential Fear in Matrimonial Consent: A Study Based on Canon 1103 With Particular Reference to Arranged Marriages Among the Tamils of Jaffna in Sri Lanka*, JCD diss. [excerpts from thesis], Rome, Faculty of Canon Law, Pontifical Urban University, 1993.

[6] A. MENDONÇA, "The Importance of Considering Cultural Contexts in Adjudicating Marriage Nullity Cases, with Special Reference to South East Asian Countries," in *Philippiniana sacra*, 31/92 (1996), pp. 189-268.

cultural factors that affect the matrimonial consent in those countries, but not with a particular reference to India. The doctoral thesis, *Force and Fear in Relation to Matrimonial Consent (Can. 1103): A Critical Consideration of the Situation among the Ethnic Nationalities-Special Reference to Nigeria*,[7] of E.H. Odilichukwu, analyzes the ecclesiastical law on force and fear in relation to matrimonial consent among the Catholics in Nigeria. The author tries to integrate doctrinal-historical, anthropological-psychological and legal-jurisprudential aspects of force and fear in order to demonstrate how cultural factors can impinge on matrimonial consent. He analyzes the applicability of the law on force and fear in light of ethnical-tribal, social-cultural, and economic background of the people in Nigeria.

The overall methodology we will use in this study is a systematic analysis of the different cultural and canonical issues related to reverential fear as a ground of marriage nullity.

The principal question of our project is: How does culture impact matrimonial consent? And more specifically: What is the impact of reverential fear, which is deeply conditioned by the Indian culture, on matrimonial consent? Our study will focus on answering this principal question. We intend to organize our response to this question under four inter-related sub-questions: Because culture invariably influences the act of matrimonial consent, we first ask the question: What is the relationship between culture and law? An appropriate answer to this question will provide us with the general principles that could be applied to the particular question related to the influence of

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[7] E.H. ODILICHUKWU, *Force and Fear in Relation to Matrimonial Consent (Can. 1103): A Critical Consideration of the Situation among the Ethnic Nationalities-Special Reference to Nigeria*, JCD diss., Roma, Pontificia Univeristas Lateranensis, 2006.

reverential fear on matrimonial consent. The second inter-related question is: What are the nature and the elements of matrimonial consent? The third inter-related question is: How does reverential fear affect matrimonial consent in the Indian cultural context? This question is intended to draw out the juridic principles related to reverential fear in general and to reverential fear in the Indian cultural context in particular. There is no doubt that the ground of reverential fear is predominantly a development of canonical jurisprudence because the law itself makes no explicit reference to the matter. Therefore, we will try to respond to the fourth question: What does the Rotal jurisprudence say about reverential fear and how do the local tribunals in India deal with marriage nullity cases involving reverential fear? In line with these questions, we will organize our responses in four chapters.

In the first chapter, we deal with the interpretation of ecclesial law in light of culture. We will analyse here the interaction between culture and law. This will entail a critical review of the available scientific literature on the relationship between culture and law with particular reference to the cultural aspects of reverential fear within the context of arranged marriages.

The second chapter will deal with the nature and the elements of matrimonial consent. We will analyse the elements of a juridic act, the factors that invalidate a juridic act, the nature and the elements of matrimonial consent as a juridic act, and the factors invalidating matrimonial consent.

Both Codes do not speak explicitly of reverential fear as a ground of marriage nullity. The concept and the related principles are obviously products of doctrine and jurisprudence. Therefore, in order to provide a juridic foundation for the fourth chapter,

we will analyse c. 1103 (*CCEO*, c. 825) from doctrinal and jurisprudential points of view in the third chapter. Through this analysis we hope to determine the juridic principles that have emerged from the interpretation and application of c.1103 (*CCEO*, c. 825) on reverential fear. In this chapter, we will also deal with the specific cultural factors that underline reverential fear, proofs of reverential fear, the principle of substantial or equivalent conformity of sentences in contentious cases and its application, and the relationship between reverential fear and a few other grounds of the nullity of marriage.

The focus of the fourth chapter will be canonical jurisprudence on reverential fear. In this chapter, we will present a critical analysis of matrimonial cases adjudged on the ground of reverential fear at the Apostolic Tribunal of the Roman Rota and in selected ecclesiastical tribunals in India. Because of the limited scope of our project, we will analyse post-1983 Code Rotal sentences on marriage cases originating specifically from India. The examination of the local jurisprudence on reverential fear will be limited to sentences pronounced by selected ecclesiastical tribunals of the Latin Church and of the Syro-Malabar and the Syro-Malankara Major Archiepiscopal Churches. Moreover, the analysis of the sentences will be categorized under the cultural factors which generate reverential fear in children in the Indian society.

It is our hope that this study will clarify the relationship between culture and law and will bring together the consolidated doctrinal and jurisprudential principles related to matrimonial consent and the ground of reverential fear.

CHAPTER ONE

INTERPRETATION OF ECCLESIAL LAW IN LIGHT OF CULTURE

INTRODUCTION

Writing on the rules for the interpreters of law J.A. Coriden says, "No law works automatically, nor is its application a purely mechanical, robot-like function."[1] Law is interpreted and applied by persons for those to whom the law is intended. Interpretation is an inherent part of the juridical structure of the law.[2] We read in Latin Code,[3] c. 16 and in the Eastern Code,[4] c. 1498 that laws are authentically interpreted by the legislator and by one to whom the legislator has granted the power to interpret them authentically. However, there is no prohibition of private interpretation, the much more common activity in which canon law experts provide counsels, directives, and non-obligatory

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[1] J.A. CORIDEN, "Rules for Interpreters," in *The Jurist*, 42 (1982), p. 277.

[2] See L. ÖRSY, "General Norms," in J.A. CORIDEN, T.J. GREEN, D.E. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary* (= *CLSA Comm1*), commissioned by Canon Law Society of America (= CLSA), Study Edition, New York/Mahwah, Paulist Press, 1985, p. 35.

[3] *Codex iuris canonici* (= *CIC*), *auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Libreria editrice Vaticana, 1989; English trans. *Code of Canon Law*, Latin-English Edition, New English Translation, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, CLSA, 1999. This translation is used for all subsequent citations of the canons of the 1983 Code.

[4] *Codex canonum Ecclesiarum orientalium* (= *CCEO*), *auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus*, Libreria editrice Vaticana, 1995; English trans. *Code of Canons of the Eastern Churches*, Latin-English Edition, New English Translation, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, CLSA, 2001.

interpretations. Judges, administrators, and experts in ecclesiastical law often are involved in this work.[5]

Referring to the interpretation and application of canon law, Pope John Paul II insists, "This entails the need for a proper knowledge of the Church's legislation, but without forgetting, in the light of a correct Christian anthropology, the reality of human beings for whom it is intended. Subjecting canon law to capricious or contrived interpretations, in the name of ambiguous and indefinite 'humanitarian principle', would mean destroying the very dignity of the humans, even before the norm."[6] The Holy Father means here that the person who interprets and applies law should have proper knowledge of the ecclesiastical legislation, not forgetting the person or the community for whom the law is given. That person or community is influenced by the concrete historical and cultural values and conditions. Coriden observes the following:

> Conditions within the human, believing community qualify the application of the law. Whether that community is a nation, province, region, diocese, vicariate or a religious community, its texture and the nature of its members weigh on the judgments involved in interpreting the law. Wise and considerate leaders evaluate such factors, at least implicitly or informally, but it is a step, which should never be omitted.[7]

A human being is a product of one's own culture, and his or her mind is invariably conditioned by the influences of that culture. An interpreter of law cannot sufficiently know a person or community before first understanding that person's or community's

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[5] See R.G. CUNNINGHAM, "Invitation, Interpretation and Inspiration: The Canonist's Response to the Code," in *Canon Law Society of America Proceedings* (= *CLSA Proceedings*), 47 (1985), p. 21.

[6] JOHN PAUL II, Allocution to the Roman Rota, 30 January 1993, in *Acta Apostolicae Sedis* (= *AAS*), 85 (1993), p. 1259; English trans. in W.H. WOESTMAN (ed.), *Papal Allocutions to the Roman Rota, 1939-2002* (= WOESTMAN, *Papal Allocutions*), Ottawa, ON, Faculty of Canon Law, Saint Paul University, 2002, p. 226.

[7] CORIDEN, "Rules for Interpreters," p. 286.

cultural situation. Only by understanding the cultural background of a person or community can a just and equitable interpretation and application of law be done. Referring to marriage cases, A. Mendonça states, "Equity demands that when nullity of marriage consent is alleged the facts and proofs adduced in support of the allegation(s) must be carefully examined and evaluated within the socio-cultural context."[8] He further comments, "Law meets human situations within the concrete context of a particular culture. Therefore, the ministry of law necessarily demands on the part of those who are involved in it a genuine appreciation of the concrete context of its application."[9]

Since law meets human beings or a society as such in a particular culture, the intrinsic relationship between law and culture cannot be ignored in interpreting and applying the law. In this chapter we will try to see how law, especially ecclesial law, is related to culture and how and why it is to be interpreted in light of culture. In order to attain this goal we will analyse the concepts of culture, value, law, ecclesial law, and other correlated facets. Then, we will study the essential elements of Indian culture in relation to marriage and family, and the main factors affecting marriage in the arranged marriage system in India today.

1.1– CULTURE AS A VEHICLE OF FORMATION AND CONVEYANCE OF A COMMUNITY'S VALUES

Each community has its own value system. It is through the culture of that community that its values are formed and conveyed. The key components of culture as

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[8] A. MENDONÇA, "Recent Rotal Jurisprudence from a Socio-cultural Perspective" (Part I), in *Studia canonica* (= *StC*), 29 (1995), p. 82.

[9] A. MENDONÇA, "A Cultural Approach to Indian Marriage Cases," in *Canonical Studies*, 7 (July 1998), p. 54.

depicted by T. F. Hoult are values, norms, institutions and artifacts.[10] Values comprise ideas about what in life seems important or good. They guide the rest of the culture. Norms consist of the expectations of how people will behave in various situations. Each culture has methods called sanctions for enforcing its norms. Norms that a community enforces formally have the status of laws. Institutions are the structures of a community within which values and norms are transmitted. Artifacts are things or aspects of material culture that are derived from a culture's values and norms. We concentrate here on the relation between culture and value.

1.1.1 – Concept of Culture

Etymologically, the term culture comes from the Latin word *cultura*[11] stemming from *colere*, meaning to cultivate or to till. Anthropologists use culture as a collective noun for the symbolic and learned non-biological aspects of human society, which include language, customs, laws, values, and standards by which human behaviour can be distinguished from that of other beings. Human behaviour is seen as culturally determined.[12] Hence, it generally refers to patterns of human activity and the symbolic

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[10] See T.F. HOULT (ed.), *Dictionary of Modern Sociology*, Totowa, NJ, Littlefield, Adams & Co., 1969, p. 93; see also G. HOFSTEDE, "Business Cultures," in F. E. JANDT (ed.), *Intercultural Communication: A Global Reader*, Thousand Oaks, CA, Sage Publications, 2004, p. 8. In this article, the author says that culture is composed of many elements, which may be classified into four categories: symbols, heroes, rituals, and values.

[11] See T.C. LEWIS, *A Latin Dictionary*, founded on Andrew's edition of Freund's Latin Dictionary, rev. enl. and in great part rewritten by C.T. LEWIS and C. SHORT, Oxford, Clarendon Press, 1969, p. 488.

[12] See N. ABERCROMBIE, S. HILL, B.S. TURNER (eds.), *The Penguin Dictionary of Sociology*, 5th ed., New York, Penguin Books, 2006, p. 92.

structures that give such activity significance. Culture provides predictability for humankind. It offers us predictable patterns of behaviour.[13]

The first really clear and comprehensive definition of culture was that of the British anthropologist E.B. Tylor: "Culture or civilization, taken in its wide ethnographic sense, is that complex whole which includes knowledge, belief, art, law, customs, and any other capabilities and capacities acquired by a man as a member of society."[14] This definition focuses on capabilities that a person acquires not through biological heredity but by growing up in a particular society, where he or she is exposed to a specific cultural tradition.[15]

Since Tylor's time, definitions of culture have proliferated. Two other prominent anthropologists, namely A.L. Kroeber and C. Kluckhohn, say, "Culture consists of patterns, explicit and implicit, of behaviour acquired and transmitted by symbols, constituting the distinctive achievements of human groups including their embodiments in artifacts; the essential core of culture consists of traditional ideas and especially their attached values."[16] V. Barnouw, a famous anthropologist, defines culture as "the way of

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[13] See M.G. ALDRIDGE, "What is the Basis of American Culture?," in F. E. JANDT (ed.), *Intercultural Communication: A Global Reader*, Thousand Oaks, CA, Sage Publications, 2004, p. 90.

[14] E.B. TYLOR, *The Origins of Culture*, with an Introduction by P. RADIN, Gloucester, MA, Peter Smith, 1970, p.1. This definition was first formulated by E.B. TYLOR in 1871 in his book, *Primitive Culture: Researches into the Development of Mythology, Philosophy, Language, Art and Custom*, vol. 1, London, John Murray & Co., 1871, p. 1.

[15] See C.P. KOTTAK, *Cultural Anthropology*, 3rd ed., New York, Random House, 1982, p. 6.

[16] A.L. KROEBER and C. KLUCKHOHN, art. "Culture," in *A Dictionary of the Social Sciences*, J. GOULD and W.L. KOLB (eds.), New York, The Free Press, 1965, p. 165; see also A.L. KROEBER and C. KLUCKHOHN, *Culture: A Critical Review of Concepts and Definitions*, New York, Random House, 1963. These authors have incorporated around three hundred definitions of

life of a group of people, the configuration of all of the more or less stereotyped patterns of learned behaviour which are handed down from one generation to the next through the means of language and imitation."[17] C. Geertz defines culture as "the fabric of meaning in terms of which human beings interpret their experience and guide action."[18]

Culture is not an observable behaviour, but rather it consists of the values and beliefs that people use to interpret experience and general behaviour, and which are reflected in their behaviour. Therefore, culture consists of abstract values, beliefs, and perceptions of the world that lie behind people's behaviour. These are shared by members of a society, and when acted upon, they produce behaviour considered acceptable within that society.[19] Speaking about culture, the Second Vatican Council says the following:

> The word "culture" in the general sense refers to all those things, which go to the refining and developing of man's diverse mental and physical endowments. He strives to subdue the earth by his knowledge and his labour; he humanizes social life both in the family and in the whole civic community through the improvement of customs and institutions [...] He communicates and preserves them to be an inspiration for the progress of many, even of all mankind.
>
> Hence, it follows that culture necessarily has historical and social overtones, and the word "culture" often carries with it sociological and ethnological connotations;

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culture in this book; L.A. WHITE, *The Concept of Cultural Systems: A Key to Understanding Tribes and Nations*, New York, Columbia University Press, 1975, p. 5; KOTTAK, *Cultural Anthropology*, p. 5; P.G. HIEBERT, *Cultural Anthropology*, Philadelphia, J.B. Lippincott Company, 1976, p. 25; W.A. HAVILAND, *Cultural Anthropology*, 7th ed., Fort Worth, Harcourt Brace Jovanovich College Publishers, 1993, p. 29 (= HAVILAND, *Cultural Anthropology* II); P.K. BOCK, *Modern Cultural Anthropology: An Introduction*, 2nd ed., New York, Alfred A. Knopf, 1974, p. 14; M. HARRIS, *Cultural Anthropology*, 2nd ed., New York, Harper & Row, 1984, p. 6; J.P. SPRADLEY, D.W. MCCURDY (eds.), *Anthropology: The Cultural Perspective*, New York, John Wiley & Sons, Inc., 1975, p. 5; HOFSTEDE, "Business Cultures," p. 8; T.H. ERIKSEN, *Small Places, Large Issues: An Introduction to Social and Cultural Anthropology*, 2nd ed., London, Pluto Press, 2001, p. 3.

[17] V. BARNOUW, *Culture and Personality*, Homewood, IL, Dorsey Press, 1963, p. 5.

[18] C. GEERTZ, *The Interpretation of Cultures: Selected Essays*, New York, Basic Books, Inc. Publishers, 1973, pp. 144-145.

[19] HAVILAND, *Cultural Anthropology* II, p. 29.

> in this sense one can speak about a plurality of cultures. For different styles of living and different scales of values originate in different ways of using things [...] of practicing religion and behaviour, of establishing laws and juridical institutions.[20]

1.1.2 – Culture as a Formator of a Community's Values

Each culture is constructed largely out of value concepts.[21] All cultural groups cherish their own values such as conjugal love, procreation, family loyalty, family status, prestige, etc.[22] Every culture contains a limited number of such core values.[23] Core values refer to the most general concepts of desirable and undesirable states of affairs. Once we identify the core values of a culture we can begin to understand the overall cultural pattern more clearly.[24] It is in that cultural society that its values are formed and conveyed.

1.1.2.1–Definition of Value

C. Kluckhohn defines value as "a conception, explicit or implicit, distinctive of an individual or characteristic of a group, of the desirable which influences the selection from available modes, means, and ends of action."[25] This definition takes culture, group,

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[20] SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World *Gaudium et spes* (= *GS*), 7 December 1965, no. 53, in *AAS*, 58 (1966), p. 1075; English trans. in A. FLANNERY (gen. ed.), *Vatican Council II: The Conciliar and Post-Conciliar Documents* (= FLANNERY), vol. 1, new rev. ed., Northport, NY, Costello Pub. Co., 1998, p. 958.

[21] See SPRADLEY and MCCURDY, *Anthropology: The Cultural Perspective*, p. 471.

[22] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 205.

[23] Those values especially promoted by a particular culture. See HAVILAND, *Cultural Anthropology* II, p. 135.

[24] See SPRADLEY and MCCURDY, *Anthropology: The Cultural Perspective*, p. 476.

[25] C. KLUCKHOHN et al., "Values and Value-Orientations in the Theory of Action," in T. PARSONS & E. SHILS (eds.), *Toward a General Theory of Action*, Cambridge, MA, Harvard University Press, 1951, p. 395; see also WHITE, *The Concept of Cultural Systems*, p. 141; SPRADLEY and MCCURDY, *Anthropology: The Cultural Perspective*, p. 471.

and the individual's relation to culture and the place in his or her group as primary points of departure.[26] L. Örsy describes value as "a good thing, not in itself alone, but in its relationship to human persons."[27] Since all human beings are imperfect they try to become perfect by appropriating good things themselves or by creating good things within themselves.[28] It means that the concept of value always includes two elements: it signifies a thing and its capacity to contribute to the perfection of human beings. Thus, human beings appropriate values to become perfect. "The values that interest canon law are those which have a social significance, that is, which are needed to build a Christian community and are necessary to sustain its life."[29] Just like human beings, communities also appropriate good things to become perfect.

1.1.2.2 – Culture as a Formator of Values in a Community

Values are clearly for the most part cultural products.[30] They are formed in each cultural society. We have already mentioned that cultural values are conceptions or ideals that the members of a group or society accept, explicitly or implicitly, and therefore influence the behaviour of that group or community members. Since culture is a set of shared ideals, values, and standards of behaviour, it is the common denominator that makes the actions of individuals intelligible to the society. Because they share the

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[26] See KLUCKHOHN et al., "Values and Value-Orientations," p. 395.

[27] L. ÖRSY, *Theology and Canon Law: New Horizons for Legislation and Interpretation*, Collegeville, MN, Liturgical Press, 1992, p. 36.

[28] See ibid., p. 90.

[29] Ibid., p. 91.

[30] See KLUCKHOHN et al., "Values and Value-Orientations," p. 399.

common culture, people can predict how others are most likely to behave in a given situation and react accordingly.[31]

Some values in a given culture relate to very specific objects, events or institutions in a society, for instance, the values attached to the institution of marriage.[32] Other values are much more general and relate to a variety of situations. As with other rules of culture, individuals may violate values and use the values to achieve their own private purposes.[33]

1.1.3 – Culture as a Conveyer of a Community's Values

Mendonça says, "Culture constitutes the lived experience of a particular community."[34] It acts and is acted upon because the individuals in a society, while following the plan or the set of meanings and values to cope with different environments, constantly modify, adjust, and improve their ways of behaviour according to the newly gained knowledge and experience.[35] Hence, culture is the act of developing by education, discipline, and social experience, the training or refining of the moral and intellectual faculties.[36] Therefore, it is through culture that a community's values, morals, tastes are refined, modified, and conveyed.

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[31] See HAVILAND, *Cultural Anthropology* II, p. 30.

[32] See BOCK, *Modern Cultural Anthropology: An Introduction*, p. 347.

[33] See ibid.

[34] MENDONÇA, "The Importance of Considering Cultural Contexts," p. 193.

[35] See J.P. PINTO, *Inculturation Through Basic Communities: An Indian Perspective*, Bangalore, India, Asian Trading Corporation, 1985, p. 5.

[36] See *Webster's Third New International Dictionary of the English Language*, ed. by P.B. GOVE and Merriam-Webster editorial staff, Springfield, MA, G. & C. Merriam, 1981, p. 552; see also I.K. FUNK (ed. in chief), *Funk & Wagnalls New Standard Dictionary of the English Language*, New York, Funk and Wagnalls, 1923, p. 629.

The values held by members of a community tend to form a consistent system. It is through this system that values are being preserved and conveyed. We would say that some values are held in high esteem in a given culture, for instance, values attached to the celebration of marriage and family life in India. But in the changed socio-cultural situation, many of the traditional values considered sacrosanct in the past do not play much of a role in marital life today.[37] Still, we can be certain that culture plays a significant role in the formation, upholding, and conveyance of values in a community.

1.1.4– Language as a Vehicle of a Community's Culture

Each culture has its own content that is both static and dynamic. It is static in its unchanging elements such as the body of customary beliefs, social forms, superstitions, art preserved, etc. It is dynamic in its changing and evolving elements like the lived experience of a particular community. Culture communicates and conveys these static and dynamic elements to those who live and participate in the life of the cultural group through the use of tools, symbols, languages, and systems of abstract thought.[38] So, language is a vehicle that carries a community's culture.

1.1.4.1– Notion of Language

R.F. Spencer defines language as "a structured system of communication by means of oral symbols, hence by means of sound, not necessarily writing, used by a human group in order to describe, classify, and catalogue experiences, concepts and objects."[39]

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[37] See V. PALATHINGAL, "Marital Consent of the Thomas Christians in the Indian Socio-Cultural Milieu," in *Eastern Legal Thought* (= *ELT*), 1 (2002), p. 111.

[38] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 194.

[39] R.F. SPENCER, art. "Language," in *A Dictionary of the Social Sciences*, ed. by J. GOULD and W.L. KOLB, New York, The Free Press, 1965, p. 377.

Another definition of language is that "it is a system of sounds to which meanings have been assigned by a group of human beings."[40] These sounds and the way they are arranged in relation to each other are symbols of ideas and emotions we wish to convey to other people who share the same knowledge about the meanings and arrangements of the sounds. Languages are identified with reference to concrete groups of people called speech communities.[41]

1.1.4.2 – Relation between Language and Culture

Anthropologists usually regard language as part of a culture. As such it shares a common feature with the rest of the culture. It is learned, not innate; it is a social phenomenon, an attribute of the group or society; it is historically transmitted through teaching and learning. In such a way communication within the community is made possible.[42]

It has often been said prescriptively that if we want to learn the heart of the people, we must learn their language because language expresses how that particular people think.[43] Coriden says, "Language colours the thinking of every people. It both reflects and moulds their very identity. It forms and shades the perceptions, understandings, and the very lives of the people. It is part of the warp and woof of all culture."[44] He suggests

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[40] J.F. DOWNS, *Human Nature: An Introduction to Cultural Anthropology*, New York, Glencoe Press, 1973, p. 49.

[41] See E.M. SCHULTZ and R.H. LAVENDA, *Cultural Anthropology: A Perspective on the Human Condition*, 2nd ed., St. Paul, MN, West Publishing Company, 1990, p. 81.

[42] See ibid., p. 80.

[43] See ALDRIDGE, "What is the Basis of American Culture?," p. 90.

[44] See J.A. CORIDEN, *Canon Law as Ministry: Freedom and Good Order for the Church*, New York, Paulist Press, 2000, p. 63.

that the ministry of a canonist must include knowledge of the language of the people and the cultural issues related to or expressed in that language.[45]

We cannot have a full appreciation of all the peculiarities of a culture by learning a particular language alone. Translations have their own limitations. Even a good translation does not always communicate the full meaning of the language because there are many words and expressions that cannot be translated exactly from one language to another without losing some of their flavour.[46] "Through learning a language alone it is impossible to understand how people of a particular culture think, how they perceive and conceptualize their world, and what influences their culture and language on their view of reality."[47] If one does not share in the process of socialization and enculturation within the cultural group, one will be devoid of their affective significance.[48]

1.1.5 – Culture's Impact on Human Personality

Culture refers to the patterned ways in which the members of a community think, feel, and behave. Personality also refers to the patterned ways of thinking, feeling, and behaving, but the focus is on the individual.[49] There is an enormous amount of influence of a given culture on the personality of the individuals of that cultural society. In a sense,

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[45] Ibid.

[46] See M. CRICK, *Explorations in Language and Meaning: Towards a Semantic Anthropology*, London, Malaby, 1976, p. 160.

[47] MENDONÇA, "The Importance of Considering Cultural Contexts," p. 201.

[48] See M.E. SPIRO, "Some Reflections on Cultural Determinism and Relativism with Special Reference to Emotion and Reason," in *Cultural Theory: Essays on Mind, Self, and Emotion*, R.A. SHWEDER and R.A. LEVINE (eds.), New York, Cambridge University Press, 1984, p. 326.

[49] See HARRIS, *Cultural Anthropology*, p. 320.

the human personality is formed by the social interactions within the context of a cultural group.[50] Culture and personality is an area of research where anthropology and psychology come together.[51] To understand fully the nature of the relationship between culture and personality it is necessary to understand personality first and then explain their relationship.

1.1.5.1 – Concept of Personality

Personality is a very complex concept.[52] As a result, no substantive definition can be applied with generality.[53] G.W. Allport gives a psychological definition of personality when he says, "Personality is the dynamic organization within the individual of those psychophysical systems that determine his characteristic behaviour and thought."[54] Barnouw defines personality as "a more or less enduring organization of forces within the individual associated with a complex of fairly consistent attitudes, values, and modes of perception which account, in part, for the individual's consistency of behaviour."[55]

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[50] See G. JAHODA, "The Colour of a Chameleon: Perspectives on Concepts of Culture," in *Cultural Dynamics* (= *CD*), 6 (1993) 3, p. 281.

[51] See BARNOUW, *Culture and Personality*, p. 3; see also KOTTAK, *Cultural Anthropology*, p. 225.

[52] See J. FEIST, *Theories of Personality-II*, Chicago, Holt, Rinehart and Winston, Inc., 1990, p. 5. Speaking about the complex nature of personality the author says that it is "[...] a subject clouded with mystery and misunderstanding." See also C. CARVER, M. SCHEIER, *Perspectives on Personality-II*, Boston, Allyn & Bacon, 1992, p. 3. These authors call personality "an elusive concept."

[53] See C.S. HALL and G. LINDZEY, *Theories of Personalities*, New York, Wiley, 1971, p. 9; see also A. MENDONÇA, *Antisocial Personality and Nullity of Marriage*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1982, p. 55; FEIST, *Theories of Personality-II*, pp. 5-7.

[54] G.W. ALLPORT, *Pattern and Growth in Personality*, New York, Holt, Rinehart and Wilson, 1961, p. 28.

[55] BARNOUW, *Culture and Personality*, p. 8.

1.1.5.2 – Culture and Personality

In the study of culture and personality, psychological anthropologists pursue the traditional anthropological interest in human diversity. By considering the psychological data from a wide range of societies, anthropology places personality in a wider, cross-cultural perspective,[56] whereby psychological anthropology complements psychology by showing how, in diverse contexts, cultural and other environmental factors influence personality.[57]

Cross-cultural studies show that the manner in which people of different cultures perceive subjective and objective events is learned, therefore, culturally determined.[58] There is an inter-relationship between perception and cognition. Perception is the process by which people organize and experience information that is primarily of sensory origin.[59] The nature of perception has long been central to an understanding of human cognition. Cognition refers to the mental processes by which human beings gain knowledge.[60] That inter-relationship of perceptual and cognitive characteristics may

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[56] See KOTTAK, *Cultural Anthropology*, p. 226; see also W.A. HAVILAND, *Cultural Anthropology* (= HAVILAND, *Cultural Anthropology* I), New York, Holt, Rinehart and Winston, 1975, p. 116.

[57] See KOTTAK, *Cultural Anthropology*, p. 226.

[58] See D. MOTET, art. "Cross-Cultural Psychology," in *Baker Encyclopaedia of Psychology*, D.G. BENNER (ed.), Grand Rapids, MI, Baker Book House, 1985, p. 265.

[59] See M. COLE and S. SCRIBNER, *Culture and Thought: A Psychological Introduction*, New York, Wiley, 1974, p. 61.

[60] See SCHULTZ and LAVENDA, *Cultural Anthropology: A Perspective on the Human Condition*, p. 86; see also J. LAVE, *Cognition in Practice*, New York, Cambridge University Press, 1988, p. 1.

depend on the specific cultural setting in which an individual grows up.[61] Thus, perception leads to concepts and ideas. Subsequently, these concepts and ideas influence people's decisions and actions.

Even though the laws of mental operations are the same for all people, cognitive styles and the manifestations of the mind depend on various environmental demands and individual experiences in a given culture.[62] Cognitive style refers to a habitual pattern of perceptual and intellectual activity.[63] Culture provides people with a range of cognitive styles that are appropriate for different cognitive tasks in different contexts.[64] Whereas persons in all cultures have equal potential for cognitive capacity, the differences in cognitive preferences are explained in terms of the needs, interests, and values of the particular culture.[65] Regarding the assimilation of the same things perceived, there might be differences from person to person and society to society.

Cultural anthropologists have observed from cross-cultural studies that there are differences regarding socialization in different cultures. Most cultures give importance to the "interpersonal relationships." It is observed that while people in the western culture tend to stress self-reliance and individualism to the point of considering them an index of mental health, almost all other cultures value "interpersonal relationships" as healthier,

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[61] See E. BOURGUIGNON, *Psychological Anthropology: An Introduction to Human Nature and Cultural Differences*, New York, Holt, Rinehart and Winston, 1979, p. 221.

[62] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 194.

[63] See SCHULTZ and LAVENDA, *Cultural Anthropology: A Perspective on the Human Condition*, p. 122.

[64] See ibid.

[65] See J.E. PLUEDDEMANN, art. "Culture and Cognition," in *Baker Encyclopaedia of Psychology*, D.G. BENNER (ed.), Grand Rapids, MI, Baker Book House, 1985, p. 265.

with corresponding values of reliance upon others, whether family, friends, associations, or institutions.[66]

1.2 – THE RELATIONSHIP BETWEEN CULTURE AND LAW

Each cultural society has its own legal system. Laws are instruments of life and perfection because they point to needed values and prompt each cultural society to reach out for them or appropriate the values needed for the well-being of that society. Legally binding customs also come under law in this respect. Therefore, laws are part and parcel of a cultural society. Rather, we could say culture becomes a source of law.

1.2.1 – Concept of Law

One of the basic questions raised in jurisprudence is the question of the definition of law. Almost every jurist since St. Thomas Aquinas has tried to work out an acceptable definition of law.[67] However, St. Thomas Aquinas defines human law as "an ordinance of reason for the common good, made by him who has care of the community, and promulgated."[68] According to him, laws are *ad bonum commune* of the community for which they had been legislated. The legislator is to attend to the good of the community. It is the living community that sets the natural need for laws. Being reasonable ordinances, they are meant to order the things and the community to their proper end, i.e., the common good. The notion of common good has a wide exposition in the Codes of

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[66] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 195.

[67] See *Summa theologiae*, I-II, qq. 90-97.

[68] "Rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet, promulgata" (*Summa theologiae*, I-II, q. 90, art. 4).

canon law.[69] ÖRSY defines laws as "norms of action for the community, set by the legitimate authority, for the appropriation of values by the community."[70] Laws express judgements concerning the desirability of certain values and convey (impose) decisions to reach out for them.[71] Accordingly, norms have a double function: they point to values and order (direct) the community to take action to acquire them.[72]

Here, we may also speak of customary law. In contrast with statute or law, customary law may be said to represent "implicit law." It is the law consisting of customs that are accepted as legal requirements or obligatory rules of conduct, practices, and beliefs that are so vital and intrinsic to a social and economic system that they are treated as laws.[73] Consequently, custom is unwritten law, whereas statute is a written law. Nevertheless, not all customs become laws. We have already noted that the classic definition of culture by E.B. Tylor includes custom also as a part of it.

1.2.2 – Law in the Context of Culture

Legal anthropologists, from their cross-cultural studies, have reached the conclusion that every society has its own legal system, written and unwritten. J.M. Huels says, "Individuals are exposed to several legal systems simultaneously and to the laws

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[69] The notions of common good, good of the Church, good of the universal Church may be found in canons, for instance, cc. 223; 264, § 2; 282, §2, and 287, § 2; *CCEO*, cc. 26; 46, § 1, and 384, § 2; see also P. J. MOGAKA, *The Interpretation of Ecclesiastical Laws in the Light of Canon 17*, JCD diss., Rome, Faculty of Canon Law, Pontifical Urban University, 2001, p. 46.

[70] ÖRSY, *Theology and Canon Law*, p. 92.

[71] See ibid.

[72] See ibid., p. 93.

[73] See B.A. GARNER (ed.), *Black's Law Dictionary*, 7th ed., St. Paul, MN, West Group, 1999, p. 391.

and conventions of every cultural group to which they belong."[74] For instance, a Catholic in India is bound by the civil laws of the nation as well as the laws of the Catholic Church. Sometimes there might be a conflict between these two sets of laws, and individuals might have to choose between competing loyalties.[75]

L. Pospisil, a specialist in anthropology of law, says, "Law is an intra-group phenomenon. It has been shown that every functioning group exhibits phenomena which have been categorized into a concept labelled law."[76] As a consequence, law is not just floating around in an unstructured way in a society. On the contrary, it pertains to specific social groups or cultural groups and sub-groups of a society.[77] Indeed, the very unity and continuance of a cultural group depend on some kind of law to preserve harmony and unity.[78] Law is not confined to legislation of formally enacted statutes or written codes alone but is inclusive of non-written practices or customs which the group views as binding.[79] We can say that law is one expression of what is considered to be valuable in a society or cultural group.

1.2.3 – Dynamic Interaction of Culture and Law

Every culture has its laws and customs. Behind each law and custom there are values upheld by a given community. We have already seen that every cultural society

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[74] J.M. HUELS, "Interpreting Canon Law in Diverse Cultures," in *The Jurist*, 47 (1987), p. 277.

[75] See ibid., p. 278.

[76] L. POSPISIL, *Anthropology of Law: A Comparative Theory*, New York, Harper & Row Publishers, 1971, p. 343.

[77] See ibid.

[78] See HUELS, "Interpreting Canon Law in Diverse Cultures," p. 278.

[79] See ibid.

has methods or sanctions for enforcing its norms. Norms that a community enforces formally have the status of laws. Thus, customs and laws are products of each culture.[80] Therefore, we can notice a dynamic interaction between culture and law.

1.2.4 – Interpreting Law in Light of Culture

Örsy says that interpretation of law is a clarification of the meaning of law by diverse means and by various ways.[81] It helps in understanding the values behind the laws as well as in applying them to concrete situations. Various elements must be considered in interpreting human law in a cultural context.

The first quality of a good interpreter of law is his or her grasp of the cultural context of the law he or she is interpreting. Mendonça says that good interpretation of law presupposes good interpreters and at first he or she must know his or her own cultural heritage before attempting to interpret the law.[82] He explains, "Without such reflective knowledge of one's own culture, it is difficult to personalize the meaning of law, as well as to understand someone else's culture."[83] R.A. Hill expresses the same view regarding the first quality of a good interpreter: "Individually we have a personal history which has shaped and conditioned our vision and our attitudes. We bring this to the interpretation of the law."[84] Coriden also emphasizes the importance of the human and historical condition

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[80] See ibid., p. 289.

[81] L. ÖRSY, "The Interpretation of Laws: New Variations on an Old Theme," in *StC*, 17 (1983), p. 95.

[82] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 198.

[83] Ibid., p. 267.

[84] R.A. HILL, "Reflections on the Interpretation of the Revised Code," in *The Jurist*, 42 (1982), p. 311.

of the interpreter in the task of interpreting.[85] Huels, underlining the above suggestions, says that the focus for the hermeneutical question should be as much if not more on the interpreter than on the rules of interpretation: "Interpretation is a human act, and each interpreter has his or her own skill, limitations, and biases that always come into play in the interpretative process. Even within the same culture interpretation of law sometimes varies and conflicts."[86]

The second quality of a good interpreter is his or her knowledge of the law itself.[87] One should know the values behind a law that the legislator wants to uphold or promote. Also, the interpreter should be well acquainted with the important hermeneutical principles related to every branch of law.

The third quality of a good interpreter is one's own vision of the person or the community for whom the law is to be interpreted. One should keep in mind that a person or community is a product of concrete historical and cultural conditions. Therefore, an interpreter cannot sufficiently understand that person or community without first understanding his or her own community's cultural background.[88]

No one can understand another person's culture without knowing its language because culture is transmitted mainly through language. We have dealt with the limitations of translations when we discussed language. If an interpreter of law does not know the language of another culture, other ways of communicating meaning and their

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[85] See CORIDEN, "Rules for Interpreters," p. 279.

[86] HUELS, "Interpreting Canon Law in Diverse Cultures," p. 273.

[87] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 200.

[88] See ibid., p. 201.

perception of reality, he or she should at least listen to those who are most intimately acquainted with that culture, the needs of the community concerned, and the actual situation of the people, because such persons are usually in the best position to understand the cultural and social contexts in which the law is enfleshed.[89]

1.3 – CULTURE AND ECCLESIAL LAW

Örsy says that the most significant hermeneutical issue in canonical science is the understanding of the same ecclesial law in different cultures.[90] One of the observations he makes in this regard is that cultures differ significantly between themselves in the perception of the role of law in a human society and its application in daily life.[91] In both Codes of canon law, many of the canons are word for word the same, for instance, canon on matrimonial consent (*CIC*, c. 1057, §2; *CCEO*, c. 817, §1). Because of the cultural diversity, some ecclesiastical laws may allow for different interpretations within the universal Church. Below we shall see what is meant by ecclesial or ecclesiastical law, what is the ultimate goal of ecclesial law, and the role of culture in the formation and the interpretation of ecclesial law.

1.3.1 – Notion of Ecclesiastical or Ecclesial Law

F. Maroto defines ecclesiastical law as "an ordinance of reason, for the common good of the Church, by one who has the care of the ecclesiastical community, and

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[89] See HUELS, "Interpreting Canon Law in Diverse Cultures," p. 271.

[90] See ÖRSY, "The Interpretation of Laws," p. 122, footnote 28.

[91] See ibid.

promulgated."[92] Örsy specifies the elements of ecclesiastical law as "a set of norms created by reason enlightened through faith. It intends to bring order into life of the ecclesial community. It is articulated and promulgated by those who are entrusted with the community's care, and its purpose is to serve the common good."[93]

Ecclesiastical law, as it is understood in *CIC* and *CCEO*, could be described as the promulgated written juridical norms that are legislated by one with legislative powers for the common good of the community capable of receiving the law under his jurisdiction.[94] D.M. Walker defines canon law as "the body of law (*corpus iuris*) constituted by an ecclesiastical authority for the organization and government of the Christian Church."[95]

1.3.2 – Ultimate Goal of Ecclesial Law

Pope Pius XII said the following in an address on 17 October 1953 with regard to the ultimate role of Canon law: "Canon law, like everything in the Church, is wholly geared towards the care of souls [...] It must give account, whether it administers ecclesiastical matters, passes judgment, or offers advice to sacred administrators and the Christian faithful. The salvation of souls should be its deepest concern."[96] In the third fundamental principle that guided the revision of the Latin Code, the Synod of Bishops

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[92] "Ordinatio rationis, ad bonum commune Ecclesiae, ab eo qui communitatis ecclesiasticae curam habet, promulgata" (F. MAROTO, *Institutiones iuris canonici ad normam novi Codicis*, Tomus I, Romae, Apud Commentarium pro Religiosis, 1921, p. 169).

[93] L. ÖRSY, "Theology and Canon Law," in J.P. BEAL, J.A. CORIDEN, and T.J. GREEN (eds.), *New Commentary on the Code of Canon Law* (= *CLSA Comm2*), commissioned by CLSA, New York, NY/Mahwah, NJ, Paulist Press, 2000, pp. 6-7.

[94] See MOGAKA, *The Interpretation of Ecclesiastical Laws in the Light of Canon 17*, p. 48.

[95] D.M. WALKER, *The Oxford Companion to Law*, Oxford, Clarendon Press, 1980, p. 175.

[96] *AAS*, 45 (1953), p. 688. Pope Paul VI quoted this statement of Pope Pius XII in his Rotal allocution of 8 February 1973 in which he emphasized the pastoral nature of Church law and canonical equity (see WOESTMAN, *Papal Allocutions*, p. 121).

emphasized in clear terms that the juridic character of the Church and all its institutions should foster supernatural life, and consequently, all laws and precepts, rights and duties are to be in harmony with their intrinsic supernatural purpose. Accordingly, the Code shall strive to instill in pastors and judges discretion and knowledge in exercising their ministry in a spirit of equity, which is the fruit of kindness and charity.[97] Pope Paul VI in his annual address to the Rotal auditors said the following:

> Canon law is the law of a society that is indeed visible but also supernatural; a society that is built up through the word and the sacraments, and whose objective is to lead people to eternal salvation. For this reason it is a sacred law, completely distinct from civil law [...]. It is from the will of Christ. It is totally incorporated in the salvific action of the Church, by which she continues the work of redemption [...] It is an expression and instrument of the apostolic office and a constitutive element of the Church of the Incarnate Word.[98]

In *CIC*, c. 1752 as in *Sacri canones*,[99] the Apostolic Constitution by which Pope John Paul II promulgated the Eastern Code, we read that the salvation of souls is the supreme law (*salus animarum suprema lex*[100]) of the Church. Although this supreme law is cited, along with canonical equity (*aequitas canonica*), as a guiding principle in cases of transfer of pastors in the above-cited canon, the text and the context suggest that this

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[97] See SYNOD OF BISHOPS, "Principia quae Codicis iuris canonici recognitionem dirigant a Synodo Episcoporum probata," 7 October 1967, in *Communicationes*, 1(1969), p. 79.

[98] PAUL VI, Allocution to the Roman Rota, 8 February 1973, in *AAS*, 65 (1973), p. 95; English trans. in WOESTMAN, *Papal Allocutions*, p. 116.

[99] See JOHN PAUL II, Apostolic Constitution *Sacri canones*, 18 October 1990, in *AAS*, 82 (1990), p. 1038; English trans. in *CCEO*, p. xxiv.

[100] It echoes a principle of ancient Roman political philosophy, *Salus reipublicae suprema lex esto* (Let the safety or the well-being of the state be the supreme law), which was adopted in canon law. All law must maintain a fine and delicate balance between the private and the common good. See G. NEDUNGATT, *The Spirit of the Eastern Code*, Rome, Centre for Religious Studies, Bangalore, India, Dharmaram Publications, 1993, p. 12, footnote 9.

reminder is meant to apply to all areas of canonical jurisprudence.[101] While the context is specific, it is presented as the Church's obligation to protect the individual rights of the faithful.[102] The Church is a sacrament of salvation of the Christian faithful, and canon law is an instrument through which the social structure of the Church is ordered and organized for the good of the individuals and the community and their salvation.[103]

Just as human beings are subjects of human rights, so too, Christians are subjects of Christian rights.[104] Justice in the Church is the virtue and the value regarding these rights. Without structural safeguards for justice in the Church, ecclesial communion will collapse. To make such provisions is the chief function of canon law that must, however, go beyond legalism and make provisions according to the principle of *epieikeia*[105] and the model of mercy of the divine Redeemer.

1.3.3 – Role of Culture in the Formation of Ecclesial Law

Has the ecclesial community any role in the formation of the ecclesial laws? Just as every civil society has its own culture, a particular ecclesial community has its own culture. Has the culture of a certain ecclesial community anything to do with the

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[101] See T.J. PAPROCKI, Commentarry on c. 1752, in *CLSA Comm2*, p. 1847; see also M. WIJLENS, "*Salus animarum suprema lex*: Mercy as a Legal Principle in the Application of Canon Law?," in *The Jurist*, 54 (1994), p. 575.

[102] See MOGAKA, *The Interpretation of Ecclesiastical Laws in the Light of Canon 17*, p. 100.

[103] See ibid., p. 94.

[104] See NEDUNGATT, *The Spirit of the Eastern Code*, p. 10.

[105] The usual translation of Aristotle's term *epieikeia* as equity is somewhat misleading. *Epieikeia* is really an act of justice; its scope is to balance, or correct, or complete the application of law, whenever it is so warranted. See ÖRSY, *Theology and Canon Law*, p. 44.

formation of the ecclesiastical laws? In order to answer these questions we have to go back and see how a law originates or must originate.

Movement towards the formation of a law is in the convergence of three judgments within the legislator.[106] Örsy says that the first judgment consists in assessing the community and its needs.[107] In other words, the legislator must first know the nature of the community, the value system of the community, or, the culture of the community because law takes its roots in the life of human specific communities.[108] Laws are bound in a reciprocal relationship to the community in and for which they originate. Therefore, an accurate knowledge of the social characteristics of the various settings in which laws are received or enfleshed is important. In this regard, some major factors of interest are the following: the constitutional model of the Church at a certain time, the social structure and religious life of the particular community, which include its customs and beliefs, its value system, its relationship to other external social entities and systems, like the State, social classes, politics, civil law, their social behaviour, and their economic set-up.[109] We may say that the legislator must firstly know the culture of the specific community.

The second judgement enables the legislator to determine the values that are necessary to fill the needs of the community. He determines what values are suitable for the specific community. The third judgment consists in ascertaining the concrete capacity

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[106] See ibid., p. 40.

[107] See ibid.

[108] See W. KOWAL, *Understanding Ecclesiastical Laws: Canon 17 in Light of Contemporary Hermeneutics*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1997, p. 111.

[109] See ibid.

of the community to appropriate those values. Sometimes it may happen that some values may be suitable but may not be obtainable by a given community because the legislator might be envisaging the values from his socio-cultural background. Just as the community is conditioned by culture, the legislator also is culturally conditioned. As Örsy mentions, law necessarily reflects the cultural mentality of the legislator and the impact of his environment.[110]

The legislator for the universal Church has the task of finding out what values are universally needed. Such values must be suitable for all because they belong to the core of the faith of the community, for instance, values concerning the sacrament of marriage. However, the norms through which these values are to be appropriated must be different.[111] M. Wijlens explains this with an example when she says, "The use of a particular legal system will be suited for some regions, but not for others. Those in continental Europe have a different understanding of law from those of the British Isles or in North America, not to speak of the people in Asia or African countries."[112] Thus, a strictly uniform canonical system that does not take into account the diversity in cultures and mentalities existing within the Church might not be the best suited for all of them.[113]

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[110] See ÖRSY, *Theology and Canon Law*, pp. 79 and 93.

[111] See WIJLENS, "*Salus animarum suprema lex*," p. 587.

[112] Ibid.

[113] See HUELS, "Interpreting Canon Law in Diverse Cultures," p. 276.

1.3.4 – Role of Culture in the Interpretation of Ecclesial Law

Interpretation of law consists of a process of correctly understanding the meaning of the law.[114] Canons 16-19 of *CIC* and *CCEO*, cc.1498-1501 deal with the norms for interpretation of ecclesiastical laws. However, these canons alone cannot be relied on for as appropriate, pastorally sensitive interpretation of ecclesial law in all situations.[115] Mendonça writes, "A narrow legalistic approach in interpreting and applying the norms which are universal in scope without giving any consideration to particular circumstances of the place and persons is certainly unjust and doomed to failure."[116]

We have discussed earlier what matters an interpreter should know for interpreting the law in general for a certain community. The same is true also in the case of interpreting and applying ecclesiastical laws. The interpreter must try to know well the culture of the ecclesial community because it is that community which receives the law. A good interpreter must also try to know the "world of the legislator," the culture and mentality in which the law was formulated.[117] Some ecclesial laws have universal scope in their application, for instance, the laws on consent in marriage. However, they cannot be interpreted in the same way in the universal Church because, while the transcendental

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[114] See V. DE PAOLIS, Commentary on c. 1498, in G. NEDUNGATT (ed.), *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches* (= *CCEO Comm*), Kanonika 10, Rome, Pontificium Institutum Orientale, 2002, p. 820.

[115] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 202; in his Rotal allocution of 30 January 1993, Pope John Paul II presented some important hermeneutical principles of law that are not to be disregarded by any interpreter of law. See WOESTMAN, *Papal Allocutions*, pp. 223-226.

[116] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 202.

[117] See HUELS, "Interpreting Canon Law in Diverse Cultures," p. 290.

values behind law *per se* do not change, the vision of such values is not the same everywhere.[118]

Racial and cultural backgrounds condition people's perceptions of and reactions to all life's events. They influence emotional responses, attitudes towards others, family practices, customary observances, choices of food, even manner of dress and ways of gesturing or walking.[119] Moreover, certain cultures have some significant values attached to various social institutions in a community, for example, values attached to the institution of marriage in a specific cultural society. The whole range of such cultural settings within the believing community and its broader social context affect the way that laws are communicated and applied.[120] Such cultural factors are to be considered for a correct interpretation of laws and application of them in a just manner.

Huels says that we must also acknowledge that no legal system, including the canonical, is entirely and uniformly suitable for every culture.[121] All those who are in the field of interpretation and application of ecclesiastical law must ensure that it is not applied without duly considering the culture of each ecclesial community. They must know and appreciate the values and traits of the cultural society. Huels states, "Interpretation of canon law should not, and cannot, be uniform. Since interpretation is a human act and human beings are psychologically and culturally diverse, we should always expect a variety of interpretations, the more so as the background and culture of

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[118] See MOGAKA, *The Interpretation of Ecclesiastical Laws in the Light of Canon 17*, p. 110.

[119] See CORIDEN, *Canon Law as Ministry*, p. 64.

[120] See CORIDEN, "Rules for Interpreters," p. 287.

[121] See HUELS, "Interpreting Canon Law in Diverse Cultures," p. 290.

the interpreters are various."[122] This is particularly true in marriage cases coming from cultures with which the interpreters are perhaps not fully unacquainted.[123] Therefore, the culture of each ecclesial community and the cultural difference of the interpreter influence the understanding and application of an ecclesial law even if it has universal scope.

1.4 – ESSENTIAL ELEMENTS OF THE INDIAN CULTURE VIS-À-VIS MARRIAGE & FAMILY

God created man and woman in His own image and likeness and united them in marriage. Jesus Christ, the Redeemer of mankind, raised marriage to the dignity of a sacrament between the baptized (see c. 1055, § 1). Marriage is the stepping-stone for the formation of family life, and "family life is, after all, the vocation and ministry to which the Lord has called the vast majority of the People of God."[124] The Church teaches that marriage is an "intimate union" (*GS*, 48). It is a "partnership of the whole of life" between a man and a woman and by its very nature ordered toward their own well-being (*bonum coniugum*) and the procreation and upbringing of children (*bonum prolis*) (c. 1055, §1; *CCEO*, c. 776, §1). This marital union is one, exclusive, and permanent (see *CIC*, c. 1056; *CCEO*, c. 776, §3). It gives rise to life-long rights and obligations. Such theological and juridical conceptualizations reflect both natural and supernatural dimensions of marriage.[125]

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[122] Ibid.

[123] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 202.

[124] C. GALLAGHER, "Marriage and Family in the Revised Code," in *StC*, 17 (1983), p. 167.

[125] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 203; see also MENDONÇA, "A Cultural Approach to Indian Marriage Cases," p. 62.

The institution of marriage is present in all human societies. By that very fact it is very much influenced by the socio-cultural situations of the respective places. To understand marriage in a particular place one must also understand the cultural and social aspects that influence the institution of marriage. Pope John Paul II directs that the institution of marriage and family life are to be understood within concrete social and cultural contexts.[126] In his Rotal allocution of 1991, Pope John Paul II reiterates, "Precisely because it is a reality that is deeply rooted in human nature itself, marriage is affected by the cultural and historical conditions of every people. They have left their mark upon the institution of marriage. The Church, therefore, cannot prescind from the cultural milieu."[127] When matrimonial cases come to the ecclesiastical tribunals, though the canonical procedural norms must be followed to safeguard the rights of all concerned, the judge has to give particular attention to the social and cultural dimensions of the parties in interpreting and applying the law. We are going to see in the following section the influence of culture on the institution of marriage in general and the understanding of marriage in the Indian cultural context in particular.

1.4.1 – Culture and Marriage

Marriage is a human reality as well as a saving mystery. Like any other human phenomenon, it affects and is affected by culture.[128] How marriage is understood,

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[126] See JOHN PAUL II, Apostolic Exhortation regarding the Role of the Christian Family in the Modern World *Familiaris consortio*, 22 November 1981, in *AAS*, 74 (1982), pp. 81-191, English trans. in J.M. MILLER (ed.), *The Post-Synodal Apostolic Exhortations of John Paul II*, Huntington, IN, Our Sunday Visitor, Inc., 1998, p. 150, n. 4

[127] JOHN PAUL II, Allocution to the Roman Rota, 28 January 1991, in *AAS*, 83 (1991), p. 948; English trans. in WOESTMAN, *Papal Allocutions*, p. 214.

[128] See R.R. CALVO, "The Impact of Culture in Marriage Cases," in *CLSA Proceedings*, 55 (1993), p. 108.

celebrated and lived, what people expect from marriage, and how roles are defined in the marital relationships are measured in a large manner by the culture of a given community. Since human beings evolve within the context of a specific culture, the inner structure and external manifestation of marriage are subject to cultural influences. As a result, marriage cannot be abstracted from a particular culture.[129]

The Church has to consider the values related to marriage that derive from the Sacred Scripture and Sacred Tradition. The non-negotiable elements declared in ecclesiastical law, are to be diligently respected, upheld, and promoted.[130] But, the Church cannot be blind to those values that are integrated in the culturally influenced conceptual formulations of marriage.[131] At the same time, cultural values cannot contradict the Gospel values and natural rights, and neither can be sacrificed solely for the preservation of culture. While the essential elements of marriage are universal and constant, their perception and conceptualization may differ from culture to culture. The notions of rights and duties, freedom, equal dignity, love, etc. are essential to the meaning of marriage. But their interiorization and exteriorization would certainly be determined by the culture of each society.[132]

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[129] See ibid; see also MENDONÇA, "The Importance of Considering Cultural Contexts," p. 203.

[130] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 268.

[131] See MENDONÇA, "A Cultural Approach to Indian Marriage Cases," p. 63.

[132] See PALATHINGAL, "Marital Consent of the Thomas Christians," p. 110; see also MENDONÇA, "The Importance of Considering Cultural Contexts," p. 203; MENDONÇA, "A Cultural Approach to Indian Marriage Cases," p. 63.

1.4.2 – Understanding of Marriage in Indian Culture

India is a land of various religions, languages, customs, and cultural practices. The religion of more than 80% of the Indian population is Hinduism. Christians, a minority community in India,[133] have largely assimilated a number of Hindu customs and practices with hierarchical status and a religion-defined way of life that influence their social institutions like marriage and family.[134]

Despite ethnic, geographic, and linguistic diversities, there is a cultural synthesis in India that gives cohesion to life. We can find a unity in diversity with respect to the culture and heritage of India.[135] The Indian culture, taken in its entirety, belongs to all, is common to all, and is not a product of a particular people or religion.[136] Commenting on the culture and heritage of India, Jawaharlal Nehru, the first prime minister of India said, "The past of India, with all its cultural variety and greatness, was a common heritage of all the Indian people, Hindu, Moslem, Christian and others and their ancestors who had helped to build it."[137]

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[133] Even though Christianity is the third largest religion in India following Hinduism and Islam, according to the census of 2006, out of the total population there are only 24 million Christians (2.1% of the entire Indian population).

[134] See J.A. FONSECA, *Marriage in India in a Christian Perspective: A Historical, Social and Theological Investigation*, Thesis ad doctratum in sacra theologia, Romae, Pontificia Universitas Lateranensis, 1988, p. 7; see also C.E. ABRAHAM, "The Rise and Growth of Christianity in India," in H. BHATTACHARYA (ed.), *The Cultural Heritage of India*, vol. 4, 2nd ed. rev. and enl., Calcutta, The Ramakrishna Mission, Institute of Culture, 1962, p. 557.

[135] See FONSECA, *Marriage in India in a Christian Perspective*, p. 8.

[136] See J. M. FRANCIS, *Coerced Marriages: Juridical Sources and Valuation of Their Nullity*, JCD diss., Rome, Faculty of Canon Law, Pontifical Urban University, 2002, p. 19.

[137] J. NEHRU, *The Discovery of India*, Reprint, New Delhi, Jawaharlal Nehru Memorial Fund, 1985, p. 341.

1.4.2.1 – Marriage among the Hindus

Certain religious ceremonies are essential for the validity of the Hindu marriage. Two important rituals precede the solemnization of marriage itself. These rituals are *sāgāi* (betrothal) and *kanyadāna* (giving away of the virgin). The solemnization of marriage, which is called *sādi*, follows those rituals.[138] Betrothal (*sāgāi*) is the first and essential step for marriage that is preceded by the choice of the partner.[139] Parents do the *sāgāi* because they arrange marriages for their children. It is considered highly improper for a young man or woman to take initiative in the matter of his or her marriage. A well-raised child is expected to abide by the decision of his or her parents in this matter.[140] So, the matrimonial consent is usually given by the parents for their children.[141]

Betrothal is mainly a family contract between the parents of both parties. The parents, in the presence of the friends who act as witnesses, give their solemn word that they are willing to perform the marriage of the boy and girl on a date to be fixed later. The priests then ratify the contract by repeating the sacred verses. In certain cases a written contract is drawn up; in others, a promise by word of mouth is considered

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[138] See J. MALIEKAL, "The Celebration of Catholic Marriage in India," in *StC*, 17 (1983), p. 390.

[139] See J. JOLLY (tr.), *The Minor Law Books: Nārada and Brihaspati* (hereafter referred to as *Nārada* with chapter and verse), Delhi, Motilal Banarasidass, 1965, 12: 3; see also A.C. MAYER, *Caste and Kinship in Central India, A Village and Its Religion*, Berkeley, University of California Press, 1970, pp. 202-208.

[140] See P. THOMAS, *Hindu Religion, Customs and Manners*, 6th ed., Bombay, D.B. Taraporevala Sons & Co. Private Limited, 1975, p. 81; see also B. GRIFFITHS and K.R. SUNDARARAJAN, art. "Hinduism," in *New Catholic Encyclopedia*, 2nd ed., vol. 6, Detroit, Thomson Gale, Washington, DC, The Catholic University of America, 2003, p. 851.

[141] We will explore later on the system of arranged marriages in the Indian culture.

sufficient. The ceremony is called *vāgdāna* or exchange of promises.[142] Betrothal is binding and irrevocable, except in extraordinary circumstances, for instance, fraud.[143]

In the contexts where marriages are arranged by the parents, consent of the parties has apparently little role to play.[144] But, according to the law books of the Hindus, this does not rule out the need for the consent of the parties.[145] The girls are usually prepared from early childhood to be married to one of their acquaintances. Ordinarily, at or before betrothal (depending on the local custom), the consent of the girl is asked; the boy himself asks the girl's father for his daughter in marriage. It is only then that *kanyadāna* takes place. That is the second step before the ritual celebration of marriage.[146]

The marriage ritual takes place in the presence of all the assembled guests, in a hall or porch built for the purpose. Solemnization of marriage takes place by doing the "seven steps" known as *saptapadi*. The bride and bridegroom under the instruction from the priest get up and take "seven steps" around the sacred fire, the groom leading and the bride following. This seals the marriage contract.[147] When taking the "seven steps" it is

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[142] See M.S. STEVENSON, *The Rites of the Twice-Born*, 2nd ed., New Delhi, Oriental Books, 1971, p. 48; see also THOMAS, *Hindu Religion, Customs and Manners*, p. 82; D.N. MUJUMDAR, *Races and Cultures of India*, 4th rev. and enl. ed., London, Asia Publishing House, 1961, p. 188.

[143] See MUJUMDAR, *Races and Cultures of India*, p. 188.

[144] See MALIEKAL, "The Celebration of Catholic Marriage in India," p. 391.

[145] See G. BÜHLER, (tr.), *The Laws of Manu*, Delhi, Motilal Banarasidass, 1967, 9: 27. Manu is supposed to be the author of the famous Code of Hindu law and jurisprudence. Nothing or very little is known about him; he must have lived between 1200-500 B.C. Another opinion about Manu is that he is only a mythical patronage, believed to be the progenitor of mankind and the originator of Hindu law. Since there are several Manus mentioned in the Hindu sacred literature the name appears to be an epithet rather than a proper noun. See also *Nārada*, 12.4.

[146] See MALIEKAL, "The Celebration of Catholic Marriage in India," p. 391.

[147] See THOMAS, *Hindu Religion, Customs and Manners*, p. 83.

hoped and prayed that their future life should be full of love, brilliance, opportunities, prosperity, bliss, progeny, and holiness. A prayer is offered at the end of the ceremony that the affectionate union of the couple should never be dissolved.[148] Most authors hold that the parties become husband and wife when the *saptapadi* is complete.[149] However, in some communities, e.g., the Reddy communities of Telengana or Anthrapradesh, *saptapadi* has no importance; instead, they consider *tāli* (an ornament tied around the neck of the bride by the bridegroom) more important, and so, marriage for them is irrevocable when *tāli* is tied by the groom.[150]

It can be said that from the Vedic time onwards, the Indian (Hindu) concept of marriage is a "sacrament" that binds an adult couple in matrimonial bonds.[151] Since it is a sacrament for the orthodox Hindus, no one can dissolve a marriage bond. Divorce is unknown in customary Hinduism.[152] Incompatibility, adultery, fornication, cruelty, and incurable diseases are not grounds for divorce.[153]

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[148] See A.S. ALTEKAR, *Position of Women in Hindu Civilization from Prehistoric Times to the Present Day*, 2nd ed., New Delhi, Motilal Banarasidass, 1973, p. 80; see also M. WILLIAMS, *Religious Thought and Life in India: An Account of the Religions of the Indian Peoples Based on a Life's Study of Their Literature and on Personal Investigations in Their Own Country*, London, John Murray, 1833, p. 363.

[149] See A.N. SAHA, *Marriage and Divorce*, 2nd ed., Calcutta, Eastern Law House Private Ltd., 1981, p. 65.

[150] See ibid., p. 66.

[151] See P. CHAMUPATI, "The Ārya Samāj," in BHATTACHARYA, *The Cultural Heritage of India*, p. 635.

[152] See ibid; however, in actual practice divorces and remarriages take place in all sections of the Hindu society.

[153] See P.T. NAIR, *Marriage and Dowry in India*, Calcutta, Minerva Associates, 1978, p. 14; The Indian parliament, after a long discussion and deliberations, passed the Hindu Marriage Act in 1955, by which important modifications were introduced into the traditional concept of the

1.4.2.2 – Marriage among the Indian Christians

Against this background about the general Indian (Hindu) concept of marriage, we are now going to look at the situation of Christianity in India. This will enable us to understand the concept and practice of marriage among Indian Christians. Their "Indianess" comes from the common heritage of the Indian culture.[154]

1.4.2.2.1 – Christianity in India

Historians and scholars accept today that an ecclesial community existed in India from the very beginning of Christianity.[155] X. Koodapuzha says, "The Church in India, which is as old as Christianity itself, existing in the heart of Asia, has a unique apostolic heritage."[156] It is a widely accepted fact that the origin of Christianity in India is the result of the apostolate of St. Thomas. According to an ancient South Indian oral tradition, St. Thomas sailed to India and landed at Cranganore (Kodungalloor) on the coast of ancient Malabar (present day Kerala) in the year 52 A.D. There he converted many high caste

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Hindu marriage both as to dissolution and monogamy. The greatest departure from the old customs and laws is the recognition of divorce by the Act.

[154] See MALIEKAL, "The Celebration of Catholic Marriage in India," p. 394.

[155] See P. THOMAS, *Christians and Christianity in India and Pakistan: A General Survey of the Progress of Christianity in India from Apostolic Times to the Present Day*, London, George Allen and Unwin Ltd., 1954; F.A. PLATTNER, *Christian India*, London, Thames and Hudson, 1957; E. TISSERANT, *Eastern Christianity in India: A History of the Syro-Malabar Church from the Earliest Time to the Present Day*, London, Longmans, Green, 1957; P.J. PODIPARA, *The Thomas Christians*, London, Darton, Longman & Todd, Bombay, St. Paul Publications, 1970 ; J. KOLLAPARAMBIL, *The St. Thomas Christians' Revolution in 1963*, Kottayam, India, Catholic Bishop's House, 1981; J. AERTHAYIL, *The Spiritual Heritage of the St. Thomas Christians*, Bangalore, Dharmaram Publications, 1982; B. VADAKKEKARA, *Origin of India's St. Thomas Christians: A Historiographical Critique*, Delhi, Media House, 1995; X. KOODAPUZHA, *Christianity in India*, Kottayam, India, Oriental Institute of Religious Studies, 1998; B. PUTHUR (ed.), *St. Thomas Christians and Nambudiris, Jews, and Sangam Literature: A Historical Appraisal*, Kochi, India, L.R.C. Publications, 2003.

[156] KOODAPUZHA, *Christianity in India*, p. 18.

Hindus and established several Christian communities.[157] The Christian community in India, known as the St. Thomas Christians from the very early centuries of the Christian era, is the living evidence of this ancient tradition.[158] Unfortunately, the St. Thomas Christians no longer form one Church, but are found within the Catholic Church, non-Catholic Churches, and other ecclesial communities.[159]

Now, the Catholic Church in India is comprised of three Churches *sui iuris*: the Latin Church (Roman), the Syro-Malabar Major Archiepiscopal Church, and the Syro-Malankara Major Archiepiscopal Church. Among them the Syro-Malabar Major Archiepiscopal Church is the most ancient one. The Latin Catholic Church in India has its origin from the evangelization work of the Western missionaries beginning with the Portuguese. The Latin Catholics are spread all over India. But the major centres of Latin Christianity in India are Tamil Nadu, Goa, Karnataka, Kerala, Uttarpradesh, Manipur, and Mizoram. There is also a large community of Christians in Mumbai (Bombay) in the

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[157] See K. PATHIL, art. "India, Christianity in," in *New Catholic Encyclopaedia*, 2nd ed., vol. 7, p. 392.

[158] See KOODAPUZHA, *Christianity in India*, p. 31; regarding the founder of the St. Thomas Christians, B. Vadakkekara after having done a historiographical study concludes, "And all along the St. Thomas Christians had but one person to look up to as the founder of their community. He is the Apostle Thomas. His name and person alone dominated the course of their history. These reported visits appear as external evidences for the fact of the continuous existence of a community of Christians in India, which knows no person other than the Apostle Thomas as its founder" (VADAKKEKARA, *Origin of India's St. Thomas Christians*, p. 473).

[159] Today, the St. Thomas Christians are divided into the Syro-Malabar Major Archepiscopal Church, the Syrian Orthodox Jacobite Church, the Malankara Orthodox Syrian Church, the Marthoma Church, the Syro-Malankara Major Archiepiscopal Church, the Assyrian Church of India, the Malabar Independent Syrian Church of Thozhiyoor, the St. Thomas Evangelical Church of India, and even a section of the Church of South India. This combined community of Christians was one and undivided, but it began to split in the middle of the seventeenth century. See PATHIL, "India, Christianity in," pp. 400-401.

state of Maharastra.[160] The Syro-Malankara Major Archiepiscopal Church was formed in 1930 when a faction of the Jacobite community led by Mar Ivanios and Theophilos entered into communion with the Apostolic See of Rome.[161]

About the nature of the early Christian community in India, it is said that it was "Hindu in culture, Christian in religion, and Catholic in worship."[162] P.J. Podipara writes, "Their Hindu culture had made them a closed community with high socio-political privileges. On these privileges they developed special canonical norms. Even their social customs assumed a canonical aspect."[163] In fact, the Christians had adapted a lot of customs and practices of the Hindu cultural society and gave them a Christian sense.[164] Even after becoming Christians, they continued the family system and social customs of their counterparts. Their customs related to birth, marriage, and funeral rites were similar to those of the Hindu Brahmins.[165] The ideas and outlook on marriage among the Brahmins corresponded to those of the Christians. Christian women were very reserved

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[160] See KOODAPUZHA, *Christianity in India*, pp. 169-242; also see P. PALLATH, *The Catholic Church in India*, Roma, Mar Thoma Yogam, 2003, pp. 35-62; PATHIL, "India, Christianity in," pp. 401-402.

[161] See PATHIL, "India, Christianity in," p. 400.

[162] A. CHERUKARAKUNNEL, "The Hindu Christians of India," in J. VELLIAN (ed.), *The Malabar Church: Symposium in Honour of Rev. Placid J. Podipara C.M.I.*, Roma, Pont. Institutum Orientalium Studiorum, 1970, p. 203.

[163] P.J. PODIPARA, art. "Malabar Rite," in *New Catholic Encyclopaedia*, vol. 9, New York, McGraw-Hill Book Company, 1967, p. 95.

[164] See A. THAZHATH, *The Juridical Sources of the Syro-Malabar Church: A Historico-Juridical Study*, Kottayam, India, Paurastya Vidyapitham, 1987, p. 63; see also CHERUKARAKUNNEL, "The Hindu Christians of India," p. 207.

[165] The Brahmins were the high caste among the Hindus. We will deal with the caste system later.

and confined to family circles without many social contacts, just like Brahmin women.[166] Christians have preserved up to now many of the old Hindu customs.

1.4.2.2.2 – Institution of Marriage and the Indian Christians

The early Christians found the Hindu social and moral practices associated with matrimony noble and reconcilable with Christian living, even though new rituals were prescribed for the wedding. Particularly compatible were the indigenous values of monogamy, family loyalty, and inadmissibility of divorce.[167] Christian marriage rites and marriages within the community were insisted upon, but could not always be enforced. The festive aspects of marriage were, as was the custom, celebrated to the exclusion of spirit and evil worship.[168] However, while complying with the Church requirements of marriage, they did not abandon the practices common among their neighbours: fixing auspicious days for marriage, consulting priests, arranging marriages by the parents, and so forth.[169]

Even though the St. Thomas Christians are divided into many Churches and ecclesial communities now, most of them still retain the traditional practices and customs related to birth, marriage, funeral rites, etc., because these are parts of their culture. Other Christians, including the Latin Catholics, are mostly the descendants of those who were converted by the Western missionaries starting from the sixteenth century. Among them

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[166] See KOODAPUZHA, *Christianity in India*, p. 68; see also CHERUKARAKUNNEL, "The Hindu Christians of India," p. 207.

[167] See FONSECA, *Marriage in India in a Christian Perspective*, p. 18.

[168] See MALIEKAL, "The Celebration of Catholic Marriage in India," p. 395.

[169] See C.G. DIEHL, *Church and Shrine: Intermingling Patterns of Culture in the Life of Some Christian Groups in South India*, Uppsala, H.O. Boktryckeri, 1965, pp. 96-97.

there may be variations from place to place in the customs and liturgical practices, but they all share the same Indian culture. For instance, in the case of preserving the values related to the institution of marriage, we find almost the same situation among the Christians throughout India. We will notice this aspect when we analyse marriage nullity cases judged by various ecclesiastical tribunals in India on the grounds of reverential fear. This shows one of the aspects of the "oneness" of the Indian culture in the midst of much diversity.

1.4.3 – Joint or Extended Family System

The classic form of the Indian family is the joint family. It is a system where the members are bound together by ties of common ancestry and common property. Groups of families live together under one leader, the eldest male member of the familial group.[170] I. Karve defines joint family in the following words: "A joint family is a group of people who generally live under one roof, who eat food cooked at one hearth, who hold property in common, who participate in common worship, and who are related to each other as one particular type of kindred."[171] Concerning the unity of such a system R. Thapar says the following:

> The basic unity in such a system is the extended family based on a three or four generation lineage controlled by the eldest male who represents it on both ritual and political occasions. The constituents of the family and its relations with the descent group are based on the system of marriage alliances involving the circulation of women and the exchange of wealth associated with it.[172]

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[170] See T. PANAKAL, *Family Apostolate in the Church of Kerala in the Light of Familiaris consortio*, Theses ad doctoratum in S. theologia, Roma, Pontificia Università Lateranense, 1986, p. 4.

[171] I. KARVE, *Kinship Organization in India*, Bombay, Asia Publishing House, 1968, p. 11.

[172] R. THAPAR, *From Lineage to State*, Bombay, Oxford University Press, 1984, p. 10.

A.L. Basham says that the Indian family was, and still is, a united one. That is to say, a close link was and is maintained between brothers, uncles, cousins, and nephews who often lived under one roof and owned the immovable property in common. Like the European and Semitic family, it is patriarchal. The father is the head of the household and administrator of the joint property.[173] A young Hindu, on his marriage, does not set up house for himself but brings his wife to his parental home. It is where his elder brothers and uncles live with their wives and children.[174]

Between the father and children there is always restraint and the demand for respect. A more spontaneous affection is evinced between mother and children, though sons have a far greater monopoly on the maternal affection.[175] It is the duty of the father or the oldest male member to arrange marriage for the girls in a joint family. The girls have no freedom in choosing their life partners. In marriage, the husband replaces the authoritarian father in the duty of supervising his wife. With marriage the bride severs her ties to her parental home, and indissolubly binds herself to her husband.[176] The person to whom the bride is directly responsible, and who exercises the legitimate authority of the family as far as she is concerned, is the mother-in-law.[177]

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[173] See A.L. BASHAM, *The Wonder that was India: A Survey of the Culture of the Indian Sub-Continent Before the Coming of the Muslims*, New York, Grove Press, Inc., 1959, p. 155.

[174] See THOMAS, *Hindu Religion, Customs and Manners*, p. 64.

[175] See D.G. MANDELBAUM, *Society in India*, Bombay, Popular Prakashan, 1970, pp. 46-47; see also THOMAS, *Hindu Religion, Customs and Manners*, p. 64.

[176] See FONSECA, *Marriage in India in a Christian Perspective*, p. 102.

[177] See G.D. BERREMAN, *Caste and Other Inequities*, Meerut, Folklore Institute, 1979, p. 167; see also MANDELBAUM, *Society in India*, p. 46.

It seems that in a joint family a form of respect and fear measures the relationship between husband and wife. There is no freedom of love. Regarding the role of a wife in a joint family, A.D. Ross says, "The wife's role is mainly functional: to produce children, look after them, show respect and reverence towards the husband, and thus fulfill the marriage bond."[178] The society is tolerant towards the husband's infidelity, while the erring wife would be hounded out of the home.[179]

Generally, the joint family has the advantage of developing closely-knit bonds and of providing support for the young, the aged, and the sick. A communal existence and harmony are maintained to some extent, and religious, economic, social, and cultural objectives of life are fulfilled. Still, the joint family system has many disadvantages. According to this system, it is the family that counts, and not the individuals. The administration of the joint family looks for the stability of the system rather than the integral personal growth of the family members. In a joint family, there is always male dominance in taking decisions that affect the whole family. For instance, before arranging a marriage or taking a decisive measure affecting the careers of the family members, the male members alone consult with each other, giving preference to the views of the elders among them.[180] Female members are considered as inferiors to the male members. Living in the narrow world of children, husband, husband's parents, and their relatives, a woman

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[178] A.D. ROSS, *The Hindu Family in Its Urban Setting*, Delhi, Oxford University Press, 1973, p. 153.

[179] See M. SUBBAMMA, *Women, Tradition and Culture*, New Delhi, Sterling, 1985, p. 2; see also I.P. DESAI, *Aspects of Family in Mahuva*, Bombay, Asia Publishing House, 1964, p. 11.

[180] See MANDELBAUM, *Society in India*, p. 45.

in a joint family has no ambition other than to live as quietly as possible in the rough sea of the joint family.[181]

1.4.4 – Contemporary Nuclear Family System in India

The traditional pattern of the joint family is now scarcely discernable and is headed towards disintegration.[182] Jobs in government and in factories have mainly given rise to nuclear-like family units of husband, wife, and children.[183] I.P. Desai calls a nuclear family a household "if it is composed of parents and their unmarried children, not related to their other kin through property or the rights and obligations pertaining to them."[184]

A transformation of the cultural pattern became inevitable by virtue of the new economic organization, ideology and administrative system. From being a unit of production and self-sufficiency, the family has become a unit of consumption. The trend has moved away from consanguinity to conjugality as the cementing bond, at least in some parts of India.[185] The rise of industrial cities and job opportunities has resulted in a

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[181] See P. KANIAMPADICKAL, *Evangelization of the Family and the Church's Magisterium: Family as Ecclesia domestica in the Experience of the Syro-Malabar Church,* Thesis ad doctoratum in sacra theologia, Romae, Pontificia Universitas Lateranensis, 2001, p. 21.

[182] See CATHOLIC BISHOP'S CONFERENCE OF INDIA (= CBCI), *All India Seminar: Church in India Today, Bangalore, May 15-25, 1969*, Workshop Hand Book, Part II, vol. 4, New Delhi, CBCI Centre, 1969, p. 54.

[183] See KARVE, *Kinship Organization in India*, p. 135.

[184] I.P. DESAI, "Joint Family in India, An Analysis," in INDIAN SOCIOLOGICAL SOCIETY, *Sociological Bulletin*, Bombay, Indian Sociological Society, 1956, p. 102; although most of the families are structurally nuclear, functionally they are still joint. See M. THOMAS, "Indian Family in the Process of Modernization," in *National Christian Council Review*, 103 (1983), p. 192; though the members live in nuclear households, they function as if they were in the joint family. Even though physically a nuclear family is composed of parents and their unmarried children, in most cases the obligations and relations of the joint family pattern are emotionally retained in varying degrees in every such family.

[185] See A.R. DESAI, *Rural Sociology in India*, Bombay, Popular Prakashan, 1969, p. 48.

loosening of the bonds of the joint family.[186] Education for boys and girls has increased, and this has helped the growth of individuality and the desire for freedom and personal income. Progressively, this has brought about a perceivable change in the social structure in India. Thus, for many reasons the majority of extended families in India have now been replaced by nuclear families.[187] Nonetheless, even where the forces of modernity are bringing about great changes in the concepts and forms of family organization, the traditional joint family has still its gravitational pull.[188]

1.4.5 – The System of Arranged Marriages in Indian Culture

The arranged marriage system exists and is still practiced in India. According to this system, parents or guardians[189] initiate and negotiate all aspects of their children's marriage. V.V. Prakasa and V.N. Rao say that an arranged marriage is a type of mate selection in which the individual getting married has little or no choice in selecting a spouse because family members-- usually parents--are more influential in the process.[190] J. Maliekal says, "In India, today, children generally leave the choice of their marriage

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[186] See KARVE, *Kinship Organization in India*, p. 301; see also KANIAMPADICKAL, *Evangelization of the Family and the Church's Magisterium*, p. 20.

[187] See W.J. GOODE, *The World Revolution and Family Patterns*, New York, Free Press, 1963, pp. 232-243.

[188] Even for those in India whose values have acquired some flexibility, the joint family remains the symbol of orthodoxy, so that physically separated nuclear units maintain family unity through occasional common activities. See J.J. ISAAC, *The Free Choice of the Marital State of Life as a Fundamental Right of the Faithful: A Juridical Study with Special Reference to India*, Excerpts from Thesis (doctoral), Rome, Faculty of Canon Law, Pontifical Urban University, 2002, p. 55, footnote 90.

[189] Guardians may include not only those legally appointed but also those who are acknowledged as such by the cultural system.

[190] See V.V. PRAKASA and V.N. RAO, "Arranged Marriages: An Assessment of the Attitudes of the College Students in India," in G. KURIAN (ed.), *Cross-Cultural Perspectives of Mate-Selection and Marriage*, Connecticut, Greenwood Pub. Group, 1979, pp. 11-31.

partners to the mature and careful decision of their parents who know them better and have their well-being at heart."[191] The custom and logic behind an arranged marriage could be deduced from the nature and structure of the family, especially that of the joint family. Even though people, today, have started to live in small families, the traditional aspects of the joint family system are commonly seen in India. In such situations, members of the family share and support one another and the individual's personal needs. Their traits are seen in relation to the whole family.[192] Consequently, marriage is mostly arranged by the parents, elders, or the "significant others." The predominant belief is that mates are already predestined, and it is the duty of the responsible persons of the family to actualize it.[193]

In cases of arranged marriages, consent of the spouses is not ultimately neglected. Rather, it is asked for and received, or it is taken for granted. In some cases the spouses are expected to accept the decision of the family members, who take into account many elements in the arrangement of marriages, such as family background, reputation, economic condition, age, dowry, etc.[194] We will speak about these factors later. If the groom's parents are satisfied with these characteristics, they, usually through a "marriage

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[191] J. MALIEKAL, *Celebration of Catholic Marriages in India*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1983, p. 24.

[192] See G.R. GUPTA, "Love, Arranged Marriages and the Indian Social Structure," in KURIAN, *Cross-Cultural Perspectives of Mate-Selection and Marriage*, p. 171.

[193] See ibid.

[194] See GUPTA, *Marriage, Religion and Society*, p. 60; see also G. KURIAN, "Modern Trends in Mate Selection and Marriage with Special Reference to Kerala," in G. KURIAN (ed.), *The Family in India: A Regional View*, The Hague, Mouton, 1974, p. 358; L. SAXTON, *The Individual, Marriage and the Family*, 9th ed., Belmont, California, Wadsworth Publishing, Co., 1995, p. 199.

broker,"[195] entrust the difficult task of revealing this interest to the woman's parents. If both parties agree, parents of both the man and the woman begin to communicate directly, and a meeting is set up at the woman's house for the man's family to see her. At the time of the visit to the bride's family, if the parents come to an agreement regarding the marriage of their children and if the man likes the woman, the parents will finalize the date for the engagement. A dowry will also be fixed, and then they will proceed with the marriage.[196]

However, today the exposure of the Indian society to western ideologies and the fast growing modernization and industrialization have created tremendous changes in the field of marriages, from too much rigidity to greater flexibility, and from a purely family-oriented choice of mate to the acceptance of the choice on the couple's part.[197] Still, a western observer may be amazed to see how established the system of arranged marriages is, in that the great majority of modern male and female Indians and even those Indians living abroad accept it as the normal way.

In evaluating the arranged marriage system, there is no doubt that one will find both positive and negative elements. It is true that the system of arranged marriages has its origin in antiquity; it is derived from ancestral traditions and customs. As far as the way of life of Indian society is concerned, the system of arranged marriages, in itself, is good

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[195] The institution of mate selection in the arranged marriage system often utilizes the services of a professional marriage broker or matchmaker. The main function of a marriage broker is to collect information about the person sought after and about his or her family. Such information usually includes particulars about that person's caste, employment status, the family's social and economic condition, religion, age, character, dowry, etc.

[196] See ISAAC, *The Free Choice of the Marital State of Life*, p. 33.

[197] See KURIAN, "Modern Trends in Mate Selection and Marriage," p. 358.

and practical. However, it has negative consequences as well. Mendonça observes the following:

> It can and does have the potential for serious negative consequences as far as matrimonial consent is concerned when a person's freedom of choice is substantially restricted, when the consent of the parties is overridden by that of the parents, when the essential elements of its object are replaced by non-essential ones, and when the personal/interpersonal nature of the marital partnership is rendered practically impossible under the pretext of family's survival.[198]

Here the individual's values and choices may be sacrificed at the cost of the interests of the family members. The personal and free act of the parties may be replaced by other social and economic factors.[199]

1.5 – THE FACTORS AFFECTING A MARRIAGE IN THE ARRANGED MARRIAGE SYSTEM

Many factors influence the arranged marriage system in India. The main socio-cultural factors that could affect this system are parental authority, filial reverence, social and financial status, dowry system, caste system, and age.

1.5.1 – Parental Authority

In countries like India where family is strongly united, the bond between children and parents is strong. Children obey their parents because of a strong attitude towards customary obedience and through a sense of dependence on their parents. Children owe respect to their parents and there is a superior-inferior relationship conditioning the parental-filial bond. This, too, has become part of the cultural environment.[200] Parents

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[198] MENDONÇA, "The Importance of Considering Cultural Contexts," p. 213.

[199] See ISAAC, *The Free Choice of the Marital State of Life*, p. 49.

[200] See FRANCIS, *Coerced Marriages*, p. 37.

want their children to respect them and obey them.[201] Parental power on the one hand and the accustomed obedience on the other contribute to reverence and respect for the parents.

As previously mentioned, the family is a closely-knit unit in the Indian society. The nuclear form of the family paves the way for strong relations among the family members. This relationship automatically leads the parents, as the elders of the family and guardians of the children, to take care of the important decisions and events of the family. Marriage, then, as an important event of the family, is also placed under the direct and personal care of parents. Mendonça writes, "The natural sequel of a family-oriented finality of marriage is the extent of parental authority over the marriage of their children."[202] It is understood as an important duty of the parents to find mates and arrange marriages for their children since "parenthood in India still implies a responsibility for getting your offspring wedded respectably, particularly, if the progeny in question is a female."[203]

Therefore, with regard to marriage, in the arranged marriage system parents play an active role while the children become in most cases passive or submissive the parents' decision.[204] This has become an element of the Indian culture. Their interest in helping

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[201] See ALTEKAR, *Position of Women in Hindu Civilization*, p. 59.

[202] MENDONÇA, "The Importance of Considering Cultural Contexts," p. 207.

[203] S. THAROOR, *India: From Midnight to Millennium*, New York, Arcade Publishing, Inc., 1997, p. 297. In the case of female children parents take the upper hand in deciding marriage while in the case of male children the decisive role of parents is not as demanding.

[204] See M.J. LUSENA, *The Application of Selected Capita of Canonical Jurisprudence to the Practice of "Proposed Marriages" in Sri Lanka*, CLS, no. 534, Washington, DC, The Catholic University of America, 1990, p. 28.

the children shows the concern of the parents to help their son or daughter in choosing a good partner for life. Here, the question to be answered is whether or not the son or daughter freely accepts this decision.

1.5.2 – Filial Reverence

Filial reverence is what children owe to parents and calls for habitual obedience on the part of children.[205] This is another specific feature that has to be taken into account in the arranged marriage system. Reverence to their parents is a universal phenomenon, but the difference in oriental cultures, especially in India, is the close relationship among family members.[206] In India marriage is more a family affair than an individual matter. It is an institution that creates new alliances and, as we have mentioned above, most of the marriages are arranged by parents irrespective of caste or creed. It is interesting to note that because of the filial reverence, children accept and sometimes are forced to accept their parents' decisions,[207] even if they are able to decide for themselves. We will discuss the validity of such marital decisions in the third chapter of this study.

1.5.3 – Social and Financial Status

Parents mainly care for the social and family status in the marriage arrangement of their children. Mendonça observes, "When feelers are sent out through a marriage-broker for a prospective bride or groom, one of the characteristics of the person being carefully investigated is his or her family's social and economic status."[208] Parents want to see their child become a member of a good, financially well-off, and morally upright family. This

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[205] See KNOPKE, *Reverential Fear in Matrimonial Cases in Asiatic Countries*, p. 81.

[206] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 209.

[207] See MALIEKAL, "The Celebration of Catholic Marriage in India," p. 396.

[208] MENDONÇA, "The Importance of Considering Cultural Contexts," p. 213.

is particularly true on the part of the woman's parents who wish to acquire a life-partner for their daughter with high personal and familial status.[209] They, therefore, may take this prestigious issue in their own hands, paying little or sometimes no attention to the wishes of their child. The requirement of a family's social and financial status is the important issue for the parents. The actual status of the family is likely to enter into the parental consent and, consequently, into the consent of the parties as well.[210] Therefore, even if the woman does not like the partner chosen by the parents, she might agree to the marriage proposal out of reverential fear deeply conditioned by the Indian culture, and also to avoid parental indignation and displeasure if she refuses.

1.5.4 – Dowry System

Dowry is considered one of the main factors in the arranged marriage system. It is an age-old practice in the Indian society, referring to property or valuable security given by one party to another as consideration for marriage. S.J. Tambiah says that dowry is the property given to the daughter to take with her into marriage.[211] L.W. Brown writes about the dowry system among the St. Thomas Christians in Malabar in the following way: "Dowry is given to compensate the daughters of the family for the loss they sustain in

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[209] See MENDONÇA, "A Cultural Approach to Indian Marriage Cases," p. 79.

[210] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 214.

[211] See S.J. TAMBIAH, "Dowry and Bride Wealth, and the Property Rights of Women in South Asia," in J. GOODY and S.J. TAMBIAH (eds.), *Bride Wealth and Dowry: Cambridge Papers in Social Anthropology*, 7, Cambridge, Cambridge University Press, 1973, p. 61; see also S. KRISHNAMURTHY, *The Dowry Problem: A Legal and Social Perspective*, Bangalore, India Book House, 1981, p. 21; U. SHARMA, "Dowry in North India: Its Consequence for Women," in P. UBEROI (ed.), *Family, Kinship, and Marriage in India*, New Delhi, Oxford University Press, 1994, pp. 341-356.

marrying out of the family; it used to be roughly equivalent to the share of property a son would receive on his father's death."[212]

The original intent behind the dowry system seems to have been to provide financial assistance for the newlywed couple.[213] P.D. Devanandan and M.M. Thomas comment on this aspect of dowry: "The girls in the patriarchal society do not have any legal claim over the patrimony. It is most likely that the parents, concerned about the welfare of their daughters, would have started to offer voluntarily the basic necessary things, to have a good beginning of the married life; this custom [...] started on a voluntary basis, has become an obligation today."[214]

Along with the jewels and the household goods, dowry also means a sum of money paid by the bride's father to the groom's family.[215] In spite of the Indian Parliament's Dowry Prohibition Act of 1961 condemning the dowry system as a social evil, the practice has still increased and is prevalent in all communities – Hindu, Muslim, Sikh,

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[212] L.W. BROWN, *The Indian Christians of St. Thomas: An Account of the Ancient Church of Malabar*, New York, Cambridge University Press, 1956, p. 178.

[213] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 219.

[214] P.D. DEVANANDAN and M.M. THOMAS, *Changing Patterns of Family in India*, Bangalore, Christian Institute for the Study of Religion and Society, 1966, p. 35.

[215] See L. CAPLAN, "Bridegroom Price in Urban India: Class, Caste, and Dowry Evil Among Christians in Madras," in UBEROI (ed.), *Family, Kinship, and Marriage in India*, p. 358.

Christian, etc.[216] It now prevails with equal force throughout India under the guise of "gift."[217]

There is no doubt that the dowry system has its own logic rooted in the mores of the people. Whatever the good intentions of the forefathers in instituting this system, at present it has become an excruciating social evil that directly affects marriageable women and, indirectly, their families. If the bride's parents cannot meet the dowry requested by the groom's family, the marriage may have to be delayed,[218] and this destroys the parents' peace of mind. Naturally, the bride whose father cannot afford the groom's exorbitant demands will not marry him.[219]

There are certainly some positive aspects of the dowry system as well. It is likely to provide self-respect, psychological security, and financial support for the wife and children in case of the husband's death. But in many cases, its disadvantages definitely outweigh its apparently positive aspects. Mendonça observes that normally a woman finds it very difficult to go into marriage without a suitable dowry because she knows that it might cause serious friction later within the family.[220] Families sometimes break up;

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[216] See L. CAPLAN, *Class and Culture in Urban India: Fundamentalism in Christian Community*, Oxford, Clarendon Press, 1987, p. 141; see also L.B. MERLYN, "Dowry," in J.B. TELLIS-NAYAK (ed.), *Indian Womanhood: Then and Now. Situations, Efforts, Profiles*, Indore, Satprakashan Sanchar Kendra, 1983, p. 71; CAPLAN, "Bridegroom Price in Urban India," pp. 356-379.

[217] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 219.

[218] See A. MATHEW, "Dowry and Its Various Dimensions," in L. DEVASIA & V.V. DEVASIA (eds.), *Women in India: Equality, Social Justice and Development*, New Delhi, Indian Social Institute, 1990, p. 79; see also MENDONCA, "The Importance of Considering Cultural Contexts," p. 220.

[219] See ISAAC, *The Free Choice of the Marital State of Life*, p. 41.

[220] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 220.

there are cases where wives are tortured and even murdered because of insufficient dowry.[221] T.J. Kirupaharan rightly observes the negative aspect of the dowry system by saying that if a poor family finds a husband for their daughter who is willing to accept a low dowry, there is always the possibility for them to impose the marriage agreement of their choice. Pressure is even greater if there are many daughters in such a family.[222] Therefore, in such a case, because of reverential fear towards her parents, the woman may choose a lifetime partner whom she dislikes. She may also agree with their choice merely to avoid their resentment or anger.

Hence, in a system where dowry determines marriage consent to a greater extent than the consideration of the constitutive elements of matrimonial consent, the freedom of choice is in question. The free choice will depend on the concrete circumstances in which it is made.[223]

1.5.5 – Caste system

The term "caste" is derived from the Portuguese word *casta* meaning breed, race, kind, etc.[224] Caste is an expression of the Sanskrit word *jati* denoting the various classes and tribes in which people are divided. There are four main divisions.[225] It is a sad fact

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[221] "[...] the 1970s and 1980s saw a record increase in the grisly phenomenon of the 'dowry deaths' with brides burned in their kitchens by husbands and mothers-in-law for not having brought sufficient dowries into their marriages" (THAROOR, *India: From Midnight to Millennium*, p. 295).

[222] See KIRUPAHARAN, *Reverential Fear in Matrimonial Consent*, p. 67.

[223] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 220.

[224] See J.H. HUTTON, *Caste in India: Its Nature, Function, and Origin*, London, Cambridge University Press, 1946, p. 42.

[225] The four types of castes are *Brahmana, Ksatriaya, Vaisya*, and *Sudra*. According to Indian tradition, "*Brahmana* is said to have come from the mouth of *Brahma*, *Ksatriaya* from the

that caste consciousness prevails in the minds of the majority of Indians.[226] Over many long years, India has developed this peculiar type of social stratification in which the higher castes exploit the lower ones. The caste of an individual is determined at birth itself.[227]

There is no doubt that the caste system has also pervaded Christianity. It cannot be denied that this evil system has entered into the mentality of some Catholics too. The early Indian Catholics naturally followed the Hindu customs. The caste consciousness is so pervasive among the Indians that it enters naturally into the choice of marriage partners.[228] J. Thattumkal observes that, in some cases, Catholics have avoided marriage and indeed all contacts with the low castes.[229]

Because of its intrinsic importance, cultural groups take every step to preserve the caste endogamy.[230] B. Constantine says, "The system of arranged marriages is one of the surest ways to secure the 'pristine purity' of the caste institution."[231] It excludes the

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arm, *Vaisya* from the thigh and *Sudra* from the foot of *Brahma*" (J. GARRETT, *A Classical Dictionary of India: Illustrative of the Mythology, Philosophy, Literature, Antiquities, Arts, Manners, Customs &c. of the Hindus*, New Delhi, D.K. Printworld, 1999, p. 121).

[226] See THAROOR, *India: From Midnight to Millennium*, p. 103.

[227] "Caste refers to distinct social groups. Members of which belong to their respective groups by birth" (J. KANANAIKIL, "Caste Discrimination," in *Vidyajyoti*, 46 [1982], p. 523).

[228] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 214.

[229] See J. THATTUMKAL, *Caste and the Catholic Church in India*, JCD diss., Roma, Pontificia Università Lateranense, 1983, pp. 169-172.

[230] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 214.

[231] B. CONSTANTINE, *The Problem of Consent in the Arranged Marriage of Tamils of Jaffna*, JCD diss., Rome, Faculty of Canon Law, Pontifical Urban University, 1977, p. 134.

possibility of inter-caste marriages even though exceptions occur.[232] Before marriage, usually the marriage broker or relatives verify the caste identity of the parties.[233] If a man or a woman is compelled to choose a partner from the same caste, his or her freedom is constrained. Mendonça observes the following:

> In caste-restricted marriages, personal choice of a marriage partner has very little scope. Parents make sure that their child has a partner who belongs to the same caste. In other words, the decision of the parents, which children are expected to respect, is already determined by the element of caste. Therefore, even if a man and a woman belonging to different castes were to fall in love, their parents generally would not consent to their marriage. This situation is likely to affect the eventual consent children proffer.[234]

Hence, it is clear that the freedom of the person may be disturbed when one is morally forced to select a partner in marriage from the same caste. If one opposes the marriage arranged by the parents, he or she might face the indignation and irritation of their parents. So, in many cases, out of reverential fear, a man or a woman consents to the arranged marriage.

1.5.6 – Age

Another significant element which enters into the choice of marriage partners, is age. There may be some conventions in each society regarding the age at which one can marry. When one goes beyond this age limit, suspicion arises, making it difficult for the woman to get married. Mendonça says, "As a general rule, the proposed bride must be younger than the proposed bridegroom. This requirement is universally adhered to in

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[232] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 215; see also THAROOR, *India: From Midnight to Millennium*, p. 104.

[233] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 215.

[234] Ibid.

arranged marriages among all communities in India."[235] The basic principle behind this requirement is that the husband assumes the responsibility for his wife from her father. It presupposes sufficient maturity on the husband's part.[236]

There is another aspect of age that has a bearing on arranged marriages.[237] It becomes very difficult, particularly for a young woman, to find a suitable match after a certain age. Then, she might be compelled by her parents, or by those who stand in their place, to agree to a marriage with anyone who would be willing to marry her. The woman will have to face the indignation of her parents if she refuses to marry the person they have chosen. So, out of reverential fear towards the parents, she may submit to the will of the parents. Pressure is even stronger if the woman is the oldest of several daughters, because according to many of the local customs it is not proper for the younger sisters to marry before the oldest. Even though the same holds true for the man, the case is not always the same.[238]

The system of arranged marriages shows to an extent that the Indian society has not yet arrived at the idea of marriage as a personal and mutual commitment to "interpersonal relationship." It still has a community-centred or family-centred rather than person-centred idea of marriage.[239]

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[235] MENDONÇA, "The Importance of Considering Cultural Contexts," p. 215; see also *coram* STANKIEWICZ, 30 January 1992, in *Monitor ecclesiasticus* (= *ME*), 118 (1993), p. 535.

[236] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 216.

[237] See ibid; see also ISAAC, *The Free Choice of the Marital State of Life*, p. 35.

[238] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 216.

[239] See W.A. SCHUMACHER, "The Importance of Interpersonal Relations in Marriage," in *StC*, 10 (1976), p. 105.

CONCLUSION

Every human being is a product of one's own culture. An interpreter of law cannot sufficiently know a person or community until he or she understands that person or community's culture. Culture is that complex whole which includes knowledge, belief, art, law, customs, and the capabilities and capacities acquired by man as a member of a society. In itself, culture is not an observable behaviour but consists of the values and beliefs people use to interpret experience and general behaviour that are reflected in the behaviour of a particular community. Culture is not only a formator but also a conveyer of a community's values. Culture invariably influences the way people perceive and conceptualize reality and behaviour. It is through the language of a community that its culture is carried.

Laws are instruments of life and perfection because they point to needed values and prompt each cultural community to reach out to the values needed for the well-being of that community. They are norms of action, set by the legitimate authority for the appropriation of values by a community. Legally binding customs also come under the purview of law. Culture becomes a source of law. Ecclesiastical or ecclesial law is articulated and promulgated by competent ecclesiastical authority, and its purpose is to serve the individual as well as the common good. In the formation of ecclesial laws, the culture of a given community is to be taken into account. Moreover, because of its supernatural finality, i.e., the salvation of souls, ecclesiastical law is to be interpreted and applied in a just and equitable manner.

A good interpreter of law must be endowed with three qualities. First, he or she must know one's own culture before attempting to interpret and apply the law. Second,

the interpreter must have a good grasp of the law itself and must be equipped with the scientific skills of interpretation. Third, the interpreter must know the culture of a foreign community, either by personally learning the language and the way of life, or through an interpreter. Without this knowledge, any attempt at applying the law in particular cases will not be just and equitable. It must be done by taking into consideration all relevant circumstances of place, people, and time.

Marriage, like any other human reality, affects and is affected by culture. How marriage is understood, celebrated and lived, what people expect from marriage, and how roles are defined in marital relationships are all measured in a large manner by the culture of a given community.

The classic form of the Indian family is the joint family. It is a system where the members are bound together by ties of common ancestry and common property. However, nowadays, it is hardly discernable. Yet, its power as an ideology is a present reality with which to be reckoned.

An arranged marriage system exists and is still practiced among all communities in India. According to this system, parents or guardians initiate and negotiate all aspects of their children's marriage. The main socio-cultural factors, as seen in this study, which could affect the arranged marriage system are parental authority, filial reverence, social and financial status, dowry system, caste system, and age. Some of these factors may have a negative impact on the consent to marriage.

Parental authority and filial reverence are the main factors that underlie reverential fear in the children. Other cultural factors that we have seen have only an indirect impact on reverential fear. Reverential fear consists in the fear of offending or saddening one's

parents, guardians or significant others. This occurs mainly in arranged marriages. It is a proven reality in matrimonial jurisprudence that reverential fear, which is very familiar to the Indian culture, has a negative impact on matrimonial consent. In matrimonial cases, the judge has the serious responsibility to determine the cultural factors that might have negatively influenced the matrimonial consent of the case in question.

After having seen the notions of culture, law, ecclesiastical law, the relationship between culture and law, the relationship between culture and ecclesiastical law, the essential elements of Indian culture in relation with marriage and family, and the factors affecting a marriage in the arranged marriage system, we will study the nature and the elements of matrimonial consent in the following chapter.

CHAPTER TWO

THE NATURE AND THE ELEMENTS OF MATRIMONIAL CONSENT

INTRODUCTION

Marriage is a natural state, one that is open to every human being, and it is chosen and sealed by the mutual consent of the spouses (see c. 1057; *CCEO*, c. 817). This consent is a juridic act. It may not be an exaggeration if one were to state that the concept of and the principles related to the juridic act permeate the entire canonical system.[1] Therefore, a good knowledge of the canons on juridic acts (see cc. 124-128; *CCEO*, cc. 931-935) is very important, because they provide basic norms necessary to understand every juridic act contained in the canonical order.[2]

One finds an implicit definition of a juridic act in c. 124, §1 (*CCEO*, c. 931, §1):

CIC, c. 124, §1	*CCEO*, c. 931, §1
For the validity of a juridic act, it is required that the act is placed by a qualified person and includes those things which essentially constitute the act itself as well as the formalities and requirements imposed by law for the validity of the act.[3]	For the validity of a juridic act, it is required that the act be placed by a qualified and competent person and include those things that essentially constitute the act itself as well as the formalities and requirements imposed by law for the validity of the act.[4]

[1] See W.L. DANIEL, "Juridic Acts in Book VII of the 1983 *Codex iuris canonici*," in *StC*, 40 (2006), p. 433.

[2] See H. PREE, "On Juridic Act and Liability in Canon Law," in *The Jurist*, 58 (1998), p. 57.

[3] "Ad validitatem actus iuridici requiritur ut a persona habili sit positus, atque in eodem adsint quae actum ipsum essentialiter constituunt, necnon sollemnia et requisita iure ad validitatem actus imposita" (*CIC*, c. 124, §1).

[4] "Ad validitatem actus iuridici requiritur ut a persona habili et competenti sit positus, atque in eodem assint, quae actum ipsum essentialiter constituunt, necnon sollemnia et requisita iure ad validitatem actus imposita" (*CCEO*, c. 931, §1).

Although this is not a definition *per se* of a juridic act, the canon does identify the factors necessary for the valid performance of a juridic act.[5] According to G. Michiels, a juridic act in a strict sense is "a social human act which is legitimately placed and declared, and for which a determined juridical effect is recognized in law, because and insofar as that effect is intended by the agent."[6] O. Robleda defines a juridic act as "an externally manifested act of the will by which a certain juridic effect is intended."[7] W. Aymans and K. Mörsdorf describe a juridic act as "a manifestation of the will that in some way is ordered to bringing about a juridic effect."[8] Huels defines a juridic act in the following way: "A juridic act is a human act, lawfully placed, by which a person capable

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[5] See M. THÉRIAULT, Commentary on c. 124, in Á. MARZOA, J. MIRAS, R. RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS (gen. ed. of English trans.), *Exegetical Commentary on the Code of Canon Law* (= *Exegetical Comm*), vol. 1, prepared under the responsibility of the Instituto Martín de Azpilcueta, Faculty of Canon Law, University of Navarra, Montréal, Canada, Wilson & Lafleur; Chicago, Illinois, Midwest Theological Forum, 2004, p. 800; see also E. MOLANO, Commentary on c. 124, in E. CAPARROS, H. AUBÉ (eds.), *Code of Canon Law Annotated* (= *CCLA*), 2nd ed. rev. and updated of the 6th Spanish language edition, prepared under the responsibility of the Instituto Martín de Azpilcueta, Montréal, Wilson & Lafleur Limitée, 2004, p. 107; DANIEL, "Juridic Acts," p. 436.

[6] "actus humanus socialis legitime positus et declaratus, cui a lege ideo et eatenus effectus juridicus determinatus agnoscitur, quia et quantus effectus ille ab agente intenditur" (G. MICHIELS, *Pincipia generalia de personis in Ecclesia: commentarius libri II Codicis iuris canonici, canones praeliminares 87-106*, editio altera, Tornaci, Desclée et socii, 1955, p. 572).

[7] "voluntatis actum externe manifestatum quo certus effectus iuridicus intenditur" (O. ROBLEDA, *Quaestiones disputatae iuridico-canonicae*, Romae, Libreria editrice Università Gregoriana, 1969, p. 13).

[8] "Unter rechtgeschäftlichen Handeln versteht man Willensäußerungen, die irgendwie auf die Herbeiführung eines rechtlichen Erfolges gerichtet sind" (W. AYMANS and K. MÖRSDORF, *Kanonisches Recht: Lehrbuch aufgrund des Codex Iuris Canonici*, vol. 1, Paderborn, Ferdinand Schöningh, 1991, p. 331).

in law manifests his or her intention to bring about (a) specific effect(s) recognised in law."[9]

Juridic acts may be either public or private.[10] They may also be unilateral, bilateral, or multilateral.[11] Some juridic acts are gratuitous acts, for instance, a donation.[12] Since c. 124 expresses a common norm, it establishes fundamental legal principles governing the validity of every juridic act, whether public, private, unilateral, etc.

The principal aim of this chapter is to analyze the nature and the elements of matrimonial consent. Since matrimonial consent is an act of the will, fundamentally a juridic act, it can be rendered invalid by any factor that renders a juridic act invalid. Therefore, we will first endeavour to study the elements of a juridic act and the factors which affect its validity. We will then examine the nature and the elements of matrimonial consent and the factors that can render it invalid.

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[9] J.M. HUELS, *Liturgy and Law: Liturgical Law in the System of Roman Catholic Canon Law*, Montréal, Wilson & Lafleur Limitée, 2006, p. 73.

[10] Public juridic acts, for the most part, are acts of the competent authority having the power of governance. But, there are public juridic acts that are not acts of the power of governance as well, e.g., the juridic acts of the defender of the bond (cc. 1626, §1, 1628, and 1687, §1; *CCEO*, cc. 1307, §1, 1309, and 1373, §1). See M. THÉRIAULT, "The Nullity of Some Processual Acts in Light of Canon 124," in *Forum*, 5/1 (1994), p. 30. Private juridic acts are acts executed by persons in their own right, like eliciting matrimonial consent, religious profession, etc.

[11] Unilateral juridic acts are those that are placed by one person only and may or may not require notification. Bilateral or multilateral acts are those in which two or more persons are involved, as in the case of a contract. See M. WIJLENS, Introduction to the Commentary on cc. 124-128, in *CLSA Comm2*, p. 177. See also J.M. KUZIONA, *The Nature and Application of Juridical Acts According to Canon 124 of the Code of Canon Law*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1998, pp. 18-19.

[12] See MICHIELS, *Principia generalia de personis in Ecclesia*, p. 575.

2.1 – THE ELEMENTS OF A JURIDIC ACT

Commenting on c. 124, §1 (*CCEO*, c. 931, §1), L. Chiappetta says that it speaks of three conditions necessary for the validity of a juridic act:

> - the effective capacity of the subject;
> - the concurrence of all constitutive essential elements of the act itself;
> - the observance of formalities and requisites imposed by law for the validity of the act. [13]

The canon in fact identifies four elements necessary for eliciting a valid juridic act: 1) a qualified person (*persona habilis*); 2) [elements] which essentially constitute the act itself ([*elementa*] *quae actum ipsum essentialiter constituunt*); 3) formalities (*sollemnia*), and 4) requirements (*requisita*).

2.1.1 – *Habilitas* for a Juridic Act

The first principle that governs a juridic act (see c. 124, §1; *CCEO*, c. 931, §1) concerns the personal *habilitas* of the subject to place the act. This principle determines that the person who acts must be *habilis*,[14] i.e., he or she must have the natural and legal *habilitas* to place a juridic act.

The person mentioned in the c. 124, §1 (*CCEO*, c. 931, §1) refers to a subject of obligations and rights. The exercise of one's obligations and rights in a particular juridical order presupposes one's juridical personality in that order. In the canonical order such a person having obligations and rights may be either a physical or a juridic person

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[13] "L'effettiva capacità del soggetto; il concorso di tutti gli elementi costitutivi essenziali dell'atto stesso; l'osservanza delle formalità e dei requisiti essenziali prescritti dalla legge" (L. CHIAPPETTA, *Il Codice di diritto canonico: commento giuridico-pastorale*, secunda edizione accresciuta e aggiornata, vol. 1, Roma, Edizioni Dehoniane, 1996, p. 188).

[14] The parallel canon on juridic acts in the Eastern Code (*CCEO*, c. 931, §1) has retained the words *habilis et competens* used in the 1977 and 1980 drafts of the Latin Code. We will discuss this point later.

(see cc. 96; 113, §2 and 114, §1; *CCEO*, cc. 920 and 921, §1). Being an artificial entity, a juridic person cannot place juridic acts by itself. It needs physical persons to act on its behalf. These physical persons lawfully authorized (c. 118), represent the juridic person and act on its behalf either as individuals or as a college or group. Thus, the juridic acts placed by the lawful representatives of a juridic person are considered to have been carried out by the juridic person, and their acts are governed by the norms of c. 124 (*CCEO*, c. 931) and other related canons.[15] These representatives of a juridic person must be personally *habiles* to place a juridic act on its behalf.

According to c. 124, §1, for the validity of a juridic act its agent must have the *habilitas* to perform it. What does the word "*habilitas*" really mean?

During the revision of the Latin Code, a distinction was made in the text of c. 124, §1 between *habilitas* and *competentia*. Thus, in the 1977 draft of c. 124 it was stated that for the validity of a juridic act, its agent must be "*habilis aut competens*." The text of the draft canon read, "For a juridic act to be valid, it is required that the act is placed by a *habilis aut competens* person [...]."[16] The 1980 draft replaced "*aut*" with "*et*," thus requiring on the part of the subject of the act both *habilitas* and *competentia* to place a juridic act. The draft canon stated, "For a juridic act to be valid, it is required that the act is placed by a *habilis* and *competens* person and includes those things which essentially

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[15] See KUZIONA, *The Nature and Application of Juridical Acts*, p. 130.

[16] "Actus juridicus ut valeat, requiritur ut a persona habili aut competenti sit positus [...]" (PCCICR, *Schema canonum libri I: de normis generalibus* [Romae], Typis polyglottis Vaticanis, 1977, c. 112, §1).

constitute the act itself as well as the formalities and requisites imposed by law for the validity of the act."[17]

The Code Commission must have realized the interpretative problems likely to arise in the use of the conjunctives "*aut*" and "*et.*" Therefore, it opted to leave them out as well as the adjective *competens* in the 1982 draft text of c. 124, §1. Thus, the revised text read, "For the validity of a juridic act, it is required that the act is placed by a *habilis* person and includes those things which essentially constitute the act itself as well as the formalities and requisites imposed by law for the validity of the act."[18] The Code Commission explained this change as follows, "*Habilitas* in the canon is understood in a broad sense, namely to have the right to the act discussed here."[19] In the promulgated text of c. 124, §1, the 1982 formulation was retained. Thus, as J.A. Doyle states, the word *habilis* in c. 124, §1 must be understood to include whatever *habilitas*, whether natural or legal, is necessary to place a particular juridic act.[20] In this sense, a person placing a juridic act must have the "right" to place the act, and this right might be of natural law or of positive law.

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[17] "Actus iuridicus ut valeat, requiritur ut a persona habili et competenti sit positus, atque in eodem adsint quae actum ipsum essentialiter constituunt, necnon sollemnia et requisita iure ad validitatem actus imposita" (PCCICR, *Codex iuris canonici: schema Patribus Commissionis reservatum*, [Città del Vaticano], Typis polyglottis Vaticanis, 1980, p. 26, c. 121, §1).

[18] "Ad validitatem actus iuridici requiritur ut a persona habili sit positus, atque in eodem adsint quae actum ipsum essentialiter constituunt, necnon sollemnia et requisita iure ad validitatem actus imposita" (PCCICR, *Codex iuris canonici: schema novissimum iuxta placita Patrum Commissionis emendatum atque Summo Pontifici praesentatum*, [In Civitate Vaticana], Typis polyglottis Vaticanis, 1982, p. 19, c. 124, §1).

[19] "Habilitas in canone intelligitur sensu lato, scil. habere ius ad actum de quo agitur" (PCCICR, "De normis generalibus," in *Communicationes*, 14 [1982], p. 145).

[20] See J.A. DOYLE, *Civil Incorporation of Ecclesiastical Institutions: A Canonical Perspective,* JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1989. p. 89; see also KUZIONA, *The Nature and Application of Juridical Acts*, p. 94.

In the development of the Eastern Code, the 1981 draft canon on juridic acts was the same as in the 1980 draft of the Latin Code. We read, "For a juridic act to be valid, it is required that the act is placed by a *habilis* and *competens* person and includes those things which essentially constitute the act itself as well as the formalities and requisites imposed by law for the validity of the act."[21] The 1984 draft retained this text without any change. It seems that during the discussion on the canon there was a suggestion to omit the words "*et competenti.*" But the Code Commission rejected the suggestion saying:

> The canon remains unchanged. The only proposal made with regard to this canon concerns the possible omission of the words '*et competens*'. This is not accepted because the word '*habilis*' refers to the requirements inherent to the person him/her self who acts (e.g., he or she must be '*sui compos*' and free of '*impedimenta*' which may render the person unsuitable to act), while the word '*competens*' refers to the power with which the person who places a particular juridic act should be endowed.[22]

Thus, unlike the Latin canon, the promulgated text of c. 931, §1 of *CCEO* includes both adjectives *habilis* and *competens* to qualify the person placing a juridic act.[23] Therefore, according to c. 931, §1 of *CCEO*, strictly speaking both *habilitas* and *competentia* would be required on the part of a person to validly place a juridic act. This

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[21] "Actus iuridicus ut valeat, requiritur ut a persona habili et competenti sit positus, atque in eodem adsint quae actum ipsum essentialiter constituunt, necnon sollemnia et requisita iure ad validitatem actus imposita" (PONTIFICIA COMMISSIO CODICI IURIS CANONICI ORIENTALIS RECOGNESCENDO [= PCCICOR], "Schema canonum de normis generalibus et de bonis Ecclesiae temporalibus," in *Nuntia*, 13 [1981], p. 19, c. 21, §1).

[22] "Il canone rimane immutato. L'unica proposta fatta a questo canone riguarda una possibile omissione delle parole «et competenti». Questo non si accetta, perché la parola «habilis» si riferisce ai requisiti inerenti alla persona stessa che agisce (p.e. deve essere «sui compos» e priva di «impedimenti» che non la rendono atta ad agire), mentre la parola «competenti» si riferisce alla potestà di cui deve essere rivestita la persona che pone un determinato atto giuridico" (PCCICOR, "Nuova revisione dello *Schema canonum de normis generalibus et de bonis Ecclesiae temporalibus*," in *Nuntia*, 18 [1984], p. 22, c. 21).

[23] "Ad validitatem actus iuridici requiritur ut a persona habili et competenti sit positus, atque in eodem assint quae actum ipsum essentialiter constituunt, necnon sollemnia et requisita iure ad validitatem actus imposita" (PCCICOR, "Schema Codicis iuris canonici orientalis," in *Nuntia*, 24-25 [1987], p. 167, c. 927, §1).

composition is not without interpretative problems. For example, would "*competentia*" be understood, according to the Code Commission's explanation, as "*potestas*" ("power," meaning power of governance) required to place every juridic act? Obviously not, because when a person places a private juridic act, he or she does so without the power of governance. What is required in such a person is a legitimate right to place that act. He or she does not need any other "power" to place a valid private juridic act. Whereas, when a public juridic act is placed, it is necessary for the validity of the act that its agent be endowed with appropriate "power" (of governance or legitimate authorization). In other words, every juridic act does not require in its agent the "power" as explained in the response of the Code Commission.

Four types of *habilitas* to perform juridic acts may be distinguished in canon law: 1) natural *habilitas*; 2) basic canonical *habilitas*; 3) specific *habilitas*; and 4) legal *habilitas*.[24]

The natural *habilitas* is derived from natural law. One of the universally cited examples of natural *habilitas* is a person's mental or psychological *capacity* "to intend" and "to will." Hence, any person who is *non sui compos* is not *habilis* to place a juridic act (see cc. 97, §2 and 99; *CCEO*, c. 909, §§2 and 3), because such a person cannot place a human act, an act of the will.[25] In other words, a person placing a juridic act is to be

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[24] See KUZIONA, *The Nature and Application of Juridical Acts*, p. 130.

[25] See WIJLENS, Commentary on c. 124, p. 178. A definition of a human act is "an exercise of the faculties of the soul or the body with the support of the intelligence and the free will (*actus humani*), which is distinguished from manifestation of bodily or spiritual powers (*acta hominis*)." See A. DE FUYE, art. "Actes humains," in R. NAZ (ed.), *Dictionnaire de droit canonique*, vol. 1, Paris, Letouzey et Ané, 1935, col. 159.

psychologically capable of eliciting a human act.[26] Obviously, there is no agreement among authors on the question of whether or not the *incapacitas* "to intend" and "to will" is a diriment impediment or simply a defect of consent. This issue will be addressed briefly later in this chapter. Another example of natural *inhabilitas* would be juridically defined impotence.

The basic canonical *habilitas* is the subjectivity of obligations and rights in the Church, in the sense of cc. 96 (physical persons), 113, §2, and 114, §1; *CCEO*, cc. 920 and 921, §1 (juridic persons). This *habilitas* implies not only the possession of rights in the Church but also the *habilitas* to act, in the sense of c. 96 (physical persons) and cc. 118-119, 1480, §1; *CCEO*, cc. 924, 1°-2°, 956, §1 and 1138, §1 (juridic persons).

The specific *habilitas* concerns a specific act in question.[27] For instance, according to the norm of c. 1024 (*CCEO*, c. 754) only a baptized male can validly receive sacred ordination; those who are in sacred orders lack the specific *habilitas* necessary for getting married (see c. 1087; *CCEO*, c. 804); only a priest is *habilis* to be the minister of the sacrament of penance (see c. 965; *CCEO*, c. 722, §1), etc.

The subject of a juridic act may also need *legal habilitas* (*competentia*). This *habilitas* signifies the presence of public power or legitimate authorization on the part of the person placing public acts, such as acts involving power of governance,[28] for

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[26] See THÉRIAULT, "The Nullity of Some Processual Acts," p. 31; KUZIONA, *The Nature and Application of Juridical Acts*, p. 134.

[27] See A. MCGRATH, Commentary on c. 124, in G. SHEEHY et al. (eds.), *The Canon Law: Letter & Spirit, A Practical Guide to the Code of Canon Law* (= *CLSGBI Comm*), prepared by the Canon Law Society of Great Britain and Ireland in association with the Canadian Canon Law Society, Collegeville, MN, The Liturgical Press, 1995, p. 72; KUZIONA, *The Nature and Application of Juridical Acts*, p. 135; THÉRIAULT, "The Nullity of Some Processual Acts," p. 31.

[28] See PCCICR, "De actibus iuridicis," in *Communicationes*, 6 (1974), p. 102.

example, the competence (power) to appoint a diocesan finance officer (c. 494, §1; *CCEO*, c. 262, §1), promoter of justice and defender of the bond (c. 1453; *CCEO*, c. 1099), etc.

2.1.2 – The Constitutive Elements of a Juridic Act

Canons in both Codes on juridic acts speak of "those things, which essentially constitute a juridic act." However, neither in c. 124, §1 (*CCEO*, c. 931, §1) nor anywhere in the Codes do we find explicit identification of the elements which "essentially constitute" a juridic act. The things (elements), which constitute the essence of an act are those that constitute the nature of the act itself.[29] In the absence of any one of these things (elements), the act itself will be non-existent.[30] Because the law itself does not establish the essential elements, one has to have recourse to doctrine and jurisprudence to identify them for each juridic act.[31] The elements that "essentially constitute" a juridic act may be considered in the strict sense from two aspects: subjective and objective.[32]

2.1.2.1 – The Subjective Constitutive Elements of a Juridic Act

A human act is a joint product of one's intellect and will. The intellect, which is the cognitive capacity (faculty) in a human being, is the source of all acts of knowing, i.e., perceiving and comprehending.[33] The will is "a capacity [faculty] whereby a person is psychically attracted to some object that is apprehended as good, or is psychically

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[29] See ibid., "De actibus juridicis," pp. 101-103; see also WIJLENS, Commentary on c. 124, p. 178.

[30] See PCCICR, "De actibus juridicis," p. 101.

[31] See ibid.

[32] See KUZIONA, *The Nature and Application of Juridical Acts*, p. 138.

[33] See D.E. FELLHAUER, "The Exclusion of Indissolubility: Old Principles and New Jurisprudence," in *StC*, 9 (1975), p. 108.

repelled by some object as evil."[34] It is again "the faculty of inclining towards or striving after some object intellectually presented as good."[35]

The connection between intellect and will is most intimate with respect to a human act. The intellect, in its practical judgment concerning the means to attain the object of the act, determines the will in its choice of one object rather than another. The will, in exercising the act of choice, chooses freely what is perceived, comprehended, and presented to it by the intellect.[36] Since there is a close connection between these two faculties, any cause, which disturbs their mutual interaction, will invariably disturb the process of deliberation and volition in the formation of a human act.[37]

2.1.2.1.1 – Abstract Knowledge of the Object

A person who places a juridic act should have sufficient knowledge of the object of the act, i.e., he or she must understand what the act is.[38] This knowledge may be speculative (theoretical) or practical, a difference derived from the end to which knowledge is ordered. If the end in view is the consideration or conjecture of truth itself, the knowledge is speculative. For example, it is through acts of understanding and reasoning that one acquires scientific (abstract) knowledge. If the end in view is an action

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[34] V.J. BOURKE, art. "Will," in *New Catholic Encyclopaedia*, 2nd ed., vol. 14, p. 719.

[35] M. MAHER, *Psychology: Empirical and Rational*, 9th ed., London, Longmans, Green and Co., 1933, p. 395. Willing is usually (but not always) distinguished from knowing, in that willing involves some kind of affective approach to what is cognitively present to consciousness. Psychic activities such as loving, intending, desiring, consenting, choosing, etc., are considered as examples of willing. See BOURKE, "Will," p. 719.

[36] See J.A. OESTERLE and J.A. O'DONOHOE, art. "Human Act," in *New Catholic Encyclopaedia*, 2nd ed., vol. 7, p. 173.

[37] See KUZIONA, *The Nature and Application of Juridical Acts*, p. 139; see also A. MENDONÇA, "Antisocial Personality and Nullity of Marriage," in *StC*, 16 (1982), p. 90.

[38] See KUZIONA, *The Nature and Application of Juridical Acts*, p. 139.

of some kind, then the knowledge is practical, for instance, a judgment of prudence concerning the acts one is to perform.[39] This abstract-practical knowledge of the object of a human act is essential for the placement of a juridic act.

2.1.2.1.2 – Critical Knowledge of the Object

The person placing a juridic act must also have a critical knowledge of the object of the act. One acquires such a knowledge by evaluating critically the implications of the act and the consequences that will follow the act. If the object comprehended and presented by the intellect interests the will in its aspect of desirability or attainment, the intellect then proceeds from its purely theoretical judgment to evaluate critically the value, which it represents here and now. Thus, the intellect attains a critical knowledge of the object. The critical evaluation leads to a practical judgment about the desirability of the object here and now for the subject. Such a practical judgment determines the movement of the will to desire for the object.[40]

2.1.2.1.3 – Internal Freedom to Choose the Object

What makes an act performed by a human being distinctively a human act is that it is voluntary in nature, i.e., an act in some way under the control of the will, which is proper to a human being. So, a human act is an act done with deliberation. In order to place a truly human act, one must be able to do it freely, i.e., he or she must be sufficiently free internally to evaluate the motives or to control the impulses or the external limitations.[41] Nothing should internally or externally block or limit the free

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[39] See OESTERLE and O'DONOHOE, "Human Act," p. 170.

[40] See MENDONÇA, "Antisocial Personality and Nullity of Marriage," p. 89; see also FELLHAUER, "The Exclusion of Indissolubility," p. 109.

[41] See KUZIONA, *The Nature and Application of Juridical Acts*, p. 139.

exercise of the will. Even though a human being as a voluntary agent has essential freedom, this freedom may experience internal or external limitations. It is possible for certain biological, social, and cultural factors to influence a person's free activity of the will. Should any of these factors affect the free exercise of one's will, that person would not have the internal freedom to act.

In the absence of any or all of the aforementioned elements, a juridic act cannot be regarded as a human act. If it is not a human act, it cannot be regarded as a juridic act.[42]

2.1.2.2 – The Objective Constitutive Elements of a Juridic Act

A human act necessarily has an object. Objects of juridic acts are corporeal things, spiritual things, actions, facts or persons.[43] These become objects of juridic acts only when they are recognized or determined as such by law.[44] Objects of juridic acts have substantial elements, substantial qualities, and accidental qualities.

2.1.2.2.1 – Substance of the Object of a Juridic Act

The word "substance" is a transliteration of the Latin *substantia*, the components of which give the root meaning of "standing under."[45] St. Thomas Aquinas says, "Rather [substance] means that which is possessed of a nature such that it exists by itself."[46] This definition emphasizes the absolute and the independent character of substance and gives

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[42] See PCCICR, "De actibus juridicis," p. 101.

[43] See MICHIELS, *Principia generalia de personis in Ecclesia*, p. 578.

[44] See KUZIONA, *The Nature and Application of Juridical Acts*, p. 141.

[45] See R.E. MCCALL, art. "Substance," in *New Catholic Encyclopaedia*, 2nd ed., vol. 13, p. 574. In popular usage, substance is often interchanged with essence since both terms have the same general connotation.

[46] "Sed significat essentiam cui competit sic esse, idest per se esse" (*Summa theologiae*, 1a, 3.5 ad 1).

the reason for the substance's capacity for supporting accidents.[47] Substance of a specific object is that which is distinctive to itself. For instance, in the case of a vow, the "vowness" is its substance. Concerning a person placing a juridic act, he or she must know the substance of the object of the act.

2.1.2.2.2 – Substantial Elements of the Object of a Juridic Act

According to Michiels, the object of some juridic acts is defined by nature itself or by the competent ecclesiastical authority.[48] In the case of such juridic acts, the things determined by the nature of the act itself or by the competent authority as substantial constitute the substantial elements of the object of the juridic act. The agent should intend these substantial elements while performing a juridic act. If these substantial elements are lacking while placing a juridic act either totally or partially in the intention of the agent, the act is juridically non-existent because of the absence of the object itself.[49]

2.1.2.2.3 – Substantial Qualities of the Object of a Juridic Act

Besides the substantial elements, the object of a juridic act has substantial qualities. They are inherent to the object or intrinsic to the object. For instance, a Christian marriage has its intrinsic essential properties or qualities, i.e., unity and indissolubility. There cannot be a valid marriage in the absence of any of the essential properties. Likewise, in the absence of any of the substantial qualities a juridic act will be invalid.

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[47] See MCCALL, "Substance," p. 575.

[48] See MICHIELS, *Principia generalia de personis in Ecclesia*, p. 579.

[49] See ibid., pp. 579-580.

2.1.2.2.4 – Accidental Qualities of the Object of a Juridic Act

Added to the substantial elements and substantial qualities are also accidental qualities of the object of a juridic act. They are also inherent to an act. But the accidental qualities of the object of a juridic act *per se* do not enter into its constitution. Thus, *per se* the absence of accidental qualities does not invalidate a juridic act. Nevertheless, they may assume substantial importance in the agent's will. In such a situation, even the accidental qualities of the object of a juridic act may enter into the constitution of a human act.[50] For instance, such qualities may become in the intention of the person who places a juridic act a *sine qua non* condition. As a result, these accidental qualities may affect the validity of a juridic act.

2.1.3 – Formalities (*sollemnia*) and Requirements (*requisita*) of a Juridic Act

Formalities (solemnities) and requirements are elements stipulated by law, sometimes for the validity of a juridic act and other times only for its lawfulness. These requirements of law are extrinsic to the act.[51] Legal formalities are related to the external form of the act, for example, that it be put in writing, that it be done before witnesses and/or a certain official, etc. Requirements are stipulations of law that are extrinsic to the act itself or the manner of performing it, for instance, the prior consent of certain consultative bodies (see c. 1292, §1; *CCEO*, c. 1036, §§1, 2), permission of the Apostolic See (see c. 1292, §2; *CCEO*, c. 1036, §4), etc. Canon 124, §1 (*CCEO*, c. 931, §1) is concerned with only the formalities and requirements that are necessary for the validity of

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[50] See ibid.

[51] See PCCICR, "De actibus juridicis," p. 102; THÉRIAULT, "The Nullity of Some Processual Acts," p. 32.

the act. Therefore, if a formality or requirement explicitly stipulated by law for validity of the act is not observed, the juridic act would be invalid.

2.2 – THE FACTORS THAT INVALIDATE A JURIDIC ACT

We have been dealing with the elements required either by natural law or by positive law for the validity of a juridic act. Every juridic act presupposes these fundamentals. Sometimes, it may happen that one or more elements necessary for the validity of a juridic act may be lacking, due to either intrinsic or extrinsic factors.[52] The Codes have explicitly identified some of these factors in cc. 125 and 126 (*CCEO*, cc. 932 and 933). They are the following: force, grave fear, fraud, ignorance, and error. Three other factors that might affect the validity of a juridic act and are not explicitly stated in these canons are incapacity to place the act, condition, and simulation. Following is a brief description of the aforesaid factors that may invalidate a juridic act.

2.2.1 – Incapacity to Elicit a Juridic Act

A juridic act is a human act. We have already noted that a person placing a juridic act is to be psychologically capable of eliciting a human act. Every human act, in so far as it is a psychological act, must be not only free, full, and responsible, but also include knowledge proportionate to the object of the act. If a person, at the time of eliciting a juridic act, does not have sufficient use of reason, or discretion of judgment proportionate to the substance (substantial elements and properties) of the object of the act, or lacks the internal freedom to choose the object of the act and to fulfill the essential obligations arising from the choice thus made, this person cannot elicit the specific act of the will,

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[52] See KUZIONA, *The Nature and Application of Juridical Acts*, p. 167.

which is a juridic act. The requirement for a sufficient and proportionate psychological capacity, i.e., to intend deliberately and to will freely, is of natural law.[53]

One's consensual incapacity to elicit a human act is not to be confused with or considered identical to an impediment to place an act defined by law, whether natural or positive. There are numerous canons in both Codes that declare certain persons *inhabiles,* that is, impeded from placing certain acts. Such persons are externally declared by law as ineligible to act validly. But such a legal declaration does not concern the psychological incapacity of a person to place the act. The psychological incapacity is the result of a serious psychic anomaly, which prevents the act of the will from being a deliberate and responsible human act proportionate to the object of the act. In principle, a person who is subject to an impediment is psychologically capable of eliciting an integral internal act. But a person who suffers from a serious psychic/mental disorder cannot place an internal act that is proportionate to the demands made by the nature of the act.[54] Therefore, it is reasonable to maintain that strictly speaking the incapacity to elicit a human act (juridic act) arising from a mental disorder is not an impediment.

2.2.2 – Force

In order for a juridic act to be valid, it is absolutely necessary that the agent have sufficient internal freedom to elicit the act. This internal freedom can be destroyed or substantially weakened either by intrinsic or extrinsic factors. The internal factors represent the mental disorders that affect the capacity of a person to make a deliberate

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[53] See P.J. VILADRICH, Commentary on c. 1095, in *CCLA*, p. 841; see also A. MENDONÇA, "Consensual Incapacity for Marriage," in *The Jurist*, 54 (1994), pp. 479-481.

[54] See VILADRICH, Commentary on c. 1095, in *CCLA*, p. 841; also see P.J. VILADRICH, Commentary on c. 1095, in *Exegetical Comm*, vol. 3/2, p. 1257.

and free decision. In other words, they can deprive a person affected by such disorders of the internal freedom to make a deliberate and free choice. This is a constitutive element of the discretion of judgement necessary to place a human act as discussed above. Force (*vis*) and fear (*metus*), on the other hand, are extrinsic factors that may interfere with the exercise of internal freedom necessary for performing a juridic act.

Canon 125, §1 (*CCEO*, c. 932, §1) reads, "An act placed out of force inflicted on a person from without, which the person was unable to resist in any way, is considered as never to have taken place."[55] Force is generally understood as pressure exerted on a person by a free agent in order to influence his or her decisions/actions. Force may be either physical or moral. Moral force signifies the threat of some objective evil.[56] Canon 125, §1 speaks only of physical force inflicted from outside.[57] It is "any force applied from an external source to a person against his or her will and superior to his or her power of resistance."[58] An act placed out of force that is exerted from outside lacks totally the element of freedom and, as a consequence, there is no human (juridic) act.

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[55] "Actus positus ex vi ab extrinseco personae illata, cui ipsa nequaquam resistere potuit, pro infecto habetur"(c. 125, §1).

[56] See J.P. KALLIKKATTUKUDY, *Fraud and Nullity of Marriage in Canon Law and Indian Civil Law: A Comparative Analysis*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 2004, p. 41.

[57] See J.V. BROWN, *The Invalidating Effects of Force, Fear, and Fraud Upon the Canonical Novitiate: A Historical Conspectus and Commentary*, CLS, no. 311, Washington, DC, The Catholic University of America, 1951, p. 56.

[58] J.A. ABBO and J.D. HANNAN, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, rev. ed., vol. 2, St. Louis, MO, B. Herder Books Co., 1925-1936, p. 150.

2.2.3 – Grave Fear

Canon 125, §2 (*CCEO*, c. 932, §2) reads, "An act placed out of grave fear, unjustly inflicted [...] is valid unless the law provides otherwise. It can be rescinded, however, through the sentence of a judge, either at the instance of the injured party or of the party's successors in law, or *ex officio*."[59] The fear mentioned in this canon includes common fear and reverential fear.

2.2.3.1 – Common Fear

J.A. Abbo and J.D. Hannan define common fear as "trepidation of mind caused by present or future danger."[60] P.C. Augustine defines fear as "an emotion excited by threatening evil or impending pain, accompanied by a desire to escape or avoid it."[61] It is experienced predominantly in the sensitive faculties of the person, especially the memory and the imagination.[62] When it is vehement, and particularly when it is aroused suddenly, fear may either diminish or even totally destroy the mental capacity of its victim.[63]

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[59] "Actus positus ex metu gravi, iniuste incusso, aut ex dolo, valet, nisi aliud iure caveatur; sed potest per sententiam iudicis rescindi sive ad instantiam partis laesae eiusve in iure successorum sive ex officio" (c. 125, §2). Canon 932, §2 of *CCEO* mentions also "some other force (*alia vi*)." Here the reference may be to all other forces, which are not treated in §1 of the same canon. The juridic acts placed out of "some other forces" also can be rescinded. See PCCICOR, "Nuova revisione dello *Schema canonum*," p. 23, c. 22.

[60] ABBO and HANNAN, *The Sacred Canons*, p. 150.

[61] P.C. AUGUSTINE, *A Commentary on the New Code of Canon Law*, vol. 2, St. Louis, MO., and London, W. C., B. Herder Book Co., 1936, p. 30.

[62] See BROWN, *The Invalidating Effects of Force*, p. 61.

[63] See A.E. MCCOY, *Force and Fear in Relation to Delictual Imputability and Penal Responsibility: An Historical Synopsis and Commentary,* CLS, no. 200, Washington, DC, The Catholic University of America, 1944, p. 77; also see BROWN, *The Invalidating Effects of Force*, p. 61.

Fear is grave when the danger threatened is so serious and imminent that it overwhelms even a strong mind; otherwise it is light.[64] This concept of fear is relative, in the sense that for some persons even light fear can be grave as it often happens in cases of reverential fear. Fear must be unjustly inflicted or threatened. Fear would be unjust if it is inflicted by one who is not entitled to threaten evil. It is unjust also when there is no proportion between the gravity of the harm threatened and the reason for which it is threatened.[65] The expression *incussus* (inflicted) implies that the fear must come from outside, *ab extrinseco*, i.e., a free agent external to the one who suffers fear, and not from a natural event.[66]

2.2.3.2 – Reverential Fear

Reverential fear is, in reality, a factual modality of common fear.[67] When the extrinsic force exerting the influence is a parent or some superior or significant other, the whole question of reverential fear and its special considerations come into play. Where the subject has a built-in respect, affect, gratitude, veneration, reverence, and obedience for the superior, he or she is especially fearful of offending the superior and most of all arousing the superior's indignation. It is important to note that it is this indignation and

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[64] See ABBO and HANNAN, *The Sacred Canons*, p. 150. Two things are required to constitute grave fear, i.e., the threatened evil, which exists objectively and not merely in the imagination; the evil threatened must be important and weighty, e.g., death, loss of great wealth, mutilation, etc.

[65] See AUGUSTINE, *A Commentary on the New Code of Canon Law*, vol. 2, p. 30.

[66] See ibid., p. 31.

[67] See P.J. VILADRICH, Commentary on c. 1103, in *Exegetical Comm*, vol. 3/2, p. 1427.

not any concomitant threats of evil that is the object of reverential fear.[68] We will discuss reverential fear at length in the following chapter.

The law states that fear, whether common or reverential, does not *per se* invalidate a juridic act unless the law provides otherwise. The reason for this is that fear *per se* does not exclude deliberation and internal freedom as physical force does. In a concrete case, it may neither impede the objective and deliberative judgement of the intellect nor totally destroy one's internal freedom to choose.[69] It may only diminish the freedom necessary to act. Therefore, as a principle, even if fear is grave, even if it is inflicted from outside, and even if it is inflicted unjustly, it *per se* does not render a juridic act null, "unless the law provides otherwise."

There are several instances in both Codes where grave fear has been expressly declared as a factor invalidating a juridic act. For instance, electoral voting (c. 172, §1, 1°; *CCEO*, c. 954, §1, 1°- grave fear), admission to novitiate (c. 643, §1, 4°; *CCEO*, c. 450, 5°- grave fear), renunciation of an office (c. 188; *CCEO*, c. 968- grave and unjustly inflicted fear), making a vow (c. 1191, §3; *CCEO*, c. 889, §3- grave and unjust fear), matrimonial consent (c. 1103, *CCEO*, c. 825- grave fear inflicted from outside), judicial sentence (c. 1620, 3°; *CCEO*, c. 1303, 3°- grave fear), etc. The actions performed under the influence of fear are in a certain respect involuntary, and according to c. 125, §2 (*CCEO*, c. 932, §2), the agent has the right to have the act rescinded by the sentence of a

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[68] See L.G. WRENN, *The Invalid Marriage*, Washington, DC, CLSA, 1998, p. 165; also see C.A. OJEMEN, *Psychological Factors in Matrimonial Consent in the Light of Canonical Legislation*, Rome, Typographia Remo Ambrosini, 1986, p. 240; A.M. ABATE, *Il Matrimonio nella nuova legislazione canonica*, Roma, Pontificia Universitas Urbaniana, 1985, p. 77.

[69] See MICHIELS, *Pincipia generalia de personis in Ecclesia*, p. 505; BROWN, *The Invalidating Effects of Force*, p. 62.

judge (not through an administrative decree), either at the petition of the injured party or his or her rightful successors, or *ex officio*.[70]

2.2.4 – Fraud (Deceit)

Along with grave fear, fraud (*dolus*) is also regarded as one of the factors that may affect the validity of a juridic act (see c. 125, §2; *CCEO*, c. 932, §2). Fraud is defined as "a deliberate concealment of facts or deliberate assertion of what is untrue in order to persuade someone to act in a certain manner."[71] It may be understood as any craft, trick, or malicious contrivance deliberately perpetrated to circumvent, dupe, or deceive another person.[72] When fraud involves juridic acts, it is understood as a deliberate and fraudulent misrepresentation of the object of a juridic act induced by an agent that leads its victim to perform that particular act.[73] In other words, through misrepresentation of the object of the juridic act, the perpetrator of the deceit deliberately distorts the object to be presented by the intellect to the will, thereby forces the will of its victim to choose that distorted object.

As far as the juridic effects of fraud are concerned, the law stipulates that they are the same as those caused by fear, i.e., as a rule it does not invalidate a juridic act, unless the law provides otherwise; as in the case of fear, there is provision in law for possible rescission of the juridic act elicited as a result of fraud (see c. 125, §2; *CCEO*, c. 932,

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[70] See AUGUSTINE, *A Commentary on the New Code of Canon Law*, vol. 2, pp. 31-32; ABBO and HANNAN, *The Sacred Canons*, p. 151; CHIAPPETTA, *Il Codice di diritto canonico*, p. 191.

[71] WIJLENS, Commentary on c. 125, §2, p. 179.

[72] See BROWN, *The Invalidating Effects of Force*, p. 104; KALLIKKATTUKUDY, *Fraud and Nullity of Marriage in Canon Law and Indian Civil Law*, p. 45.

[73] See MICHIELS, *Pincipia generalia de personis in Ecclesia*, p. 535.

§2). It should be noted, however, that c. 125, §2 deals only with accidental error induced by fraud because if fraud causes substantial error, then the act is invalid *per se* in virtue of natural law itself as provided in c. 126.[74]

2.2.5 – Ignorance

Canon 126 (*CCEO*, c. 933), which deals with the effects of ignorance and error on a juridic act states, "An act placed out of ignorance or out of error concerning something which constitutes its substance or which amounts to a condition *sine qua non* is invalid. Otherwise, it is valid unless the law makes other provision. An act entered into out of ignorance or error, however, can give rise to a rescissory action according to the norm of law."[75]

In a broad sense, ignorance means absence of due knowledge. Strictly speaking, it may be defined as lack of knowledge in someone who is by nature capable of having it.[76] Ignorance is distinguished from inadvertence in the sense that inadvertence signifies actual absence of knowledge verified at the moment when the act is placed. While

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[74] See ibid., pp. 663-670; ABBO and HANNAN, *The Sacred Canons*, pp. 151-152; CHIAPPETTA, *Il Codice di diritto canonico*, p. 191.

[75] "Actus positus ex ignorantia aut ex errore, qui versetur circa id quod eius substantiam constituit, aut qui recidit in condicionem *sine qua non*, irritus est; secus valet, nisi aliud iure caveatur, sed actus ex ignorantia aut errore initus locum dare potest actioni rescissoriae ad normam iuris" (c. 126). *CCEO*, c. 933 is the same as *CIC*, c. 126 except a few minor differences: Instead of *actus positus* in *CIC*, we find *actus iuridicus positus* in *CCEO*; in *CCEO*, *actus* is qualified with *juridicus*; instead of *nullus est* in *CCEO* we find *irritus est* in *CIC*. Actually, the 1984 draft of this canon of the Eastern Code was the same as *CIC*, c.126. See PCCICOR, "Nuova revisione dello *Schema canonum*," p. 22, c. 23. But, when we look at the 1986 draft of the Eastern Code we find the modification. See PCCICOR, "Schema Codicis iuris canonici orientalis," p. 167, c. 929. The *coetus* made no observations regarding the change of any expression in this canon in the 1984 draft: "Il canone non ha osservazioni" (PCCICOR, "Nuova revisione dello *Schema canonum*," p. 22, c. 23) and introduced it into the promulgated canon.

[76] See J.B. NUGENT, art. "Ignorance," in *New Catholic Encyclopaedia*, 2nd ed., vol. 7, p. 314.

ignorance is a habitual state of the intellect lacking determined knowledge, inadvertence is a transitory state of the intellect in which what one who knows habitually fails to consider it here and now.[77] Ignorance occurs in the intellect.[78] Actually, ignorance usually causes error in the person placing the act.

The person placing a juridic act must have the intellectual knowledge of the object of the act. If a person is ignorant of the nature of the object of the act, he or she may not place the act validly. According to c. 126 (*CCEO*, c. 933), if ignorance concerns the substance of the object (or its essential elements or properties) of a juridic act, when placed with such an ignorance, the act is invalid. For instance, ignorance concerning the nature of a contract, e.g., purchase of a prime property, would invalidate that contract. This is true also when ignorance concerns what is not substantial (that is to say, accidental), but amounts to a condition *sine qua non*.[79] Apart form these two circumstances, the law accepts as valid any act performed as a result of ignorance, unless the law has provided otherwise. However, even where the acts placed as a result of ignorance are recognized by law as valid, such acts can be rescinded in accordance with the norm of law.

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[77] See MICHIELS, *Pincipia generalia de personis in Ecclesia*, pp. 649-650.

[78] See J.H. PROVOST, "Error as a Ground in Marriage Nullity Cases," in *CLSA roceedings*, 57 (1995), p. 310.

[79] Through this formula the legislator is providing a unique category of a condition through which a person attributes to an accidental element a substantial value. The principle embodied in this formula affirms that the person is ignorant of an accidental element of the object that constitutes, through the will of the agent, a condition, in the sense that he or she makes the efficacy of the act of the will depend on the presence or the absence of an element that is not substantial. See R. SEERES LÓPES DE GUEREÑU, "'Error recidens in condicionem sine qua non' (Can. 126): studio stórico-giurídico," in *Periodica*, 87 (1998), pp. 329-349.

2.2.6 – Error

The notion of error is a complex one. Doctrine and jurisprudence acknowledge several kinds of error.[80] In general, error is a false judgment about something,[81] or a false apprehension of a thing.[82] It is a state of mind in which one approves falsehood for truth. A person in error knows something and "knows" that he or she knows "something," but what is known subjectively does not correspond to the actual reality.[83] Error is different from ignorance. Where there is ignorance, due knowledge is lacking. But in the case of error, there is knowledge, but it is the wrong knowledge about the object of the act which the intellect presents to the will.[84]

Like ignorance, error can concern the substance or accidents of the object of a juridic act. If it concerns the substance (or its substantial elements or properties), it is known as substantial error. And it is called accidental error if it concerns the accidents of the object of the act. The same principles stated above with regard to the effects of ignorance on a juridical act are applied also to error. In other words, according to c. 126 (*CCEO*, c. 933), error may result in the invalidity of a juridic act in only two situations: 1) if error concerns the substance of the object of the act (substantial error); 2) if error

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[80] See A. MENDONÇA, "A Doctrinal and Jurisprudential Analysis of Canon 1097 on Error of Fact," in *Forum*, 16/2 (2005), p. 365.

[81] See ABBO and HANNAN, *The Sacred Canons*, vol. 1, p. 152; MENDONCA, "The Importance of Considering Cultural Contexts," p. 232.

[82] See PROVOST, "Error as a Ground in Marriage Nullity Cases," p. 308; THÉRIAULT, Commentary on c. 126, p. 806.

[83] See AUGUSTINE, *A Commentary on the New Code of Canon Law*, vol. 2, p. 33.

[84] See H.T. RIMLINGER, *Error Invalidating Matrimonial Consent: An Historical Synopsis and Commentary*, CLS, no. 82, Washington, DC, The Catholic University of America, 1932, p. 28.

relates to something that really amounts to a condition *sine qua non*, even though the object of error is not the substance of the act. Apart from these two circumstances a juridic act is valid, but the act can be rescinded, in accordance with the norm of law.

2.2.7 – Condition

As stated above, condition is not identified as one of the possible factors that can affect the validity of a juridic act. But it is in fact recognized in law as another factor, especially a condition related to the future, which can invalidate a juridic act. Condition is a circumstance attached to a legitimate act that suspends the validity of that act until some future uncertain time. It is called "proper" when the circumstance or event is future and uncertain, e.g., "if you become a doctor." Condition is called "improper" when the event is future but certain, e.g., "if dawn breaks tomorrow." Condition, in spite of being past or present, is "uncertain," i.e., unknown to the contracting party, e.g., "if you have already inherited from your parents."[85] The act of placing a condition is a positive act of the will based on a doubt or uncertainty concerning the desired event or circumstance. The efficacy or validity of a juridic act is thus subordinated to the efficacy of the conditioning circumstance. In a conditioned juridic act there is no act of the free will if the condition placed by the agent is not fulfilled. In such a situation the validity of a juridic act cannot be sustained.

2.2.8 – Simulation

Simulation is another factor that can negatively influence the validity of a juridic act. But, it has not been identified as such as a factor in both Codes.[86] A juridic act

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[85] See P.J. VILADRICH, Commentary on c. 1102, in *CCLA*, p. 854.

[86] In fact, in the early stages of the revision of the present Latin Code, the *coetus* had first entertained the idea of introducing a canon on simulation and the proposed text read as follows:

manifests the agent's intention. The intention is the very essence of the act. If there is no intention to act, there can be no juridic act, even if the person observes all the legal formalities and meets all the requirements of the act. The intention of the agent must be in some way connected to the juridic effects determined by law for the act. Conversely, we cannot think of a juridic act without referring to the agent's intention with respect to its juridic consequences.[87]

Sometimes the person who places a juridic act may exclude by a positive act of the will the object itself or the substantial elements or substantial qualities (properties) of the object of the juridic act from his or her intention. The agent may replace personal ends or elements for those determined by law as necessary for the validity of a particular juridic act. In other words, there may not be, in some cases, conformity between what has been intended and declared by the agent in regard to the object of the act and what has been truly determined about that object by the law.[88] A juridic act is simulated when there is no conformity between the external act and the internal intention. Therefore, someone who simulates a juridic act does not place the act validly.

"Simulatio circa aliquam clausulam in contractu expressam, si facta fuerit ab alterutra parte, altera inscia, non facta censetur; si facta fuerit ab alterutra parte, altera conscia, aut ab utraque parte, contractus est nullus" (PCCICR, "Schema canonum proponitur de actibus iuridicis," in *Communicationes*, 21 [1989], p. 157). The *coetus* abandoned this canon early in its formulation because the general feeling was that it would create serious difficulties in civil law that may have its own rules governing the effects of simulation on contracts. See PCCICR, "Recognitio canonum de actibus iuridicis," in *Communicationes*, 21 (1989), pp. 174-175.

[87] See P. KITCHEN, "Matrimonial Consent and Simulation," in *StC*, 28 (1994), p. 353.

[88] See KUZIONA, *The Nature and Application of Juridical Acts*, p. 205.

2.3 – THE NATURE AND THE ELEMENTS OF MATRIMONIAL CONSENT

Matrimonial consent is a juridic act. Therefore, all the principles applicable to a juridic act must be applied also to matrimonial consent. Canon 1057 expresses in capsule form the essential juridic principles related to matrimonial consent as a juridic act. Thus, §1 of this canon reads, "The consent of the parties, legitimately manifested between persons qualified by law, makes marriage; no human power is able to supply this consent."[89] In this brief but comprehensive norm, three core aspects of the matrimonial consent are identified: *habilitas*, consent and its legitimate manifestation. And §2 (*CCEO*, c. 817, §1) of the same canon states, "Matrimonial consent is an act of the will by which a man and a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage."[90] This canonical norm in turn tells us what marital consent and its object are. In this section, therefore, we will briefly analyze the juridical nature and the content of matrimonial consent in order to provide an appropriate doctrinal and juridical context for the central theme of our study on the effect of reverential fear on matrimonial consent.

2.3.1 – *Habilitas* for Matrimonial Consent

The first requisite necessary for placing a valid juridic act is that the subject of the act should be *habilis*. It means that the person eliciting a juridic act must have the natural and juridic *habilitas* to perform the act. According to c. 1057, the man and the woman who want to celebrate marriage should be *iure habiles* in order to bring marriage into

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[89] "Matrimonium facit partium consensus inter personas iure habiles legitime manifestatus, qui nulla humana potestate suppleri valet" (c. 1057, §1). This paragraph of the canon has no parallel in *CCEO*, but c. 776, §1 may be considered implicitly to contain the equivalent principle.

[90] "Consensus matrimonialis est actus voluntatis, quo vir et mulier foedere irrevocabili sese mutuo tradunt et accipiunt ad constituendum matrimonium" (c. 1057, §2; *CCEO*, c. 817, §1).

existence. The *habilitas* mentioned in c. 1057, §1 includes both *natural* and *juridic habilitas* on the part of those who intend to marry.

The first and foremost *habilitas* that the parties who want to contract marriage should be endowed with is their natural psychological capacity to intend and to will.[91] As a human act, matrimonial consent must be free, conscious, and responsible. To be *habilis* for this act, one must possess at least the minimal psychological *capacitas* to intend with sufficient deliberation and internal freedom to establish and sustain the intimate community of life and conjugal love (*intima communitas vitae et amoris coniugalis*). If this psychological (affective, intellectual and volitional) capacity is substantially lacking, a person's marital consent would be defective and, as a consequence, it would fail to give rise to a valid marriage.[92] Besides the requirement of this natural *habilitas*, ecclesiastical law has also established several diriment impediments that disqualify (render *inhabiles*) persons from contracting a valid marriage (see cc. 1083-1094; *CCEO*, cc. 800-812). Therefore, the expression *iure habiles* used in c. 1057, §1 also implies that the parties should be free from any divine-natural or ecclesiastical diriment impediments at the time of celebrating the marriage.

2.3.2 – The Constitutive Elements of Matrimonial Consent

As explained above, an actual juridic act consists of subjective and objective constitutive elements. From a subjective viewpoint, a juridic act is a human act, a product of the interaction between the faculties of intellect and will. On the part of the intellect, the abstract knowledge of the object and the critical knowledge of the object constitute

[91] Whether this is in fact a natural *habilitas* or a defect of consent will be discussed later in the following section.

[92] See T.P. DOYLE, Commentary on c. 1057, in *CLSA Comm1*, p. 743; see also J.P. BEAL, Commentary on c. 1057, in *CLSA Comm2*, p. 1250.

the elements of a juridic act, while, on the part of the will, internal freedom to choose freely the object proffered by the intellect is a constitutive element of a juridic act.

2.3.2.1 – The Subjective Constitutive Elements of Matrimonial Consent

Matrimonial consent as a juridic act includes all the subjective constitutive elements, namely, sufficient abstract and critical knowledge of the object of consent on the part of the intellect, and, on the part of the will, internal freedom necessary to make a deliberate and free choice of that object of consent as presented to it by the intellect. Taken together, these three subjective constitutive elements are in jurisprudence called "discretion of judgement."[93] Hence, the subjective constitutive elements of matrimonial consent are the knowledge of the object of consent, critical knowledge of the object of consent, and internal freedom to choose the object of consent.[94]

2.3.2.1.1 – Abstract Knowledge of the Object of Matrimonial Consent

Since nothing can be willed if it is not previously known, the act of the will requires previous minimal knowledge of the object of consent.[95] Therefore, the validity of marital consent depends on a minimum degree of knowledge of what marriage is. Canon 1096, §1 (*CCEO*, c. 819) determines the minimal degree of knowledge about marriage that is needed to elicit valid matrimonial consent. The canon states, "For matrimonial consent to exist, the contracting parties must be at least not ignorant that marriage is a permanent partnership between a man and a woman ordered to the procreation of offspring by means

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[93] See M.F. POMPEDDA, "Maturità psichica e matrimonio nei canoni 1095, 1096," in *Apollinaris*, 57 (1984), p. 134; MENDONÇA, "Consensual Incapacity for Marriage," p. 497.

[94] See J.A. ALESANDRO (ed.), *Marriage Studies IV*, Washington, DC, CLSA, 1990, p. 17; see also MENDONÇA, "Consensual Incapacity for Marriage," p. 494.

[95] See I. GRAMUNT, J. HERVADA, L.A. WAUCK, *Canons and Commentaries on Marriage*, Collegeville, Liturgical Press, 1987, p. 40.

of some sexual cooperation."[96] Without this minimum knowledge of marriage one cannot evaluate and choose the object of consent.

2.3.2.1.2 – Critical Knowledge of the Object of Matrimonial Consent

In his decision of 3 December 1957, P. Felici stated, "To be responsible for one's own acts (which corresponds to moral imputability), the exercise of the knowing faculty alone is certainly not sufficient, but the critical faculty should also function, which alone can form judgements and exercise acts of the free will."[97] Regarding the maturity of judgment needed in matrimonial consent, A. Sabattani says, "When such maturity of judgment sufficient to understand and to choose is lacking, whether its source is habitual alienation of the mind or transient disturbance, or psychic debility, there is '*amentia in the contractual sense*'."[98] These statements imply that one who does not have critical knowledge of all that is to be consented to in the act of matrimonial consent cannot validly contract marriage.

2.3.2.1.3 – Internal Freedom to Choose the Object of Matrimonial Consent

The final decision whether or not to perform a human (juridic) act is always the function of the will. But this function of the will necessarily presupposes the presence of

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[96] "Ut consensus matrimonialis haberi possit, necesse est ut contrahentes saltem non ignorent matrimonium esse consortium permanens inter virum et mulierem ordinatum ad prolem, cooperatione aliqua sexuali, procreandam" (c. 1096, §1).

[97] "Ad propriorum actuum responsabilitatem habendam (quae morali imputabilitati respondet) non sane sufficit exercitium facultatis cognoscitivae, sed operari debet facultas critica, quae una potest iudicia efformare et liberae voluntatis exercitare actus" (*Coram* FELICI, 3 December 1957, in *RRT Dec.*, 49 [1957], p. 788, n. 3); see also MENDONÇA, "Consensual Incapacity for Marriage," p. 495.

[98] "Quando deficit huiusmodi maturitas iudicii sufficiens ad matrimonium intelligendum vel eligendum, sive id proveniat ex habituali alienatione animi, sive ex exturbatione transeunti, sive ex psychica debilitate, habetur *amentia in sensu contractuali*" (*Coram* SABATTANI, 24 February 1961, in *RRT Dec.*, 53 [1961], p. 118, n. 4); see also MENDONÇA, "Consensual Incapacity for Marriage," p. 496.

critical knowledge of the object of the act. In his address to the Roman Rota, Pope John Paul II speaks about the role of the will and freedom in matrimonial consent: "Certainly, the [marital] bond is caused by consent, that is, by an act of the man's and the woman's will, but this consent actualizes a power already existing in the nature of man and woman. Thus, the indissoluble force of the bond itself is based on the natural reality of the union freely established between man and woman."[99] Hence, the matrimonial bond exists in and through marital consent evoked by the free act of the spouses' will.

The internal freedom necessary on the part of the will to elicit validly a juridic act implies that its exercise should be free from internal, that is, immature, obsessive and overpowering ideas, fantasies, fear, etc., or external constrictions.[100] Nevertheless, as Mendonça observes, "Maturity of decision does not always require critical knowledge that is exhaustive or total, or absolute freedom from inner impulses or psychic debility. The law requires the minimum in order to uphold the natural right of each person to enter into a marital relationship. This must be determined in each concrete case."[101]

2.3.2.2 – The Objective Constitutive Elements of Matrimonial Consent

The act of matrimonial consent has a twofold object. According to c. 1057, §2, in the very act of consent a man and a woman mutually give themselves to each other in order to "constitute marriage" (see *CCEO*, c. 817, §1). Thus, the two sexually distinct

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[99] JOHN PAUL II, Allocution to the Roman Rota, 1 February 2001, in *AAS*, 93 (2001), p. 361; English trans. in WOESTMAN, *Papal Allocutions*, p. 263.

[100] See MENDONÇA, "Consensual Incapacity for Marriage," p. 496.

[101] Ibid., p. 497.

persons themselves (*sese*) are the "material object" of the conjugal covenant, while the "constitution of marriage," that is, marriage itself is its "formal object."[102]

2.3.2.2.1 – Spouses Themselves (*sese*)

Canon 1057, §2 states that in their mutual consent "a man and a woman" give and accept each other to constitute marriage. This statement implies that the very persons of the spouses are exchanged through their irrevocable consent; thus, the woman and the man present each other as the material object of their marital consent. In his 2001 address to the Roman Rota Pope John Paul II spoke of this aspect of marriage in the following words:

> The natural consideration of marriage shows us that husband and wife are joined precisely as sexually different persons with all the wealth, including spiritual wealth, which this difference has at the human level. Husband and wife are united as a man-person and a woman-person. The reference to the natural dimension of their masculinity and femininity is crucial for understanding the essence of marriage.[103]

Therefore, the spouses considered in their individuality and defined by their personal, familial, socio-cultural qualities constitute the material object of marriage consent.

2.3.2.2.2 – Marriage Itself

What is marriage? The Second Vatican Council described marriage thus: "An intimate community of life and conjugal love, established by the Creator and endowed with its own laws, is established by the covenant of marriage, that is, by their irrevocable personal consent."[104] This description implies that the mutual spousal consent transforms

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[102] See MENDONÇA, "Antisocial Personality and Nullity of Marriage," p. 99.

[103] JOHN PAUL II, Allocution, 1 February 2001, p. 361; English trans. in WOESTMAN, *Papal Allocutions*, p. 262.

[104] "Intima communitas vitae et amoris coniugalis, a Creatore condita suisque legibus instructa, foedere coniugii seu irrevocabili consensu personali instauratur" (*GS*, 48).

the man and the woman into husband and wife, giving rise to a most profound unity between the two, which is, in conciliar language, *intima communitas vitae et amoris coniugalis*.[105] This intimate union between a man and a woman at the depth of their person is the essence of marriage. This theological description of marriage has been articulated in juridic terms in c. 1055, §1 (*CCEO*, c. 776) as an exclusive and perpetual partnership (*consortium*) of the "whole of life," which is ordered to the good of the spouses and to the procreation and education of children. A valid marriage between baptized persons is a sacrament, by which the spouses, in the image of an indefectible union of Christ with the Church, are united by God and, as it were consecrated and strengthened by sacramental grace (see *CCEO*, c. 776, §2; *GS*, 48; *CCE*, nn. 1601, 1617). This grace-filled conjugal partnership of the whole of life (*consortium totius vitae*) is the formal object of the marriage covenant. The commitment to *consortium totius vitae* pervades all the facets of the spouses' life. It envisages the totality of the whole reality of marriage.[106] Thus, c. 1055 §1 (*CCEO*, c. 776) describes in personalistic terms the essence of marriage both in its constitutive and essentially qualitative aspects.[107]

2.3.2.2.3 – Substantial Elements and Properties of Marriage

The Supreme Legislator has not identified the substantial elements of marriage in any of the canons of the two Codes. The Code Commission in fact noted that the essential

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[105] See P.J. VILADRICH, *The Agony of Legal Marriage: An Introduction to the Basic Conceptual Elements of Matrimony*, Pamplona, Servicio de publicaciones de la Universidad de Navarra, 1990, p. 161.

[106] See D.E. FELLHAUER, "The *Consortium omnis vitae* as a Juridical Element of Marriage," in *StC*, 13 (1979), p. 70.

[107] See A. MENDONÇA, "Exclusion of the Essential Elements of Marriage," in W.H. WOESTMAN (ed.), *Simulation of Marriage Consent: Doctrine, Jurisprudence, Questionnaires*, Ottawa, Faculty of Canon Law, Saint Paul University, 2000, p. 42.

elements of marriage are to be determined by doctrine and jurisprudence, taking into consideration the definition of marriage and, indeed, the whole of legislation and doctrine, both juridical and theological.[108]

It is possible to deduce the essential elements of marriage from a careful analysis of its theologico-juridical description presented in c.1055, §1 (*CCEO*, c. 776, §§1-2). Here marriage is described as a partnership of the whole of life (*consortium totius vitae*). Traditionally three goods (*tria bona* described by St. Augustine), namely the good of children (*bonum prolis*), the good of fidelity (*bonum fidei*) and the good of sacrament (*bonum sacramenti* = indissolubility), have been considered to pertain to the essence of marriage. The conciliar as well as the canonical description of marriage now includes also the fourth good, namely the good of the spouses (*bonum coniugum*). Which ones of these are the essential elements and which are essential properties of marriage?

Canonical doctrine and jurisprudence draw from the above description of marriage the following essential elements and properties. Firstly, the *ordination* of the partnership of the whole of life to the good of the spouses (*bonum coniugum*) as an essential element of marriage[109] would have its own constitutive elements.[110] Secondly, the *ordination* of the conjugal *consortium* to the good of offspring (*bonum prolis*) in all its essential aspects is also an essential element of marriage.[111] Furthermore, the partnership (*consortium*)

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[108] See PCCICR, "Relatio complectens synthesim animadversionum ab Em.mis et Exc.mis Patribus Commissionis ad novissimum schema Codicis iuris canonici exhibitarum, cum responsionibus a Secretaria et consultoribus datis," in *Communicationes*, 15 (1983), p. 234.

[109] See MENDONÇA, "Exclusion of the Essential Elements of Marriage," pp. 44-88, where the author identifies other possible essential elements of marriage.

[110] See *coram* BOCCAFOLA, 12 March 1998, in *RRT Dec.*, 90 (1998), p. 218, n. 6.

[111] See *coram* STANKIEWICZ, 22 February 1996, in *RRT Dec.*, 88 (1996), p. 121, n. 7.

between two baptized persons is a sacrament. Thus, the sacramental dignity of marriage has also been regarded in doctrine and jurisprudence as an essential element of marriage.[112] From this we can reasonably hold that at least the above three aspects are essential elements of marriage.[113]

The Supreme Legislator has explicitly identified two essential or substantial properties of marriage: "The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness by reason of the sacrament" (c. 1056; *CCEO*, c. 776, §3).[114] These properties are implicitly stated in c. 1055, §1 (*CCEO*, c. 776, §§1-2) and c.1134 (no parallel canon in *CCEO*), and are reinforced in c. 1099 (*CCEO*, c. 822). The property of unity in marriage includes *unicity* of the bond and *exclusivity*. *Unicity* of the bond means that marriage is between one man and one woman (one bond), that is, marriage is monogamous. This is opposed to polygamy. *Exclusivity*, on the other hand, means that in the exchange of matrimonial consent the right to sexuality is conceded to one's spouse only. The opposite is reservation of the right to one's sexuality (body) to oneself. [115] The Second Vatican Council teaches the following with regard to unity and fidelity in marriage: "The intimate union of marriage, as a

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[112] See *coram* RAGNI, 30 May 1996, in *RRT Dec.*, 88 (1996), p. 411, n. 7.

[113] There is no consensus among the canonists what exactly constitutes the essential elements of marriage. See MENDONÇA, "Exclusion of the Essential Elements of Marriage," p. 88.

[114] "Essentiales matrimonii proprietates sunt unitas et indissolubilitas, quae in matrimonio christiano ratione sacramenti peculiarem obtinent firmitatem" (c. 1056; *CCEO*, c. 776, §3).

[115] See U. NAVARRETE, "De iure ad vitae communionem: observationes ad novum schema canonis 1086, §2," in IDEM, *Quaedam problemata actualia de matrimonio*, 3rd ed., [ad usum privatum], Romae, Pontificia Universitas Gregoriana, 1979, p. 189; see also A.B. SIEGLE, *Marriage According to the New Code of Canon Law*, New York, Alba House, 1986, p.13.

mutual self-gift of two persons, and good of children demand total fidelity from the spouses and unbreakable unity between them."[116]

2.3.2.2.4 – Accidental Qualities of the Spouses and of Marriage

An object does not consist solely of substantial or essential elements. It is also made up of distinctive properties or qualities. Because such properties or qualities are not constitutive, they are known as accidental. The two objects of matrimonial consent, namely the persons of the spouses and marriage itself, are endowed with such accidental properties or qualities. A quality of a person, which is accidental, is an enduring characteristic that distinguishes that person.[117] Thus, for example, physical health, family status, religious adherence, education, profession or occupation, socio-economic status, caste, etc., can be viewed as accidental properties or qualities of a person.[118] Similarly, marriage also can have accidental properties or qualities, like happiness, peace, material well-being, etc. In certain circumstances and under certain conditions, it is possible for these accidental properties or qualities, either of the spouses or of marriage, to assume substantial value in a particular case. This point will be discussed in the following section.

2.4 – THE FACTORS INVALIDATING MATRIMONIAL CONSENT

As a juridic act, matrimonial consent can be affected by the same factors which invalidate a juridic act. In this section, therefore, we will briefly analyze the factors that

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[116] "Quae intima unio, utpote mutua duarum personarum donatio, sicut et bonum liberorum, plenam coniugum fidem exigunt atque indissolubilem eorum unitatem urgent" (*GS*, 48).

[117] See P.J. VILADRICH, Commentary on c. 1097, in *Exegetical Comm*, vol. 3/2, p. 1286.

[118] See BEAL, Commentary on c. 1097, p. 1305.

invalidate matrimonial consent in order to provide a proper juridic context for the chapters to follow.

2.4.1 – Incapacity to Elicit Matrimonial Consent (Consensual Incapacity)

Every juridic act is a human act. Matrimonial consent, insofar as it is a human act, must not only be deliberate and free but also proportionate to its object. Therefore, a person who does not have, at the time of exchanging consent, sufficient use of reason or discretion of judgement proportionate to the essential rights and duties entailed in the mutual spousal consent, or is incapable of assuming the essential conjugal obligations, lacks the capacity necessary to contract a valid marriage. This psychological incapacity must be the result of a serious psychic anomaly (*seria anomalia psychica*).[119] To have invalidating efficacy with respect to matrimonial consent, the anomalies or disorders must prevent the act of will from being a free and responsible human act proportionate to the rights and obligations of marriage.[120] Canon 1095 (*CCEO*, c. 818), therefore, identifies three categories of persons who are incapable of contracting marriage (or three species of "consensual incapacity"), namely those who lack the sufficient use of reason, those who suffer from a grave defect of discretion of judgment concerning the essential matrimonial rights and duties, and those who are not able to assume the essential obligations of marriage for causes of a psychic nature. The ecclesiastical legislator has placed this "consensual incapacity" among the factors that affect the act of consent (and

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[119] See JOHN PAUL II, Allocution to the Roman Rota, 5 February 1987, in *AAS*, 79 (1987), p. 1457; English trans. adapted from WOESTMAN, *Papal Allocutions*, p. 194: "The hypothesis of real incapacity is to be considered only when an anomaly of a serious nature is present, which, however it may be defined, must substantially vitiate the capacity of the individual to intend and/or to will."

[120] See VILADRICH, Commentary on c. 1095, in *CCLA*, p. 841.

hence among the defects of consent) and not among the impediments that render a person *inhabilis* to contract marriage.

2.4.2 – Ignorance

Canon 1096, §1 (*CCEO*, c. 819) reads, "For matrimonial consent to exist, the contracting parties must be at least not ignorant that marriage is a permanent partnership between a man and a woman ordered to the procreation of offspring by means of some sexual cooperation."[121] This canon defines the knowledge a person should have of the object of matrimonial consent in order to contract marriage validly. L. Chiappetta says that the intention of the Supreme Legislator expressed in c. 1096 (*CCEO*, c. 819) is to define the "minimum" knowledge of the object of consent without which one cannot marry validly.[122]

According to c. 1096, §1 (*CCEO*, c. 819), the content of the minimum knowledge indispensable for the validity of matrimonial consent is that marriage is "a permanent partnership between a man and a woman, ordered to the procreation of offspring by means of some sexual cooperation." It is necessary that the spouses know that marriage is a partnership and this partnership enjoys a particular stability (permanence).[123] The spouses are not to be ignorant that this partnership is ordered to the procreation of children and that this procreation is achieved by means of sexual cooperation between the

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[121] "Ut consensus matrimonialis haberi possit, necesse est ut contrahentes saltem non ignorent matrimonium esse consortium permanens inter virum et mulierem ordinatum ad prolem, cooperatione aliqua sexuali, procreandam" (c. 1096, §1; *CCEO*, c. 819).

[122] See L. CHIAPPETTA, *Il matrimonio nella nuova legislazione canonica e concordataria: manuale giuridico-pastorale*, Roma, Edizioni Dehoniane, 1990, p. 213.

[123] This stability does not admit a predetermined term of duration that is dependent on the intention of staying together, or making the bond dependent on one's own freewill. See J. PRADER, Commentary on c. 820, in *CCEO Comm*, p. 562.

spouses. It is not necessary that those who marry have an extensive knowledge of human sexuality, but they must know that procreation comes about through the bodily interaction of specific organs of man and woman.[124] Therefore, a marriage will be invalid because of ignorance if a person does not know that marriage entails the exchange of the right to his or her body or thinks (erroneously) that some right is exchanged but one that is substantially different from the real one.[125] This implies that ignorance, defined as absence of due knowledge, always leads to erroneous judgement concerning the substance of marriage.

2.4.3 – Error of Fact[126]

The material object of marital consent is the person of the spouses (*sese*) with their defining qualities (c. 1057, §2). This is acknowledged also by c. 1097 (*CCEO*, c. 820), as it deals specifically with the object of error which can invalidate consent, and this error concerns the person and his or her qualities: "Error concerning the person renders a marriage invalid" (§1)."Error concerning a quality of the person does not render a marriage invalid even if it is the cause for the contract, unless this quality is directly and principally intended" (§2).[127] Error is a false judgement concerning an object, and in the

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[124] See *coram* MASALA, 30 March 1977, in *RRT Dec.*, 69 (1977), pp. 157-171, especially p. 165; see also PRADER, Commentary on c. 820, p. 562; BEAL, Commentary on c. 1097, p. 1304.

[125] See WRENN, *The Invalid Marriage*, p. 94.

[126] For a more in-depth doctrinal and jurisprudential treatment of "Error of Fact," see MENDONÇA, "A Doctrinal and Jurisprudential Analysis of Canon 1097 on Error of Fact," pp. 362-435.

[127] Canon 1097 (*CCEO*, c. 820), §1: "Error in persona invalidum reddit matrimonium."

§2: "Error in qualitate personae, etsi det causam contractui, matrimonium irritum non reddit, nisi haec qualitas directe et principaliter intendatur."

case we are discussing, the object is the very persons of the spouses and their qualities. In canonical tradition and jurisprudence, error regarding a person has always been understood as error about the physical identity of the person (spouse) that renders the marriage null in virtue of natural law itself.[128]

According to c. 1097, §2 (*CCEO*, c. 820, §2), error regarding the quality of the person, even if it (error) is the reason for the marriage, does not invalidate the marriage, unless the quality is intended directly and principally. In general, one who marries may intend to celebrate marriage with a particular person who is endowed with a specific quality (e.g., family background, educational qualification, etc.).[129] And, as a principle, error about a particular quality in the would-be spouse does not *per se* affect the validity of marital consent, but it could invalidate consent should a particular quality assume such an importance for a person that he or she implicitly makes its presence (or absence) a condition for the validity of his or her consent. Thus, in the case of error regarding a quality "directly" and "principally" intended, the fundamental reason for the nullity of the marriage is the condition regarding the quality. L. Wrenn explains the adverbs "directly" and "principally" as follows: "In marriage, a quality is *directly* intended when the quality rather than the person is intended in and of itself; it is *principally* intended when the quality is more important than the person."[130] Therefore, for the error concerning a quality of the person to invalidate marriage, one must *directly* and *principally* intend, by a positive act of the will, that quality believed to be present (or absent) in his or her spouse.

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[128] See BEAL, Commentary on c. 1097, p. 1304.

[129] See PRADER, Commentary on c. 820, p. 562; WRENN, *The Invalid Marriage*, p. 96.

[130] WRENN, *The Invalid Marriage*, p. 97; see also *coram* STANKIEWICZ, 24 October 1991, in *RRT Dec.*, 83 (1991), p. 676, n. 11.

It is sufficient that the intention is virtual, i.e., formulated prior to the exchange of consent but never retracted, and implicit, i.e., expressed only indirectly or obliquely.[131]

2.4.4 – Fraud (Deceit)

Canon 1098 (*CCEO*, c. 821) is a new norm in matrimonial legislation. It reads, "A person contracts invalidly who enters into a marriage deceived by fraud, perpetrated to obtain consent, concerning some quality of the other partner which by its very nature can gravely disturb the partnership of conjugal life."[132] As discussed earlier, juridic acts performed under the influence of fraud (deceit) are valid unless the law provides otherwise (see c. 126, §2; *CCEO*, c. 932, §2). Canon 1098 (*CCEO*, c. 821) is an exception to the principle stated in c. 126, §2 (*CCEO*, c. 932, §2). According to c. 1098 (*CCEO*, c. 821), a marriage entered into as a result of fraudulently induced error is invalid. When one of the spouses has been deprived of the knowledge of an important quality of the other by fraud, what is given and accepted (namely, the object) in consent is incomplete and partial. Thus, the object of matrimonial consent is defective because of the deceitfully induced error about it.[133]

Since the promulgation of the Latin Code, canonists have debated whether the source of the invalidity of marriage because of error resulting from fraud is natural law or positive ecclesiastical law.[134] At this point in time, there seems to be a doubt of law

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[131] See WRENN, *The Invalid Marriage*, p. 101; BEAL, Commentary on c. 1097, p. 1306.

[132] "Qui matrimonium init deceptus dolo, ad obtinendum consensum patrato, circa aliquam alterius partis qualitatem, quae suapte natura consortium vitae coniugalis graviter perturbare potest, invalide contrahit" (c. 1098; *CCEO*, c. 821).

[133] See BEAL, Commentary on c. 1098, p. 1307.

[134] For more discussion on this issue, see U. NAVARRETE, "Canon 1098 de errore doloso estne iuris naturalis an iuris positivi ecclesiastici?," in *Periodica*, 76 (1987), pp. 161-181; see also

concerning the applicability of the norm of c. 1098 (*CCEO*, c. 821) to marriages celebrated prior to the coming into effect of the 1983 Code of Canon Law. Therefore, in virtue of c. 1060 (*CCEO*, c. 779), when there is doubt the validity of a marriage is to be upheld until the contrary is proven.[135]

2.4.5 – Juridic Error

The term "juridic error" or "error of law" commonly refers to the error spoken of in c. 1099 (*CCEO*, c. 822): "Error concerning the unity or indissolubility or sacramental dignity of matrimony does not vitiate matrimonial consent provided that it does not determine the will."[136] The implication of this canon is very clear: if error about the unity, indissolubility, or sacramental dignity of marriage does determine the will, the consent is

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J.G. JOHNSON, "On the Retroactive Force of Canon 1098," in *StC*, 23 (1989), pp. 61-83; *coram* STANKIEWICZ, 27 January 1994, in *RRT*, *Dec.*, (1994), pp. 56-76; J.G. JOHNSON, "Fraud and Deceit in the Rota: The First Ten Years," in *The Jurist*, 56 (1996), pp. 559-569. About this issue Mendonça comments, "[Canonists] continue to dispute whether this figure of nullity is of natural law or only of positive ecclesiastical law. If it were an expression of natural law, the norm of canon 1098 (*CCEO*, c. 821) would be retroactive and applicable to non-Catholics as well. If it is a prescription of merely ecclesiastical law, then it cannot be applied retroactively to marriages celebrated prior to 27 November 1983, nor can it be applied to marriages of non-Catholics (cf. c. 11; *CCEO*, c. 1490). Whenever true deceit is involved in a marriage case, Rotal jurisprudence seems to treat its effects under the figure of deceitfully induced substantial error, which invalidates any juridical act by virtue of natural law itself. However, it is not unreasonable to argue in favour of its natural law basis if its effects are considered within the context of human dignity and freedom, which constitute the natural foundation of every human act. In deceit there is violation of the dignity and freedom of its victim, and this is contrary to natural law itself"(A. MENDONÇA, *Substantive Jurisprudence on Defects of Consent: Seminar on Tribunal Practice*, DCA 6301, for Personal Use of the Students Only, Ottawa, Faculty of Canon Law, Saint Paul University, Spring 2007, pp. 214-215).

[135] For Rotal jurisprudence on this issue, see especially the following sentences: *coram* POMPEDDA, 26 July 1996, in *RRT Dec.*, 88 (1996), pp. 581-586; *coram* SERRANO, 25 October 1996, in ibid., pp. 649-656; *coram* FALTIN, 30 October 1996, in ibid., pp. 671-679; *coram* DEFILIPPI, 4 December 1997, in ibid., 89 (1997), pp. 853-865.

[136] "Error circa matrimonii unitatem vel insdissolubilitatem aut sacramentalem dignitatem, dummodo non determinet voluntatem, non vitiat consensum matrimonialem" (c. 1099; *CCEO*, c. 822).

invalid. Error does not determine the will if it remains in the intellect without entering into the will.[137] But it is possible for error to impact the will in such a way that it determines the decisions that the will makes. In relation to its influence on matrimonial consent, error can be either "simple error," or "determining error." As a principle, simple error does not determine the will. Thus, the presumption here is that simple error remains in the intellect. On the other hand, "determining error" does enter into and determine the will. Rotal jurisprudence characterizes it as "obstinate" or "stubborn" error (*error pervicax*) in order to emphasize its impact on the will. It is so called because of the strength with which it controls human behaviour. Such an error becomes like a second nature in the person imbued with it and induces that person to act according to the distorted thinking about the object it generates in his or her mind.[138] Rotal jurisprudence emphasizes the strength and consequences of the error rooted in the mind of the spouse.[139] According to jurisprudence, the error deeply rooted in a contractant's mind can easily compound and become operative in the decision being made, thus determining the will toward that decision.[140] Here again the defect of consent lies in the defective object configured in the mind by error and presented to the will for its decision or choice. The choice of the will here concerns a marriage devoid of its essential properties (or

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[137] See PRADER, Commentary on c. 822, p. 563.

[138] See J.H. PROVOST, "Error as a Ground in Marriage Nullity," in *CLSA Proceedings*, 57 (1995), pp. 308-310.

[139] See *coram* FELICI, 17 December 1957, in *RRT Dec.*, 49 (1957), pp. 842-849.

[140] See PRADER, Commentary on c. 822, p. 564.

elements).[141]

2.4.6 – Simulation

Canon 1101, §1 (*CCEO*, c. 824, §1) reads, "The internal consent of the mind is presumed to conform to the words and signs used in celebrating the marriage."[142] This principle is based on the fact that persons generally declare what they think and what they want. While the object of the presumption of this canon is the intention to celebrate a true marriage, this is a simple presumption that always admits contrary proof.[143] It can easily happen that in those who marry, or in one of them, the external manifestation of the consent does not conform to the internal will (intention). A situation of such fundamental contradiction is referred to in ecclesiastical jurisprudence as "simulation."

Canon 1101, §2 (*CCEO*, c. 824, §2) states, "If, however, either or both of the parties by a positive act of the will exclude marriage itself, some essential element of marriage, or some essential property of marriage, the party contracts invalidly."[144] In this canon we do not find the word "simulation;" instead, we find the word "exclusion" of "marriage itself, some essential element or an essential property of marriage." But the use of the term "simulation" together with the distinction between "total" and "partial" has

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[141] For a recent comprehensive study on determining error, see A. MENDONÇA, "A Doctrinal and Jurisprudential Approach to the Ground of Determining Error," in *Studies in Church Law*, 3 (2007), pp. 129-239.

[142] "Internus animi consensus praesumitur conformis verbis vel signis in celebrando matrimonio adhibitis" (c. 1101, §1; *CCEO*, c. 824, §1).

[143] Regarding the value of presumptions, see *coram* COLAGIOVANNI, 26 April 1983, in *RRT Dec.*, 75 (1983), pp. 187-196; *coram* FIORE, 16 April 1988, in *RRT Dec.*, 80 (1988), pp. 242-249.

[144] "At si alterutra vel utraque pars positivo voluntatis actu excludat matrimonium ipsum vel matrimonii essentiale aliquod elementum, vel essentialem aliquam proprietatem, invalide contrahit" (c. 1101, §2; *CCEO*, c. 824, §2).

been constant in doctrine and jurisprudence.[145] Thus, if the object of simulation is marriage itself, it is called "total simulation." In this scenario, marriage itself is excluded from consent. If the object of simulation is an essential element or an essential property of marriage, then there is "partial simulation." In this situation, marriage itself is intended, but not with its essential elements or properties. The defect in either case is in the object of consent.

2.4.7 – Condition

Canon 1102, §1 deals with a "condition about the future" and says that a marriage celebrated under condition about the future circumstances is invalid. The second paragraph determines that if a marriage is entered into with a condition concerning the past or the present, the validity of the marriage depends on the existence of the circumstance at the time of exchanging matrimonial consent. The third paragraph states that a past or present condition cannot be lawfully attached to matrimonial consent without the written permission of the local ordinary.

It is important to note that there are substantial differences between *CIC*, c. 1102 and *CCEO*, c. 826, on the conditioned matrimonial consent. In line with the former Eastern canonical norm (*CA*, c. 83), which stated, "Marriage cannot be contracted under a

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[145] See JOHN PAUL II, Allocution to the Roman Rota, 21 January 1999, in *AAS*, 91 (1999), p. 624; English trans. in WOESTMAN, *Papal Allocutions*, p. 251; see also A. STANKIEWICZ, "Recent Jurisprudence of the Roman Rota Concerning Total and Partial Simulation (c. 1101, §2; *CCEO*, c. 824, §2)," in WOESTMAN, *Simulation of Marriage Consent*, pp. 171-211. This is the first part of an article originally published as "De iurisprudentia rotali recentiore circa simulationem totalem et partialem (cc. 1101, §2 *CIC*; 824, §2 *CCEO*)," in *ME*, 122 (1997), pp. 189-234, 425-436; English trans. by R. DUFOUR; *coram* ROGERS, 26 January 1971, in *RRT Dec.*, 63 (1971), pp. 60-65.

condition,"[146] c. 826 of *CCEO* determines, "Marriage based on a condition cannot be validly celebrated."[147] Accordingly, no one can validly subordinate matrimonial consent to any condition, whether future, past or present. Whenever a condition is placed on the marriage consent by one or both of the spouses, the marriage must be considered as null for reason of a defect of consent.[148] In a conditioned consent there is no will if the condition placed by the respective spouse(s) is not fulfilled. In other words, the validity of a marriage contracted under a condition may remain suspended indefinitely, which is not admissible in case of such an important human relationship. Furthermore, in a conditioned consent, the person(s) attaching a condition simply intends to terminate the conjugal bond (contrary to its natural permanence=indissolubility) if the condition is not fulfilled or verified.

2.4.8 – Force or Grave Fear

Generally speaking, a juridic act that results from physical force exerted on a person from without which he or she is unable to resist is "considered as never to have taken place" by law itself (see c.125, §1;*CCEO*, c. 932, §1). While the situation involving physical force in placing a juridic act may not be that common, "grave fear" is likely to occur more frequently. The ecclesiastical law does not give the same juridic effect to grave fear as it does to force. According to the general principle, grave fear does not invalidate a juridic act, but the law provides exceptions in specific situations.

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[146] "Matrimonium sub condicione contrahi nequit" (PIUS XII, *Motu proprio Crebrae allatae* (= *CA*), c. 83, 22 February 1949, in *AAS*, 41 [1949], p. 107; English trans. in V.J. POSPISHIL, *Code of Oriental Canon Law: The Law on Marriage*, Chicago, Universe Editionis, 1962, p. 131).

[147] "Matrimonium sub condicione valide celebrari non potest" (*CCEO*, c. 826).

[148] See PRADER, Commentary on c. 826, p. 569.

Matrimonial consent is one such exception. Canon 1103 (*CCEO*, c. 825) states, "A marriage is invalid if entered into because of force or grave fear from without, even if unintentionally inflicted, so that a person is compelled to choose marriage in order to be free from it."[149] According to this canon, a marriage entered into as a result of "physical force" is to be considered as "inexistent" in virtue of c. 125, §1 (*CCEO*, c. 932, §1). One may not encounter this type of situation that frequently. On the other hand, marriage cases involving "grave fear" are not that uncommon.

Fear is the result of moral force inflicted on a person from without.[150] Fear can be either common or reverential. It may be inflicted either justly or unjustly, intentionally or unintentionally. According to the general norm stated in c. 125, §2 (*CCEO*, c. 932, §2), a juridic act placed as a result of justly inflicted fear would be valid. But this cannot be true in case of a choice of one's state in life, like marriage (cf. c. 219; *CCEO*, c. 22). The norm of c. 1103 (*CCEO*, c. 825), therefore, must be understood to include a marriage contracted because of fear even if it was "justly" inflicted. For this reason, fear inflicted from without, whether intentionally or unintentionally,[151] justly or unjustly, invalidates matrimonial consent, provided that the fear is subjectively grave and for the person there is no other escape than by choosing marriage. Furthermore, the fear must either be

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[149] "Invalidum est matrimonium initum ob vim vel metum gravem ab extrinseco, etiam haud consulto incussum, a quo ut quis se liberet, eligere cogatur matrimonium" (c. 1103; *CCEO*, c. 825).

[150] See BEAL, Commentary on c. 1103, p. 1320.

[151] The phrase "even if unintentionally" was not in c. 1087 of *CIC*/17 (*CA*, c. 78). In essence this phrase implies that even unintentionally inflicted fear can deprive the subject of the internal freedom necessary to make a free and deliberate choice of marriage. See MENDONÇA, *Substantive Jurisprudence on Defects of Consent*, p. 359.

actually present or virtually perdure at the moment of exchanging matrimonial consent, and there must be a clear connection between fear and the choice of marriage.[152] In this case, matrimonial consent is invalid because of lack of internal freedom in the choice of marriage. In other words, the object of matrimonial consent is chosen without sufficient internal freedom of will.

CONCLUSION

The principal focus of this chapter has been on the nature and elements of matrimonial consent in general in order to provide a more comprehensive juridic context for the contents of the chapters to follow. The foundational principle enshrined in ecclesiastical matrimonial legislation is that consent is the efficient cause of marriage.

By its nature, matrimonial consent is a human act, a juridic act. Hence, all the canonical principles pertinent to the valid performance of a juridic act are also relevant and applicable to the valid elicitation of matrimonial consent. A juridic act may be described as a human act, lawfully placed, by which a person capable in law manifests his or her intention to bring about (a) specific effect(s) recognised in law.

The first principle that governs a juridic act determines that the person who elicits the act must be *habilis*. For the validity of a juridic act its agent must have the *natural* and *juridic habilitas* to perform it.

The second principle states that for its validity, the juridic act must include those things (elements) which constitute it. What are "those things which constitute" a juridic act? We have identified two sets of constitutive elements of a juridic act, namely

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[152] We will discuss in detail these aspects of fear in relation to matrimonial consent in the next chapter.

subjective and objective. The subjective constitutive elements of a juridic act are the abstract knowledge of the object, the critical knowledge of the object, and the internal freedom to choose the object. In the absence of any one or all of the subjective constitutive elements, an act cannot be regarded as a human act. If it is not a human act, it will not be a juridic act. The objective constitutive elements of a juridic act consist of its object with its constitutive elements and substantial as well as accidental qualities. The agent of a specific juridic act must intend its objective constitutive elements for its validity. If the constitutive elements of the object are lacking either totally or partially in the intention of the agent when eliciting the act, the act is juridically non-existent. In the same way, the absence of any of the substantial qualities of the object would render a juridic act invalid. If the accidental qualities assume substantial value in the intention of the agent, that is, they become a *sine qua non* condition, a juridic act elicited under such a condition would be invalid.

The law identifies several intrinsic and extrinsic factors that might interfere with the validity of a juridic act, particularly in relationship to *habilitas*, the subjective constitutive elements, and the objective constitutive elements, like substantial elements and qualities of the object of the act. Such factors listed in the Code are: force, grave fear, fraud (deceit), ignorance, and error. Three other factors found in the Code could be added to this list, and these are the incapacity to elicit a juridic act, simulation, and condition. Each one of these factors affects specific areas of a concrete juridic act.

The application of the principles stated above to matrimonial consent as a juridic act yields the following conclusions:

First, the subjects of matrimonial consent, namely each spouse, must be *iure habilis*. This *habilitas* mentioned explicitly in c. 1057, §1 includes both *natural* and *juridic habilitas* on the part of the spouses. To be *habilis* for exchanging matrimonial consent, besides being free from diriment impediments, one must possess at least the minimal psychological *capacitas* to intend with sufficient deliberation and internal freedom to establish and sustain the intimate community of life and conjugal love.

Second, as a juridic act matrimonial consent should be integral as to its subjective constitutive elements, namely, sufficient abstract and critical knowledge of the object of consent on the part of the intellect, and sufficient internal freedom on the part of the will to make a deliberate and free choice of that object of consent as presented to it by the intellect.

Third, the two sexually distinct persons themselves (*sese*) are the "material object" of the conjugal covenant, while the "constitution of marriage," that is, marriage itself is its "formal object." Both doctrine and jurisprudence have not definitively identified so far all the constitutive elements of marriage. However, from the recent developments in doctrine and jurisprudence it seems safe to consider the ordination of conjugal partnership to *bonum coniugum* and *bonum prolis* and sacramental dignity of marriage as the essential elements of marriage while unity (both *unicity* of the bond and exclusivity) and indissolubility as the essential properties of marriage.

Fourth, like any other juridic act, matrimonial consent may become defective due to internal as well as external factors. The factors, which render the act of matrimonial consent defective, are incapacity (consensual incapacity), ignorance, error of fact, fraud (deceit), juridic error, simulation, condition, and force or grave fear.

There is no special reference to reverential fear in the Codes of canon law. But, it is always treated under the canon on force or grave fear. The Church has developed a clear jurisprudential structure which carefully distinguishes reverential fear from common fear. The principles of force or grave fear include that of reverential fear as well. Reverential fear effects defect in matrimonial consent if it satisfies the requisites stated in c. 1103 (*CCEO*, c. 825). However, it merits a more detailed consideration due to the peculiar difficulties related to its identification and proofs.

The content of this chapter thus provides a more comprehensive context for our next chapter, which will centre specifically on the main issue of this project, namely the effect of reverential fear on the act of matrimonial consent.

CHAPTER THREE

REVERENTIAL FEAR AS A GROUND OF MARRIAGE NULLITY

INTRODUCTION

Marriage is a natural reality to which every human being has the right unless impeded by law. Between the baptized, this natural reality has been raised by Christ the Lord to the dignity of a sacrament (c. 1055, §1; *CCEO*, c. 776, §2). The assumption of the married state, however, is subject to the personal choice of every person. Therefore, nobody may coerce a person in any way to choose this state of life. This principle has been clearly stated in canon 219 (*CCEO*, c. 22): "All the Christian faithful have the right to be free from any kind of coercion in choosing a state of life."[1] Any attempt at coercing a person to choose the married state could result in the invalidity of marriage.

Marriage comes into being through the mutual and free consent of the spouses (see c. 1057; *CCEO*, c. 817). This has been the teaching of the Church[2] and of jurisprudence.[3]

We have noted in the previous chapter that any factor, whether internal or external, which substantially impedes the internal freedom, invalidates a juridic act. Grave fear has been designated by law as one such factor which can interfere with one's freedom needed to place a valid juridic act. Nevertheless, fear *per se* does not invalidate a juridic act unless the law establishes otherwise (c. 125, §2; *CCEO*, c. 932, §2). Referring to the

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[1] "Christifideles omnes iure gaudent ut a quacumque coactione sint immunes in statu vitae eligendo" (c. 219; *CCEO*, c. 22).

[2] See PIUS XI, *Casti connubi*, p. 541.

[3] See, for example, *coram* SCIACCA, 6 April 2000, in *RRT Dec.*, 92 (2000), p. 308, n. 2; also in *ME*, 126 (2001), p. 355, n. 2.

invalidating force of force or grave fear on the juridic act of consent in marriage, c. 1103 (*CCEO*, c. 825) says, "A marriage is invalid if entered into because of force or grave fear from without, even if unintentionally inflicted, so that a person is compelled to choose marriage in order to be free from it."[4] Reverential fear (*metus reverentialis*) is such a type of fear and is causative of defect in matrimonial consent. In fact, reverential fear constitutes the greatest percentage of the cases judged under the ground of force or grave fear in marriage tribunals. Therefore, the ground of reverential fear has gained general acceptance and detailed description in doctrine and jurisprudence.

Marriage cases involving the ground of reverential fear are treated less frequently in the Western countries. The very nature of most Asian cultures, especially the Indian culture, which fosters tight-knit family ties, a parental role in decision making on matters affecting the family unity, and strong parent-children interdependence, easily lends itself to situations in which personal freedom of children may be unduly restricted.[5] As we have discussed in chapter one, this happens mostly in the arranged marriages in which, generally, parental rights and choices predominate those of their children.

In this chapter, we will study the various aspects of reverential fear that may invalidate matrimonial consent. Since culture plays a very important role in this respect, we will analyse also the main cultural factors that underlie reverential fear. We will also examine the relationship between reverential fear and some other grounds of marriage nullity with a view to determining the possibility of declaring substantial conformity of

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[4] "Invalidum est matrimonium initum ob vim vel metum gravem ab extrinseco, etiam haud consulto incussum, a quo ut quis se liberet, eligere cogatur matrimonium" (c. 1103; *CCEO*, c. 825).

[5] See MENDONÇA, "The Importance of Considering Cultural Contexts," pp. 257-258.

sentences when decisions are based on two different grounds of nullity.

3.1 – REVERENTIAL FEAR AS A FACTOR INVALIDATING MARITAL CONSENT

It is true that c. 1103 (*CCEO*, c. 825) speaks only of generic "fear." But this does not detract from the fact that "reverential fear" is a species of fear. Therefore, the law does not exclude reverential fear as a ground of marriage nullity.[6] When reverential fear meets the conditions stipulated by law (c. 1103; *CCEO*, c. 825) it will certainly invalidate a marriage. Accordingly, all that is said regarding fear applies equally to reverential fear if it is to invalidate matrimonial consent. Even so, reverential fear requires more detailed consideration because of the peculiar difficulties that arise in connection with its identification and proofs.

3.1.1 – Common Fear

Force (*vis*) and fear (*metus*) can either totally destroy or substantially diminish the freedom of will and thus gravely affect the imputability of a human act. While force can be either physical or moral coercion brought to bear on another person, fear is the result of this force on the part of the one on whom it is inflicted.[7]

F.M. Cappello defines force (*vis*) as "[...] 'pressure (exterior) from a greater thing that cannot be resisted'; and it is considered as the *efficient* cause on the part of the one who inflicts *fear* through *external* pressure."[8] M.Á. Ortiz says, "[...] while *force* removes

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[6] See SANGMEISTER, *Force and Fear as Precluding Matrimonial Consent*, p. 139.

[7] See BEAL, Commentary on c. 1103, p. 1320.

[8] "[...] 'maioris rei impetus (exterior), qui repelli non potest'; et consideratur tanquam causa *efficiens* in eo, qui per impulsum *externum* incutit *metum*" (F.M. CAPPELLO, *Tractatus canonico-moralis de sacramentis*, vol. 5. *De matrimonio*, Taurini, Romae, Marietti, 1950, cap. VIII, art. V, p. 586, n. 605).

freedom, *fear* modifies the *voluntariness* [...]."[9] Cappello defines fear as a "[...] 'trepidation of mind caused by an immediate or future danger (that is, evil)'; and it is the *effect* on the part of the one who is subjected to the force."[10] J. D'Annibale states, "Fear is the trepidation of mind (*mentis trepidatio*), the cause of an immediate or future danger."[11] When fear is caused by an external agent to extract an act or a decision from its victim, the mental trepidation resulting from it takes on the character of moral violence.

Fear may be caused from within (*ab intrinseco*), that is, solely by the state of mind of the subject, that is, the result of one's psychological condition. Fear is said to be from without (*ab extrinseco*) when a free human agent causes it.[12] Fear can be either *grave* or *slight*. When fear is so serious in its effects as to deprive the subject of the use of free will, it is said to be *grave* and it would render the juridic act of matrimonial consent placed under its influence null and void.[13]

When evil is threatened in order to extract matrimonial consent, the victim feels that he or she has no other choice but to accept marriage. Here, fear, experienced by the party, becomes the cause of marriage, that is, consenting to marriage is the only way

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[9] "[...] mentre la *vis* toglie la libertà, il *metus* modifica il *voluntarium* [...]" (M.Á. ORTIZ, "Il timore che invalida il matrimonio e la sua prova," in *IE*, 15 [2003], p. 108).

[10] "[...] 'mentis trepidatio instantis vel futuri periculi (seu mali) causa'; et est *effectus* in eo, qui vim patitur" (CAPPELLO, *Tractatus canonico-moralis de sacramentis*, cap. VIII, art. V, p. 586, n. 605).

[11] "Metus est, instantis, vel futuri periculi causa mentis trepidatio" (J. D'ANNIBALE, *Summula theologiae moralis quam in Seminario Reatino tradebat*, pars I, Ed. 2a, emendata et aucta, Mediolani, Ex Typographia S. Josephi, 1881, p. 104, n. 138).

[12] See D'ANNIBALE, *Summula theologiae moralis*, pars I, p. 104; see also ODILICHUKWU, *Force and Fear in Relation to Matrimonial Consent*, p. 86.

[13] See ODILICHUKWU, *Force and Fear in Relation to Matrimonial Consent*, p. 96.

perceived by the party of avoiding the threatened danger or evil. Therefore, according to c. 1103 (*CCEO*, c. 825), a marriage is invalid only if it was celebrated "because of fear" and not "with fear."[14] In such a situation, there is a certain degree of will to marry although it is forced through moral coercion. In other words, there exists marriage consent, which lacks the sufficient free will to be valid. Therefore, fear, which is a state of trepidation of the mind, creates a substantially defective matrimonial consent in the aspects of its internal freedom and not a *total* lack of consent.[15] To have invalidating force, fear must be grave and be either actually present or virtually perdure at the moment of exchanging matrimonial consent.

3.1.2 – Reverential Fear

Canonical doctrine and jurisprudence has always considered the effects of reverential fear on matrimonial consent. B. Pontii defined it as follows: "Reverential fear is a discerning of a future evil as coming to us from those under whose lawful power we are and whom we regard with respect and honour."[16] St. Alfonsus de Liguori wrote, "Reverential fear is that by which one fears to oppose anybody to whom that person is subjected, namely, the father, mother, father-in-law, husband, king, master, prelate,

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[14] See D. KELLY, Commentary on c. 1103, in *CLSGBI Comm*, p. 619.

[15] See VILADRICH, Commentary on c. 1103, p. 1416.

[16] "Reverentiae metus est futuri mali existimatio, quod nobis ab his metuimus, in quorum legitima potestate sumus et quos cultu et honore dignamur" (B. PONTII, *De sacramento matrimonii tractatus* [...], *opus aeque canonici et civilis juris, ac sacrae theologiae professoribus utile ac necessarium. Summariis, et duplici indice* [...] *illustratum in hac nova editione*, Venetiis, Apud Laurentium Basilium, 1756, lib. IV, cap. V, n. 1, p. 114); see also *coram* PARISELLA, 8 July 1982, in *RRT Dec.*, 74 (1982), p. 392, n. 2.

guardian, and curator."[17] Conte a Coronata explained, "That fear is called reverential which is inflicted on us by those towards whom we are bound by a duty of piety or reverence."[18] Cappello stated, "Reverential fear is present when one is afraid of offending and displeasing those to whose authority he or she is subject and whom he or she is bound to hold in reverence and honour, such as parents and superiors, that is, ecclesiastical or secular."[19] As a consequence of this duty of homage and respect, the subject will experience a sense of shame in not obeying the will of the superior. An act of the will elicited as a result of the reverence due to the superior would naturally lack the spontaneity and freedom necessary for a free and deliberate consent.[20]

R. Funghini states, "The Code speaks of one [type of] fear. Canonists, moral theologians, and jurisprudence of Our Forum, however, distinguish common fear from reverential fear, and they attribute to this fear also the force which invalidates marriage

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[17] "Metus reverentialis est ille quo quis veretur resistere ei cui subjicitur, nempe patri, matri, socero, marito, regi, domino, praelato, tutori et curatori" (SANCTI ALPHONSI MARIAE DE LIGORIO, *Opera moralia Sancti Alphonsi Mariae de Ligorio: Theologia moralis,* ed. nova cum antiquis editionibus diligenter collata in singulis auctorum allegationibus recognita notisque criticis et commentariis illustrata, cura et studio P. LEONARDI GAUDE, vol. 4, Romae, Typis polyglottis Vaticanis, 1912, p. 199, lib. VI, tract. VI, n. 1056; see also D'ANNIBALE, *Summula theologiae moralis*, pars I, p. 104, footnote 14).

[18] "Metus reverentialis is vocatur qui nobis ab iis incutitur erga quos pietatis aut reverentiae debito ligamur" (M. CONTE A CORONATA, *De sacramentis; tractatus canonicus*, vol. 3. *De matrimonio et sacramentalibus*, Taurini, Marietti, 1945, p. 633, n. 471).

[19] "Metus reverentialis, qui habetur quando quis timet ne offensos et indignatos eos reddat, in quorum potestate est et quos reverentia et honore prosequi tenetur, uti sunt parentes et superiores quicunque seu ecclesiastici seu saeculares" (CAPPELLO, *Tractatus canonico-moralis de sacramentis*, cap. VIII, art. V, p. 588, n. 605).

[20] See PONTII, *De sacramento matrimonii tractatus*, lib. IV, cap. 5, nn. 1-2, p. 114; see also KNOPKE, *Reverential Fear in Matrimonial Cases in Asiatic Countries*, p. 5.

when it meets proper criteria."[21] He further distinguishes between common fear and reverential fear in three ways:

> a) by reason of subject, that is, of the persons, because there exists a special bond of blood, or of love, or of subjection between the person who is the victim of fear and the one who inflicts fear;
> b) by reason of object, because the evil that is feared is not the loss of temporary goods, disinheritance, and expulsion from the house, but the cessation or serious discontinuance and interruption of the existing affective relationship;
> c) by reason of means used to influence [bend] the contrary will of the person marrying, because the person inflicting the fear does not use beatings, cruelty, violence, insults, and indignations, but inappropriate and distressing entreaties.[22]

H. Ragni observes, "Besides the so-called 'common' fear, there is also another species of fear, i.e., reverential fear, which is determined solely by the trepidation of mind which the agent, who exercises power or parental authority, inflicts on the victim of fear."[23] D. Faltin distinguishes reverential fear from common fear by two factors, namely:

> a) legality, from which arises a special subjection of the subject to the legitimately constituted authority; and

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[21] "Codex de uno metu loquitur. Canonistae vero, theologi moralistae et iurisprudentia Nostri Fori metum communem a reverentiali distinguunt et huic quoque, cum qualificatus sit, vim matrimonium irritantem agnoscunt" (*Coram* FUNGHINI, 21 June 1995, in *RRT Dec.*, 87 [1995], p. 415, n. 4).

[22] "a) ratione subiecti seu personarum, quia peculiare intercedit sanguinis vel amoris vel subiectionis vinculum inter metum patientem et metum incutientem; b) ratione obiecti, quia malum quod timetur non est amissio bonorum temporalium, exhereditatio, eiectio e domo, sed exstantis relationis affectivae remissio vel gravis intermissio et interruptio; c) ratione mediorum ad flectendam contrariam nubentis voluntatem adhibitorum, quia non percussionibus, saevitiis, violentiis, contumeliis, indignitatibus utitur metum incutiens, sed importunis vexantibusque precibus" (*Coram* FUNGHINI, 21 June 1995, p. 416, n. 4).

[23] "Praeter metum sic dictum «communem» habetur alia species metus, i.e., metus reverentialis, qui unice determinatur ab illa mentis trepidatione quam in metum patientem infert metum incutiens qui potestatem vel auctoritatem parentum exercet" (*Coram* RAGNI, 1 December 1992, in *RRT Dec.*, 84 [1992], p. 606, n. 4). Following are some of the other Rotal sentences, which clearly distinguish between common fear and reverential fear: *Coram* HUOT, 24 May 1984, in ibid., 76 (1984), p. 302, n. 4; *coram* CORSO, 30 May 1990, in ibid., 82 (1990), pp. 398-399, n. 9; *coram* DE LANVERSIN, 7 November 1990, in ibid., p. 776, n. 6; *coram* PALESTRO, 18 December 1991, in ibid., 83 (1991), p. 808, n. 6; *coram* FALTIN, 6 July 1994, in ibid., 86 (1994), pp. 371-372, n. 13; *coram* FUNGHINI, 21 June 1995, in ibid., 87 (1995), p. 416, n. 4; *coram* FALTIN, 29 January 1998, in ibid., 90 (1998), p. 27, n. 7, etc.

b) affectivity, by which, as a cause, a bond of reverence is created towards those "under whose authority we are [...]."[24]

B. Lanversin distinguishes reverential fear from common fear on the basis of three reasons. He says:

> Reverential fear is distinguished from common fear chiefly for three reasons, namely,
> – due to a pre-existing relationship of the subordinate towards the superior, which exits between the victim of fear and the one inflicting it;
> – due particularly to the moral nature of the pressure exerted on the subject by the superior;
> – due similarly to the moral nature of the evil, that is, of the danger, which the subject fears, namely, the indignation of the superior.[25]

What is really meant by the "moral nature" of the pressure that is exerted on the subject or the "moral nature" of the evil, which the passive subject (*patiens*) fears? Reverential fear is a subjective experience. It exists in the perception of the one contracting marriage. The power of reverential fear is internal.[26] Even if the reality of the dreaded indignation of the authority figure is actually mild, the perception of this indignation by the contractant can be severe and of long duration. While there must be some real connection between the internal emotion and the external situation, the

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[24] "a) legalitate, ex qua oritur subiecti potestati legitime constitutae specialis subiectio; et b) affectivitate, ex qua perficitur, tanquam ex causa, ligamen reverentiae erga eos «in quorum potestate sumus» [...]" (*Coram* FALTIN, 27 April 1990, in *RRT Dec.*, 82 [1990], p. 329, n. 17); see also IDEM, 9 December 1992, in ibid., 84 (1992), p. 620, n. 9; IDEM, 6 July 1994, in ibid., 86 (1994), p. 371, n. 13; IDEM, 29 January 1998, in ibid., 90 (1998), p. 27, n. 7.

[25] "Metus reverentialis a metu communi tres potissimum ob rationes distinguitur, silicet:
– ob praeexistentem habitudinem inferioris ad superiorem, quae viget inter metum patientem et metum incutientem;
– ob moralem praesertim naturam impetus, a superiore in subditum exerciti;
– ob moralem pariter naturam mali seu periculi, quod subditus veretur, nempe superioris indignationem" (*Coram* DE LANVERSIN, 7 November 1990, in *RRT Dec.*, 82 [1990], p. 776, n. 6).

[26] See D.A. SMILANIC, "Reverential Fear," in *CLSA Proceedings*, 58 (1996), p. 285.

emotional state of the contractant can make it worse than it actually is.[27] In analyzing a matrimonial case on the ground of reverential fear, attention should be paid not only to the gravity of the indignation of the parents or of the superior, but also to the subjective perception of that gravity.[28] The "moral nature" of the pressure and of the danger is internal; it is "psychological," or "psychic," in the broad sense of the term.[29]

The specific object of reverential fear is not a particular evil threatened by the parent but the parental indignation itself. I. Parisella says, "Its [of reverential fear] specific object is, what they call, the indignation of the parents or of the superiors, which even if light by itself, can be foreseen as grave and of long duration."[30] Referring to the sentence of 27 February 1956 by P. Mattioli, Faltin speaks of the cause of reverential fear in the following manner: "Oftentimes, experience teaches us, the cause of reverential fear seems to be 'the abuse of power' on the part of those 'who truly enjoy the power' and '*in the reverence and excessive subjection*' on the part of those, who, in some way, are subjects [...]."[31]

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[27] See ibid; see also *coram* HUOT, 24 May 1984, in *RRT Dec.*, 76 (1984), p. 301, n. 3.

[28] See *coram* HUOT, 24 May 1984, in *RRT Dec.*, 76 (1984), p. 301, n. 3. We will discuss later the gravity of the object of reverential fear in detail.

[29] See SMILANIC, "Reverential Fear," p. 285.

[30] "Eius specificum, quod vocant, obiectum est parentum vel Superiorum indignatio, quae, si per se levis, praevideri potest gravis et diuturna" (*Coram* PARISELLA, 8 July 1982, in *RRT Dec.*, 74 [1982], p. 392, n. 3); see also *coram* FIORE, 16 January 1961, in *RRT Dec.*, 53 (1961), p. 6, n. 2; BEAL, Commentary on c. 1103, p. 1321.

[31] "Saepe saepius, experientia duce, causa metus reverentialis esse videtur «abusus potestatis» ex parte eorum «qui potestate re vera gaudent» et «in reverentia ac subiectione nimia, ex parte eorum, qui reapse, aliquo modo, subditi sunt» [...]" (*Coram* FALTIN, 29 January 1998, p. 27, n. 7 [italics added]; see also *coram* FALTIN, 6 July 1994, p. 371, n. 13. In both these sentences Faltin quotes the sentence *coram* MATTIOLI, 27 February 1956, in *RRT Dec.*, 48 [1956], p. 183, n. 3).

Since the basic motive for reverential fear is the reverence for one's parents or superior, it may be considered as a fear that influences an inferior to consent to a contract in deference to his or her parents or superior. These characteristics of affection and reverence differentiate between common fear and reverential fear.[32] In a situation in which a boy or a girl can avoid the indignation of the parents only by marrying, the resulting fear can compel him or her to choose an undesirable marriage. Therefore, any person who enters into marriage, which he or she would otherwise, under normal circumstances, not contract, owing to a desire not to displease or anger his or her parents or guardians, is said to be dominated naturally by reverential fear. Hence, in such a marriage a boy or a girl is unable to elicit valid consent because of the fear of offending his or her parents or guardians.[33] Nevertheless, to invalidate marriage, reverential fear should have all the elements mentioned in c. 1103 (*CCEO*, c. 825).

3.1.2.1 – Elements of Fear/Reverential Fear

The Supreme Legislator has not formulated a separate canon on reverential fear. Since it is a species of fear, all the elements of fear are applicable to reverential fear as well.[34] Ragni says, "The ground of force and fear in the new Code of Canon Law is governed by c. 1103, which determines the constitutive elements for the fear that invalidates marriage."[35] He continues:

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[32] See OJEMEN, *Psychological Factors in Matrimonial Consent*, p. 240.

[33] See SANGMEISTER, *Force and Fear as Precluding Matrimonial Consent*, p. 140.

[34] See VILADRICH, Commentary on c. 1103, p. 1427.

[35] "Caput vis et metus in novo Codice Iuris Canonici regitur a can. 1103, qui elementa constitutiva pro metu matrimonium invalidante dictat" (*Coram* RAGNI, 1 December 1992, p. 606, n. 3).

> For, not any fear impedes the validity of matrimonial consent but only that which is indeed proven to be qualified, namely, when: a) it is at least relatively grave (as from the circumstances, age, sex, and similar factors); b) from outside, that is, from an agent, who himself or herself is not the victim of fear and who is a free person, and moreover; c) this fear is irresistible, i.e., unavoidable without the celebration of the unwanted marriage. Moreover, as is known, under the present Code of Canon Law, any fear inflicted in relation to marriage, that is, 'even the fear inflicted not intentionally' (cf. c. 1103), is considered unjust.[36]

From the above description, it is clear that the gravity, the externality, and the unavoidable nature are the specific elements of any fear invalidating matrimonial consent. We should, furthermore, bear in mind that these elements are never to be taken in isolation; that is, fear that includes the presence of one element without the others will still be considered insufficient for the invalidating matrimonial consent. All elements must necessarily coexist.[37]

The basic element of reverential fear is that the inflicting party is the party's parent, superior, or a "significant other." Because of being subordinate, the party owes obedience and reverence to the parent, superior, or the significant other. In that context, the gravity, externality, and unavoidability of fear are to be specifically evaluated taking into consideration various factors such as education, maturity of the passive subject, level of affection existing between the person inflicting (*incutiens*) fear and its victim, and other related cultural situations.[38]

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[36] "Nam, non quilibet metus validitatem consensus matrimonialis impedit, sed tantummodo ille qui qualificatus reapse probatur, videlicet quando: a) sit saltem relative gravis (uti ex circumstantiis, aetate, sexu et similibus); b) ab extrinsexo, seu ab auctore qui non sit ipse metum patiens quique fuerit persona libera, ac praeterea; c) qui exstet metus insuperabilis, i.e., inevitabilis absque ipsius invisi coniugii celebratione. Praeterea, uti notum est, sub hodierno Iuris Canonici Codice quicumque metus relate ad matrimonium incussus, seu 'etiam haud consulto incussus' (cf. c. 1103), iniustus aestimatur" (ibid.).

[37] See ODILICHUKWU, *Force and Fear in Relation to Matrimonial Consent*, p. 88.

[38] See VILADRICH, Commentary on c. 1103, p. 1427.

3.1.2.1.1 – Gravity of Fear/Reverential Fear

We read in c. 1103 (*CCEO*, c. 825) that the mere presence of fear does not invalidate matrimonial consent, but the fear should be grave enough to justify the invalidity of the action. According to T. Sànchez, there are five conditions for fear to be grave.[39] However, P. Gasparri reduces them to two: "[...] namely, that the impending or future evil is grave for the particular person who is afraid, and that this person is convinced that this evil is in fact threatening him or her; otherwise the fear is slight."[40]

Certainly, the gravity of fear required could be rather difficult to measure. What could be the cause of great trepidation in one person may not be sufficient to cause grave fear in another. Canonists used to distinguish between two levels of fear: the absolutely grave fear and the relatively grave fear. J.W. Dohney points out that fear is considered absolutely grave "if the evil threatened or feared is of such a nature that it is considered by all men as an absolutely serious harm such as death, serious mutilation, slavery, exile, long imprisonment, serious infamy, disinheritance, and the like."[41] Whereas, fear is relatively grave "if it is caused by an evil not ordinarily viewed as objectively grave, but

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[39] See T. SÀNCHEZ, *De sancto matrimonii sacramento disputationum tomi tres*, Norimbergae, Sumtibus Jo. C. Lochneri, 1706, lib. IV, disp. I, n.10.

[40] "[...] scilicet ut malum instans vel futurum sit grave pro illa persona quae timet, et ut haec persona persuasum habeat illud malum sibi revera imminere; secus metus est levis" (P. GASPARRI, *Tractatus canonicus de matrimonio*, cura et studio Petri Card. Gasparri concinnatus, Ed. nova ad mentem Codicis I. C., vol. 2 [Città del Vaticano], Typis polyglottis Vaticanis, 1932, cap. IV, art. II, p. 55, n. 846).

[41] DOHENY, *Canonical Procedure in Matrimonial Cases*, vol. 1, p. 911. The fear caused by any of the above mentioned dangers is called absolutely grave fear, for not even a man of average robust constitution could ordinarily escape from the serious influence, which it normally exercises on the mind especially with regard to choices or decisions to be made. See also W. CONWAY, *Problems in Canon Law: Classified Replies to Practical Questions*, Westminster, MD, Newman Press, 1957, p. 221; F. DELLA ROCCA, *Manual of Canon Law*, Milwaukee, Bruce, 1959, p. 292.

which viewed in relation to an individual is subjectively grave because of some peculiar disposition of mind, temperament, or training."[42] Therefore, the gravity is to be measured and appraised not absolutely, but relatively to the person affected by fear. However, in both cases, the subject must have been so weakened by the threat or evil that he or she was not in a position to resist easily because of timidity and absence of help.[43] Thus, if it is proved that a certain exterior action by another person has unduly interfered with the freedom of choice of an individual to choose and consent, the marriage thus contracted would be invalid.

Reverential fear is a relatively grave fear. Regarding the gravity of reverential fear, Gasparri states:

> '[...] it is called, therefore, reverential fear when someone fears the indignation of the father, the master, etc., which is grave evil although [...], beatings and threats are absent. And, if this fear is grave and of long duration in the future, it is, therefore, grave evil, and it will be regarded not without reason as grave fear [...]'. Thus, indeed, such an indignation by itself is not presumed in the external forum as a grave evil not even with respect to a girl unless circumstances suggest otherwise, or something else has occurred, e.g., quarrels, threats, unreasonable and very pressing requests, etc.[44]

Cappello comments on the relatively grave nature of reverential fear as follows:

> Authors dispute whether reverential fear is slight or grave. It is *per se* slight, for the confusion and annoyance, which the subordinate suffers solely on account of the offence and indignation of the Superior, does not constitute *de se* a grave evil. On the other hand, if the offence and indignation of this kind is *grave* either in itself or from the circumstances, for example, if there are arguments, fights, unreasonable requests

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[42] DOHENY, *Canonical Procedure in Matrimonial Cases*, vol. 1, p. 911.

[43] See OJEMEN, *Psychological Factors in Matrimonial Consent*, p. 246.

[44] "'[...] itaque timor reverentialis dicitur, cum aliquis patris, domini, etc., indignationem, quae profecto malum est, metuit, licet absint [...] verbera aut minae. Quae si gravis et diuturna futura sit, malum grave ideoque et metus gravis non immerito existimabitur [...]'. Ita quidem, sed in foro externo non praesumitur eiusmodi indignatio esse malum grave neque pro puella, nisi circumstantiae aliud suadeant, aut accesserit aliquid aliud, e.g., iurgia, minae, preces importunae et instantissimae, etc."(GASPARRI, *Tractatus canonicus de matrimonio*, vol. 2, cap. IV, art. II, p. 57, n. 848).

> (namely, pressing and of long duration), complaints, etc., the fear is considered grave. If there is fear of some notable harm, for example, disinheritance, expulsion, or beatings or threats, then there is simply grave fear [...]. In the external forum, reverential fear is *presumed* to be light; nevertheless, *especially in girls*, it easily becomes grave from the circumstances.[45]

In his sentence of 14 March 1989, Masala states:

> According to common doctrine and the constant jurisprudence of ecclesiastical courts, this kind of fear is slight of its nature. But it is considered grave if it is qualified, that is, accompanied by circumstances, which in the case suggests that the superior's indignation is a grave evil. This occurs whenever the son or daughter, because of pressures from parents through repeated and fastidious pleadings or continuous arguments, which leave practically no room for freedom, and this is very hard to tolerate, fears that the parents' indignation would last a long time.[46]

Stankiewicz explains the gravity of reverential fear as follows:

> Furthermore, one is not to ignore that in reverential fear, it is not a question of an absolute gravity of an imminent evil, but only of a relative one, which depends both on time-factors affecting the situation of the family life, where paternal indignation is effective, as well as on the psychic nature of the person inflicting fear and of the person experiencing it [...], and finally on the degree of familial, economic and social subjection, and dependence of the person experiencing the fear on the one inflicting it.[47]

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[45] "Disputant AA. num metus reverentialis sit levis aut gravis. *Per se* est levis, quia confusio et molestia, quam patitur inferior ob solam offensionem et indignationem Superioris, non constituit *de se* malum grave. At si huiusmodi offensio et indignatio sit *gravis* vel in se ipsa vel ex adiunctis, puta si accedant iurgia, rixae, preces importunae (scil. instantes et diuturnae), querimoniae etc., metus censetur gravis. Si denique timetur notabile damnum, ex. gr. exheredatio, expulsio, aut verberationes vel minae adsint, tunc est metus gravis simpliciter [...]. Timor reverentialis in foro externo *praesumitur* levis; tamen, *praesertim in puellis*, facile ex adiunctis gravis fit" (F.M. CAPPELLO, *Tractatus canonico-moralis de censuris iuxta Codicem iuris canonici*, Ed. 4a, emendata et aucta, Taurini, Romae, Marietti, 1950, pars I, cap. II, art. III, p. 52, n. 58).

[46] "Id genus metus iuxta communem doctrinam et constantem iurisprudentiam tribunalium ecclesiasticorum natura sua est levis, habetur vero gravis si qualificatus, seu stipatus adiunctis, quae suadeant indignationem superioris in casu esse malum grave. Hoc obtinet si filius, ex instantibus parentum repetitis ac fastidiosis precibus, iurgiisve continuis, quae locum vix relinquunt libertati, quaeque durum est tolerare, timet parentum diuturnam fore indignationem" (*Coram* MASALA, 14 March 1989, in *RRT Dec.*, 81 [1989], p. 212, n. 2).

[47] "Praetermittendum quoque non est in metu reverentiali non agi de gravitate absoluta imminentis mali, sed relativa tantum, quae pendet tum a temporis adiunctis in condicionem vitae familiaris influentibus, ubi paterna indignatio effectum suum sortitur, tum ab indole psychica metum incutientis et metum patientis [...], tum demum a gradu subiectionis et dependentiae familiaris, oeconomicae et socialis metum patientis a metum incutiente" (*Coram* STANKIEWICZ, 25 October 2001, in *Forum*, 17 [2006], p. 158, n. 9).

In order to understand the gravity of reverential fear, therefore, one ought to examine carefully the previously mentioned circumstances. The gravity of reverential fear sufficient to invalidate consent must be proven in a marriage nullity case. However, the proof of the gravity of reverential fear is not an easy task because, as Stankiewicz observes, "It is, therefore, evident to everyone that the proof of reverential fear, which might be qualified, that is, invalidating marriage, is more difficult than that of common fear."[48] We will have a closer look at the gravity of reverential fear when we discuss its invalidating force.

3.1.2.1.2 – Externality of Fear/Reverential Fear

The invalidating force of grave fear must come from a source outside the affected person (see c. 1103; *CCEO*, c. 825). The source of fear must not be a natural or a supernatural cause.[49] The fear cannot result from scrupulosity, a sense of moral or social obligation, or some other internal psychological process.[50] The source of fear must be a human agent and not some impersonal cause.[51] Funghini says, "It is required that fear is inflicted from outside, i.e., by a free cause, that is, by a human agent. Only fear, which is inflicted under the pressure of another person's will, invalidates marriage. Fear from

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[48] "Nemo est igitur qui non videat probationem metus reverentialis, qui sit qualificatus seu matrimonium irritans, difficiliorem esse quam metus communis" (*Coram* STANKIEWICZ, 24 June 1982, in *RRT Dec.*, 74 [1982], p. 369, n. 7).

[49] See CONTE A CORONATA, *De sacramentis*, vol. 3, p. 631, n. 469. Natural causes are exemplified in a danger of death, in exposure to extreme poverty, in the risk of infamy, in the hazard of imprisonment, etc. A supernatural cause is evinced through the fear of hell or a troubled conscience, which harkens to past sins or injustices (see ibid.).

[50] See BEAL, Commentary on c. 1103, p. 1320. Such self-inflicted fears are not what we are referring to here. They could invalidate matrimonial consent but not under the present ground of nullity in consideration but under c. 1095, 2° (*CCEO*, c. 818, 2°).

[51] See ibid.

within, in which the evil to be feared is spontaneously perceived by the subject himself or herself, is excluded."[52] The free human agent may be the parents, the relatives, or anyone in authority.[53]

With respect to the external cause of reverential fear, it is necessary for the one who inflicts fear to hold a position of superiority that involves effective influence, authority or real power over the victim of fear.[54] Moreover, there should be a real relationship between the superior and the subject that is not merely transient but sufficiently habitual, stable, and inescapable in order to wield effective influence on the subordinate during the formation of consent. T.G. Doran says:

> For the very existence of reverential fear, however, the following are required: 1) the aforesaid actual relationship of subjection or of subordination (e.g., between a father and a child, a teacher and a student, a guardian and a ward, a commander and a soldier); 2) a well founded fear that one would incur both grave and lasting indignation of the superior on account of the refusal to marry; 3) the actual coercion inflicted on the subordinate by the superior by using all those means which are able to give rise to a state of disturbance in the subordinate's mind.[55]

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[52] "Requiritur ut ab extrinseco, seu a causa libera, i.e. ab homine metus inferatur. Metus, qui matrimonium irritat est tantum ille qui sub pressione alienae voluntatis incutitur. Excluditur metus ab intrinseco, in quo malum timendum ab ipso subiecto sponte percipitur" (*Coram* FUNGHINI, 21 June 1995, p. 417, n. 5); see also *coram* STANKIEWICZ, 27 February, 1992, in *RRT Dec.*, 84 (1992), p. 119, n. 30; *coram* RAGNI, 1 December 1992, p. 606, n. 3, etc.

[53] See KNOPKE, *Reverential Fear in Matrimonial Cases in Asiatic Countries*, p. 28.

[54] See VILADRICH, Commentary on c. 1103, p. 1426.

[55] "Ut autem metus reverentialis exsistat, requiruntur: 1) praedicta actualis relatio subiectionis subordinationisve (v.g. inter gentitorem et filium, magistrum et discipulum, tutorem et pupillum, tribunum et militem); 2) metus bene fundatus ne quis incurrat in indignationem et gravem et duraturam superioris ob nuptiarum recusationem; 3) actualis coercitio iniuncta inferiori a superiore adhibitis omnibus iis mediis quae gignere valent statum perturbationis in mente inferioris" (*Coram* DORAN, 28 February 1991, in *RRT Dec.*, 83 [1991], p. 130, n. 12).

All this implies that a superior-subordinate relationship forms an environmental context or situation that may affect a person's life.[56]

3.1.2.1.3 – Grave Fear/Reverential Fear Unintentionally Inflicted

Canon 1103 (*CCEO*, c. 825) says, "A marriage is invalid if entered into because of force or grave fear from without, even if unintentionally inflicted [...]." This norm implies that whatever the force from which a grave fear arises, even if it is not directed purposely at marriage, can render a marriage invalid if it is the immediate cause of marriage.[57] This is known as indirect fear. It is sufficient that fear be grave, be from some external and free agent and that marriage is the only way to liberate oneself from the impending evil. The one exerting the force that leads to grave fear need not be aware of the consequences of his or her actions. What is critical is that, even unintentionally, the person's actions result in grave fear on the part of the victim.[58]

Since reverential fear does not require any particular element or elements that is/are different from those indicated in c. 1103 (*CCEO*, c. 825), the regular requirement of fear to invalidate consent favours reverential fear as well. Such grave reverential fear has the invalidating force when the parents do not raise even threats with the direct purpose of forcing matrimonial consent from a son or a daughter.[59]

3.1.2.1.4 – Unavoidability of the Choice of Marriage

The grave fear that invalidates marriage is one by which "a person is compelled to

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[56] See VILADRICH, Commentary on c. 1103, p. 1427.

[57] See OJEMEN, *Psychological Factors in Matrimonial Consent*, p. 249.

[58] See BEAL, Commentary on c. 1103, p. 1321; see also R. BROWN, *Marriage Annulment in the Catholic Church*, Suffolk, Kevin Mathew Ltd., 1990, pp. 37-38.

[59] See VILADRICH, Commentary on c. 1103, p. 1429.

choose marriage in order to be free from it" (see c. 1103, *CCEO*, c. 825). Thus, to invalidate the marital consent, it is required that the impending evil cannot be resisted or avoided, either in reality or in the mind of the victim, through any other way than marriage.[60] Marriage is entered into as a means of escaping the threat or the indignation of the parents or of the superior. Grave fear becomes not merely an occasion but the cause of the consent to marriage.[61] It is not necessary that the person be compelled by fear to marry a particular person; it is sufficient that he or she be compelled by fear to contract an unwanted marriage, even if he or she is free in the choice of a partner.[62] This principle is supported by H.A. Ayrinhac, who says, "Nor is it required [...] that a person be forced to marry a certain party, but simply that he should be reduced to choose marriage in order to free himself from fear."[63]

The principle of unavoidability of marriage is applied to reverential fear as well. In a situation of reverence and obedience, the subordinate person feels obliged to choose marriage as the only means of avoiding the parental indignation. If the subject were not in a position of subordination, the same evil, that is, indignation could not have caused reverential fear or the consequent unavoidable choice of marriage to escape intimidation.

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[60] See CONTE A CORONATA, *De sacramentis*, vol. 3, p. 641, n. 479.

[61] See DELLA ROCCA, *Manual of Canon Law*, p. 293.

[62] For example, a person whose parents demand that he marry by the age of twenty-five or be deprived of a substantial inheritance may have no choice but to marry to avoid financial loss, but still be free in the choice of the person he marries. See BEAL, Commentary on c. 1103, p. 1321.

[63] H.A. AYRINHAC, *Marriage Legislation in the New Code of Canon Law*, rev. and enl. by P.J. LYDON, New York, Benziger, 1939, p. 207.

3.1.2.2 – Invalidating Force of Reverential Fear in Matrimonial Consent

We have already noted that reverential fear is slight by nature and, therefore, it does not *per se* invalidate matrimonial consent. However, if a boy or a girl, because of a relationship of reverence, subjection, and dependence, is so pressured into complying with the paternal expectation, advice or command to contract marriage or to marry a specific person, then one is consenting to such a marriage unwillingly. In other words, such a marriage is invalid.

Canonical doctrine and jurisprudence distinguishes two types of reverential fear, namely, mere (pure) reverential fear and qualified reverential fear. This distinction is based on the degree of the invalidating force or influence of reverential fear on matrimonial consent.[64]

3.1.2.2.1 – Mere Reverential Fear

Pure or mere reverential fear derives its influence solely from the deference and reverence which a young man or woman has for the parents or for a superior.[65] Since the sense of respect in a child is a perfectly normal factor, it can rarely happen that grave fear would be involved in it. Such a fear is simply a condition of mind, purely consequent upon the normal relationship of a child to one's own parents or of an inferior to one's

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[64] See, for example, *coram* GRAZIOLI, 26 November 1936, in *RRT Dec.*, 28 (1936), p. 705; see also KNOPKE, *Reverential Fear in Matrimonial Cases in Asiatic Countries*, pp. 62-69; ODILICHUKWU, *Force and Fear in Relation to Matrimonial Consent*, pp. 109-119. Since a classification of types and degrees of reverential fear involves the basic mental attitude of fear, it is very difficult and more or less impractical to insist upon a rigid demarcation of types.

[65] See KNOPKE, *Reverential Fear in Matrimonial Cases in Asiatic Countries*, p. 63; SANGMEISTER, *Force and Fear as Precluding Matrimonial Consent*, pp. 140-141.

own superior.[66]

In the case of children, when time comes for them to select their partners in marriage, parents and guardians consider it their responsibility to guide their children with advice, persuasions, and even moderate rebukes[67] against contracting an imprudent marriage, especially when they are still very young and immature. The suggestions of the parents can lead their children to make a better choice. If the children accede, it is considered normal, insofar as obedience is due to the parent's guidance, and this is customary in itself.[68] Here, marriage is to be understood of a child who, acknowledging the guidance of the parents, accedes to their wish immediately or with only some brief hesitation. There is no grave reverential fear involved in it.[69] The Second Vatican Council states, "It is the duty of the parents and the guardians to guide young people with prudent advice in the establishment of a family; their interest should make young people listen to them eagerly; but they should beware of exercising any undue influence, directly or indirectly, to force them into marriage or compel them in their choice of partners."[70]

Mere reverential fear may have its own degrees. The lowest degree is that which involves only the sense of embarrassment or shame resulting from the refusal to obey the

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[66] See ODILICHUKWU, *Force and Fear in Relation to Matrimonial Consent*, pp. 109-110; KNOPKE, *Reverential Fear in Matrimonial Cases in Asiatic Countries*, p. 63; SANGMEISTER, *Force and Fear as Precluding Matrimonial Consent*, p. 143.

[67] See *coram* DE LAVERSIN, 13 December 1989, in *RRT Dec.*, 81 (1989), p. 757, n.7.

[68] See *coram* DAVINO, 18 April 1991, in *RRT Dec.*, 83 (1991), p. 271, n. 7.

[69] See *coram* WYNEN, 7 August 1937, in *RRT Dec.*, 29 (1937), p. 603, n. 4.

[70] "Parentum vel tutorum est se iunioribus, in fundanda familia, prudenti consilio, ab eis libenter audiendo, duces praebere, caventes tamen ne eos coactione directa vel indirecta ad matrimonium ineundum aut ad electionem compartis adigant" (*GS*, 52, in *AAS*, 58 [1966], p. 1073).

parents or the superiors. The shame or embarrassment experienced in offending or grieving superiors or parents, although an evil affecting the person, causes but a minor or slight degree of reverential fear. The higher degree is the fear of causing sadness, sorrow, displeasure, or offence to the parents or to one's superior. Strictly speaking, a real fear can hardly be said to be present here. The highest degree is the fear of the indignation or anger of one's parents or superiors at the refusal to obey their wishes. [71] As noted earlier, reverential fear *per se* is slight. For, the harm suffered by a son or a daughter because of paternal offence, sorrow, indignation or anger, quickly vanishes like vapour in the family circle.[72] Therefore, in general, the three types of *mere* reverential fear connote the presence of only a slight fear and, as a result, it does not invalidate matrimonial consent. However, once the indignation becomes prolonged and serious, so that it exists as a real threat to the peace of mind of the child or the subordinate, then fear becomes grave, and it will no longer be *mere* reverential fear.[73]

3.1.2.2.2 – Qualified Reverential Fear

As much as reverential fear is natural and normal, it can easily give rise to another higher degree of fear, considered grave and capable of overwhelming the will of a child or a subordinate, and thereby invalidating matrimonial consent. Thus, when a *mere* reverential fear is aggravated by other factors, there is qualified reverential fear. Hence, qualified reverential fear can be explained as *mere* reverential fear that is intensified by

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[71] See SANGMEISTER, *Force and Fear as Precluding Matrimonial Consent*, p. 141; KNOPKE, *Reverential Fear in Matrimonial Cases in Asiatic Countries*, p. 63.

[72] See *coram* STANKIEWICZ, 25 October 2001, p. 156, n. 8.

[73] See KNOPKE, *Reverential Fear in Matrimonial Cases in Asiatic Countries*, p. 64.

threats, beatings, repeated pleadings, or vexations. This can then change the *mere* fear into grave fear, whether absolute or relative.[74]

Beatings, threats, whether implicit or explicit, and ill treatment can qualify reverential fear, and make it grave, even though they all may not be absolutely serious in themselves. However, if threats are grave in themselves, the resulting fear is both reverential and common, and, in this case, the gravity of fear can be more easily established. In this situation, therefore, there are two evils, namely, the indignation and the threats from the parents.[75]

Even in the absence of threats, simple but prolonged indignation, accompanied by annoying demands, constant pleas, and repeated requests from the parents or from a superior can make a child uncomfortable, fearful, and this can arouse grave fear and trepidation in the child. This can force a person's will to choose marriage, which under normal circumstances that person would not do. This is supported by Stankiewicz, who states:

> Wherefore, canonical doctrine and jurisprudence unanimously teach that reverential fear, arising from the indignation of parents or superiors, can also be qualified as grave even if there are no beatings or threats, that is to say, if the indignation 'were to be grave and of long duration', because then it both constitutes a serious harm and 'will be considered not without reason as grave fear' [...]. And this is so, because in *qualified reverential fear* an imminent and serious harm, which is different from parental indignation, itself is not necessarily required; 'for this can be serious and very grievous harm' [...].[76]

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[74] See ODILICHUKWU, *Force and Fear in Relation to Matrimonial Consent*, p. 110.

[75] See *coram* CAIAZZO, 15 March 1939, in *RRT Dec.*, 31 (1939), p. 150, n. 6; see also WRENN, *The Invalid Marriage*, p. 165; KNOPKE, *Reverential Fear in Matrimonial Cases in Asiatic Countries*, pp. 69-70.

[76] "Quare doctrina et iurisprudentia canonica omnium consensu docent metum reverentialem, ex parentum vel superiorum indignatione exortum, etiam gravem qualificari posse, licet absint verbera vel minae, si nempe indignaria 'gravis et diuturna futura sit', quia tunc et malum grave constituit et 'metus gravis non immerito existimabitur' [...]. Idque obvenit, quia in *metu reverentiali qualificato* necessario haud requiritur malum imminens et grave diversum ab

It is about such a situation that Sànchez asks, "Which firm or prudent person would not consider as a grave evil always to face a hostile father or man, or some other person, on whom he depends and with whom he has to deal constantly?"[77] The pleas, entreaties, etc. involved must be repeated, sufficiently frequent, and unreasonable enough to cause grave fear. An occasional plea or an isolated entreaty would not be sufficient to cause the pressure on the will that would constitute grave fear.[78] However, Stankiewicz adds that the factors which cause qualified reverential fear are not *per se* grave. Therefore, he says:

> Hence, it is necessary that there are absolute commands, precepts, or unreasonable insistence of parents which so harass the child's mind, that in order to free him or her self from them, he or she is forced to choose marriage, lest, due to his or her manifest reluctance, he or she is overwhelmed by his or her parent's grave and lasting indignation without any hope of future reconciliation with them.[79]

If a command is imperious and stated with severity, it amounts to a demand which would suggest very strongly that unpleasant consequences will follow its non-compliance. Even when the command is not repeated, the child may fear the resultant anger, which he or she is sure will follow because the child knows that the parents are

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ipsa parentum indignatione; 'haec enim potest esse grave et molestissimum malum' [...]" (*Coram* STANKIEWICZ, 25 October 2001, p. 158, n. 9).

[77] "Quis enim vir constans, aut prudens non reputabit grave malum, semper coram oculis habere infensum patrem aut virum, aut alium a quo pendet et cum quo semper versaturus est?" (SÀNCHEZ, *De sancto matrimonii sacramento*, lib. IV, disp. IV, n. 14).

[78] See *coram* FLORCZAK, 9 January 1922, in *RRT Dec.*, 14 (1922), p. 4, n. 6; *coram* GRAZIOLI, 21 January 1937, in ibid., 29 (1937), p. 41, n. 5; *coram* HEARD, 25 July 1939, in ibid., 31 (1939), p. 459, n. 2.

[79] "Inde accedant oportet parentum absoluta imperia, praecepta vel instantiae importunae animum filii adeo vexantia, ut is ad sese liberandum ab illis eligere cogatur matrimonium, ne propter manifestam reluctantiam suam genitorum indignatione eaque gravi ac diuturna opprimatur absque ulla spe futurae reconciliationis cum eis" (*Coram* STANKIEWICZ, 25 October 2001, p. 159, n. 9).

usually determined to carry out their plans.[80] If the parents or superiors are strong-willed and insist on one obeying their command, such an absolute command will be more effective than repeated requests or unreasonable demands.[81]

However, today's children have a different concept of parental authority. Therefore, paternal indignation does not seem to have much influence on the children's choices.[82] As J.J. García Faílde says, "In the present-day situations, where the ties of parental authority and filial subjection have been loosened, the presumption of reverence on the part of subordinates seems to have turned into a presumption of dependence on the part of the elders in submission to subordinates."[83] In such a situation, for reverential fear arising from the indignation of the parents or superiors to be grave enough to invalidate matrimonial consent, it should be qualified by commands, unreasonable demands, quarrels, pleas, threats, entreaties, and the like.[84]

Apart from reverential fear, when one decides to contract marriage in compliance with the wishes of one's parents or superior, but there is no threat or danger of grave indignation from them, one simply acquiesces to their wishes or advice in order to please them. In acquiescing to their decision, the subject intends to continue enjoying their care,

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[80] See P. CIPROTTI, "Iurisprudentia S.R. Rotae de metu ex parentum iussu," in *Apollinaris*, 14 (1941), p. 87.

[81] See ibid., p. 86.

[82] See *coram* STANKIEWICZ, 25 October 2001, p. 158, n. 9.

[83] "In locis hodiernis in quibus, laxatis vinculis auctoritatis parentum et subiectionis familiorumfamilias, praesumptio reverentiae subditorum videtur conversa in praesumptionem dependentiae maiorum in obsequium subditorum" (J.J. GARCÍA FAÍLDE, "Observationes novae circa matrimonium canonicum simulatum et coactum," in *Periodica*, 75 [1986], p. 204).

[84] See GASPARRI, *Tractatus canonicus de matrimonio,* p. 57, n. 848; see also *coram* STANKIEWICZ, 25 October 2001, pp. 157-158, n. 9.

affection, benevolence, and love.[85] Stankiewicz says that complying with a person's wishes is not the same as doing something most willingly.[86] The reason is that, as Wynen says, "Certain reluctance is implied in the phrase 'complying with a person's wishes'."[87] Stankiewicz, however, adds that one, who complies with parental wishes, deliberately and freely contracts marriage: "For such a person makes his or her own his or her parents' arguments in favour of marriage and submits self to their advice because of the affection, trust, love, and some other reasonable cause, not to distress them by some grief; thus in a certain sense such a person willingly renouncing his or her own freedom in choosing the partner [...]."[88] In such cases, reverential fear may not have the force to invalidate matrimonial consent.

The invalidating reverential fear, therefore, should have all the elements already discussed, such as gravity, externality, and causative nature. Such a fear considered in light of the character, the situation, and the trepidation of mind of the subject, would prevent a true matrimonial consent, and, consequently, would render the marriage invalid. In order to determine the invalidating force of reverential fear, therefore, all aspects related to it, namely, the indignation of the parents or of the superior, the sex, age,

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[85] See J. RODRÍGUEZ GONZÁLEZ, *La nulidad del matrimonio por miedo en la jurisprudencia pontificia*, Vitoria, Editorial ESET, 1962, p. 182; see also *coram* STANKIEWICZ, 25 October 2001, p. 159, n. 10.

[86] See *coram* STANKIEWICZ, 25 October 2001, p. 159, n. 10.

[87] "In ipsa phrasi 'morem gerere' continetur aliqua reluctantia" (*Coram* WYNEN, 28 June 1952, in *RRT Dec.*, 44 [1952], p. 385, n. 3).

[88] "Is enim parentum argumenta in favorem nuptiarum sua facit eorumque consilio sese remittit propter affectum, fiduciam, dilectionem aliamque rationabilem causam, ne eos aliquo moerore afficiat, consulto igitur propriam libertatem in seligenda comparte quodammodo abdicando [...]" (*Coram* STANKIEWICZ, 25 October 2001, p. 160, n. 10).

education, psychological condition, maturity, degree of affection, and the social and cultural background of the subject must be carefully considered and evaluated.[89]

3.2 – CULTURAL FACTORS THAT UNDERLIE REVERENTIAL FEAR

We have already discussed that the respect for the explicit or implicit wishes of parents and superiors induces children and subordinates to do or omit something for fear of offending them by acting contrary to their will. This kind of fear is reverential in nature. This is a cultural phenomenon and is prevalent in Middle Eastern and South East Asian countries. Therefore, there is a variety of cultural factors that induce reverential fear. These factors vary from culture to culture. Our focus in this section will be on those cultural factors that are rooted in the Indian family system and give rise to reverential fear.

3.2.1 – Parental Authority

The relationship between parents and children is of divine origin. Parenthood is a divine institution and not a creation of a state. God instituted parenthood in order that children might be born (Gen 3: 16) and cared for properly until they are old enough to take care of themselves (Eph 6: 4). Parents are responsible for their children's spiritual as well as temporal welfare. Therefore, when they exercise their parental duty, they exert certain authority over their children.

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[89] No son or daughter can claim to have been subjected to reverential fear if it can be proved that he or she has neither reverence nor affection nor sense of obedience for his or her father, mother, or any significant other. A son or daughter who is financially, socially, and psychologically independent, may find it difficult to prove that he or she has been subjected to some reverential fear in eliciting his or her matrimonial consent. See O. GIACCHI, *Il consenso nel matrimonio canonico*, Milano, A. Giuffrè, 1968, pp. 243, 251-253; *coram* FERRARO, 22 February 1972, in *RRT Dec.*, 64 (1972), p. 107, n. 7; IDEM, 11 April 1972, in ibid., p. 168, n. 6; see also *coram* PALESTRO, 18 December 1991, in ibid., 83 (1991), p. 809, n. 5.

Parental authority has deep roots in the culture of the Indian society. The Christian community in India is not immune from this cultural experience. The patriarchal system of family still prevails in India. According to this system, the father has power over all members of his family.[90] Since the age-old, extended family system has given way today to nuclear families, a mother now wields more power than did her predecessors. Now, the wife complements her husband in the everyday life of the family.[91]

In such a system, until they are married, children in a family remain subject to their parents.[92] They remain under the authority of their parents even when they have reached adulthood. Parental authority is so strong that the parents make decisions even for their adult children.[93] This is evident in the system of arranged marriages in India. A marriage case, originating from Kerala, India, judged in the third instance at the major archiepiscopal ordinary tribunal of the Syro-Malabar Church, *coram* Thoompunkal on 4 September 2003,[94] typifies the parental power and usual filial respect and obedience. The marriage in question took place on 29 June 1987. It was an arranged marriage, but the conjugal life lasted about 45 days only.

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[90] See DEVANANDAN and THOMAS, *Changing Patterns of Family in India*, p. 10; see also L.S. CAHILL, *Family: A Christian Social Perspective*, Minneapolis, MN, Fortress Press, 2000, pp. 23-28.

[91] See KANIAMPADICKAL, *Evangelization of the Family and the Church's Magisterium*, p. 39.

[92] See ISAAC, *The Free Choice of the Marital State of Life*, p. 28.

[93] See M.C. PERERA, "The Family and Society in Asia: Challenges, Problems and Perspectives of the Evangelising Mission of Religious," in *Omnis terra*, 17 (1983), p. 41.

[94] See MAJOR ARCHIEPISCOPAL ORDINARY TRIBUNAL OF THE SYRO-MALABAR CHURCH, *coram* THOOMPUNKAL, 4 September 2003, Prot. no. MAT 362/2003, unpublished photocopy. The names of the parties and of the places are excluded in this analysis in order to protect confidentiality.

Ten years later, the man submitted a petition to the eparchial tribunal on 8 January 1998 requesting that his marriage be declared null and void on the ground of inability to assume the essential obligations of marriage due to causes of a psychic nature (*CCEO*, c. 818, 3°; *CIC*, c. 1095, 3°) on the part of the respondent. The first instance tribunal pronounced an affirmative sentence on the said ground on 17 October 2001. The second instance court of metropolitan tribunal of Ernakulam-Angamaly submitted the case to an ordinary examination and on 10 July 2002 issued a negative sentence.

Against the decision in the second instance, the petitioner appealed to the major archiepiscopal tribunal and the case was admitted to an ordinary trial. During the session of joinder of issues the case was concorded as to whether there is evidence for the nullity of marriage on the grounds of defect of consent due to (1) inability to assume the essential obligations of marriage on the part of the respondent (c. 818, 3°; *CIC*, c. 1095, 3°); (2) inability to assume the essential obligations of marriage on the part of the petitioner; (3) force or grave fear (c. 825; *CIC*, c. 1103) on the part of the petitioner and (4) force or grave fear on the part of the respondent. The last three grounds were added to be dealt with as if in first instance (c. 1369; *CIC*, c. 1683). The court of third instance answered on 4 September 2003 in negative to the first three grounds and in affirmative to the fourth ground, that is, the nullity of the marriage in question is evident only on the ground of force or grave fear on the part of the respondent. This decision confirms the negative sentence in the second instance.

While interrogating the respondent, the tribunal of the third instance found that the marriage ended mainly because of the respondent's unwillingness to cooperate in conjugal life because she did not like the petitioner. In fact, the respondent did not want

to marry the petitioner, but she was forced by her father to marry him. She declared that she wanted to wait for another two years for marriage. She stated that she had to obey her father who had compelled her to give consent to that marriage. She further stated that her father had forced her to marry the petitioner because of his family's financial status. Though she had told her mother and the oldest brother about her dislike toward the petitioner, they were unable to say anything against her father because they themselves were afraid of him.

Although the respondent had stated during her first instance hearing that she liked the marriage, during the third trial she corrected her statement saying that she had meant that she raised no objection to the marriage when her father had told her, but in her mind she did not like the proposal. In his statement, her brother corroborated the stern character of their father. Their father would never accept any suggestion given by their mother or by the children. He was of an authoritarian character.

The judges concluded with moral certitude that the respondent had married out of reverential fear towards her father. Thus, proper consent on the part of the respondent was lacking and hence the marriage was invalid due to defect of consent. Another *Turnus* of the collegiate tribunal of the major archiepiscopal tribunal ratified the affirmative sentence in the third instance on 16 October 2003.

In India, marriage is regarded as of vital importance to the family and community and not as a personal matter between a man and a woman.[95] This explains the initiative or

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[95] See PERERA, "The Family and Society in Asia," pp. 37-38. Marriage is an event between two families and not just between two individuals. See also B.D. SHARDA, "Marriage Markets and Matrimonial: Matchmaking Among Asian Indians of the United States," in *International Journal of Sociology of the Family* (= *IJSF*), 20 (1990), p. 22.

the responsibility the parents feel when they arrange the marriages of their children. Parents feel it is their fundamental duty to give their son or daughter in marriage to the best possible match. Hence, when it is time for their children to marry, parents arrange their marriages, although the children's opinions are sometimes sought. When parents arrange marriage for their children, they look carefully into the social and economic factors in order to safeguard the status, reputation, and relationship of the family. Therefore, the arrangement is made to meet the requirements of the parents and not necessarily of the parties to the marriage. In this sense, matrimonial consent or marriage itself assumes secondary importance.[96] Even in our times, parents do not consider the exercise of parental authority to be something bad or not in tune with the modern mind. They consider it their duty to use their authority. They expect their children to obey them and to accept their choice. Parents are sincere about their concern for the well-being of their children; therefore, they consider it their duty to decide the future of their children. Hence, when parents arrange marriage for their children, they make the choice, and they expect their children to accept their decision.[97]

In cases of arranged marriage, the decision of the parents is so decisive that they do not expect their children to turn down the arrangement made by them. If the children, influenced by the changes in the modern society, react negatively to their parents' decision, the parents, in turn, quite often fail to understand the thinking of their children. Any challenge to parental authority in these matters is likely to be considered unbecoming of a child, and the child, in turn, may not be able to counter such

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[96] See ISAAC, *The Free Choice of the Marital State of Life*, p. 49.

[97] See KIRUPAHARAN, *Reverential Fear in Matrimonial Consent*, p. 71.

expectations.[98] In these cases, it seems that in exercising their legitimate authority, parents might force their children, although unintentionally, into contracting marriage. Imposing marriage on an unwilling person is unjust because it deprives the person of his or her freedom of choice. Stankiewicz says, "Nor do the parents have the right, therefore, to demand of their children a reparatory marriage, that is, one in view of a pregnancy, because of which the children do not lose the faculty of choosing a partner according to their own will, even if they are to blame for the act."[99] Therefore, if a boy or a girl is absolutely unwilling and yet obeys through reverential fear, he or she acts exclusively through respect and obedience and the matrimonial consent given in such a situation is invalid.

Over the years, all the social institutions in India have undergone gradual change due to their exposure to the Western culture and to modernization, industrialization, and urbanization. Even in matters pertaining to marriage, there has been considerable change from rigidity to flexibility and from parents and elders-oriented choice of one's marriage partner to accommodation of preferences, feelings, and freedom of youngsters.[100] In other words, there is a gradual openness to consider the individuality and uniqueness of children, rather than complete domination by parents in the choice of one's life partner. Still, there has been remarkably little change with respect to the marriage of a daughter and her free choice. Even in the case of a well educated girl, the authority still rests with

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[98] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 209.

[99] "Nec ideo parentibus ius competit exigendi a filiis matrimonium reparatorium, graviditatis nempe causa, ob quam iidem facultate eligendi compartem juxta proprium arbitrium etiam facto culpabiliter patrato non amittunt" (*Coram* STANKIEWICZ, 25 October 2001, p. 155, n. 5).

[100] See KURIAN, "Modern Trends in Mate Selection and Marriage," p. 358.

her parents, especially with the father; therefore, her prospects of choosing a suitable partner on her own remains limited. The same traditional attitude prevails even with regard to the marriage of a son in a family, even though less pressure is exerted on him by the parents/elders regarding the choice of his partner in marriage.[101] Thus, in the present Indian society, there is a clash between parental authority and the desire for freedom in choosing one's marriage partner on the part of the younger generation.

In his sentence of 20 December 1963, Sabattani states, "A marriage arranged by parents for their children is not invalid if the children ratify the engagement entered upon and so contract the marriage. If, however, they do not wish to ratify the engagement and are therefore compelled by fear to wed, the marriage is null."[102] Burke adds:

> In such [marriage] cases when the Church feels bound to make a decision against long established traditions, it in no way calls into question the good faith of the parents, or their sincere love for their daughter or son, or genuine concern for their welfare. However, the subjective good will of the parents does not justify or lessen the objective violation of the son's or daughter's right to freedom in the giving of matrimonial consent. This consent, inasmuch as it constitutes a person in the married state, must always remain a most personal choice; as the Church has always taught, it 'cannot be supplied by any other human power' (c. 1057, §1).[103]

Therefore, if it is proved that the matrimonial consent was not given with freedom of will and it resulted out of grave reverential fear of the indignation of the parents, then that marriage can be declared invalid.

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[101] See R. SINHA, *Dynamics of Change in the Modern Hindu Family*, New Delhi, Vedams eBooks (P) Ltd., 1993, pp. 79-81; see also ISAAC, *The Free Choice of the Marital State of Life*, p. 58.

[102] "Desponsatio a parentibus facta pro matrimonio filiorum, non vitiat, si dein filii iam inita sponsalia rata habeant et ita contrahant; si vero desponsationem ratam habere nolunt ac proinde nuptias inire cogantur metu, matrimonia sunt irrita" (*Coram* SABATTANI, 20 December 1963, in *RRT Dec.*, 55 [1963], p. 973, n. 4).

[103] *Coram* BURKE, 20 January 1994, in *StC*, 29 (1995), p. 257, n. 10.

3.2.2 – Filial Respect

It is a true picture of the Indian society that corresponding to the parental authority there is an extraordinary filial respect, which is instilled into the children right from childhood by word, example, and circumstances. Parents, who enjoy authority over their children, presuppose a customary obedience on the part of their children. The notion of filial reverence is instilled into the children in such a way that, in some instances, they remain submissive to their parents throughout their lives. In such cases, it is quite possible that children fail to develop a sense of personal autonomy necessary to make important decisions in their lives. These types of persons may leave everything to the discretion of their parents.[104]

As already explained, since marriage is more a family and community affair than a personal contract and an institution creating new alliances, most of the marriages in India are still arranged by the parents or close relatives irrespective of caste or religion. Because of filial respect and accustomed obedience, children accept and sometimes are even forced to accept their parents' decisions, even if they are able to decide for themselves.[105] The children know that if they disobey their parents' wishes they will incur the anger, resentment, and indignation of their parents. This impending indignation on the part of the parents causes fear in the children that is deferential in nature. Therefore, even if the boy or the girl strongly disagrees with the marriage proposal, he or she may not explicitly voice any objection due to reverential fear.

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[104] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 209.

[105] See MALIEKAL, "The Celebration of Catholic Marriage in India," p. 396.

Another aspect of filial respect is a deep sense of gratitude towards the parents. The Indian culture highly values this virtue of indebtedness. As a result, children feel that any decision that is against their parents' decision is something bad and shameful. Mendonça states, "Children grow up with a deep feeling of indebtedness or 'deep seated debt of gratitude which has no end' toward their parents for caring for them. This intense sense of indebtedness is further reinforced by a feeling of shame when a child does not display evidence of his deep seated debt of gratitude."[106] Mendonça adds that when this kind of cultural demand based on filial reverence goes counter to a person's freedom to choose, there can be no true choice. This can be one of the important aspects of matrimonial consent that may be seriously violated in case of filial reverence, and this is certainly a frequent happening in arranged marriages.[107]

In the previously cited sentence of 20 January 1994 by Burke, we read the following about the validity of arranged marriages:

> Tribunals cannot let themselves be guided by what may have been normal or common in the past, if the evidence in the concrete case shows that natural and ecclesial rights have been violated. The juridical question to be determined is whether a person in the end freely acquiesced in the proposed marriage, out of motives of love, of respect for greater experience, etc., or whether 'acceptance' of the marriage was against his or her own will, and motivated simply by fear of consequences of not doing so.[108]

This principle was already stated by Mattioli in his sentence of 29 February 1960, where he said, "Nor is it right to object that the parents had good reasons for their insistence; in other words, they were looking to the good of their children, or wished to attain other

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[106] MENDONÇA, "The Importance of Considering Cultural Contexts," p. 209; see also CALVO, "The Impact of Culture in Marriage Cases," p. 113.

[107] See MENDONÇA, "The Importance of Considering Cultural Contexts," pp. 209-210.

[108] *Coram* BURKE, 20 January 1994, p. 257, n. 10.

very upright ends. This could indeed attenuate or justify their action in the forum of their own conscience, but it takes away nothing from the objective violation of justice which, according to the norm of law, nullifies the consent of the person suffering their pressures."[109]

Filial respect or piety is one thing, and freedom of choice of one's marriage partner for the whole of one's life is another matter. The latter is a natural right of each human being, and it cannot be sacrificed at the expense of filial respect and devotion towards one's parents. The filial respect that paves the way for blind obedience, then, may force a person to enter into marriage contrary to his or her personal free will. If a boy or a girl, in filial respect, accepts what was arranged by the parents, it may be a wilful acceptance, but to evaluate its validity, we have to know whether or not it took place out of grave reverential fear.

3.2.3 – Respect Towards "Significant Others"

In the absence of parents, there are others who stand in the place of parents (*in loco parentis*), who enjoy almost the same authority over the children. These "significant others" may include the superior of a religious institute, director of an orphanage, guardian, or the oldest member in a family. If the father or the mother is deceased, there is usually someone else who will assume the authority to look after the needs of the

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[109] "Nec valet obiicere parentes ex iustis causis institisse, i.e., verum bonum filiorum attendentes, et alios etiam fines rectissimos consequi volentes: id enim eorum opus in foro conscientiae attenuare vel iustificare poterit, sed nihil adimit obiectivae iuris laesioni, per quam annullatur patientis consensus ad normam legis" (*Coram* MATTIOLI, 29 February 1960, in *RRT Dec.*, 52 [1960], p. 133, n. 2).

children in a family. There is always respect and obedience towards such a person or persons on the part of the children.[110]

In the case of marriage, the person in charge of the children arranges a partner of his or her choice in the arranged marriage system. He or she strongly expects that the boy or girl will accept that choice. Failure to submit will cause anger or indignation of the one who stands in the place of parents. Therefore, in order to avoid the indignation of such person, the boy or the girl consents to the marriage proposal out of reverential fear. Before him or her there is no other way to get out of this situation except by consenting to the proposed marriage. The following is a marriage case originating from Kerala, India, judged in second instance by the major archiepiscopal ordinary tribunal of the Syro-Malabar Church, *coram* Kodackal on 17 November 2005.[111] It illustrates the role of the significant others in the arrangement of marriages and the subjective respect and obedience towards them.

The marriage in question was celebrated on 24 September 1961. The petitioner had lost his father when he was only two and a half years old, and it was his older brother who raised him. This brother arranged marriage for the petitioner with one of the relatives of his own wife. Conjugal life lasted four months, though the formal separation took place two years later. Thirty-four years later, the man requested the Metropolitan tribunal of Changanacherry to have his marriage declared null on the ground of force or grave fear on his own part. The tribunal pronounced an affirmative decision on 12 May 2005. The case proceeded to the second instance as per norm of law.

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[110] See KIRUPAHARAN, *Reverential Fear in Matrimonial Consent*, p. 70.

[111] MAJOR ARCHIEPISCOPAL ORDINARY TRIBUNAL OF THE SYRO-MALABAR CHURCH, *coram* KODACKAL, 17 November 2005, Prot. no. MAT 548/05/CHY, unpublished photocopy.

From the facts of the case, it was clear that the man did not have the proper intention to marry the respondent. He did not even go for the pre-marital interview with her. He married her because of his brother's force, which he could not resist at that time. His brother was very stubborn and bossed everybody in the family. Nobody could say a word against him. In his deposition, the petitioner declared that he had explicitly told his relatives that he did not want to marry the respondent. However, he did not tell this to his older brother with whom he was living, because he was afraid of him. In his declaration, the man confessed that he did not have any desire to have the respondent as his wife since he had already known her. She was a relative of his older brother, and she was older and taller than he. In his final written statement submitted after the publication of the acts, the petitioner explained the stubborn nature of his older brother, his dependency on him, and his lack of freedom.

All witnesses proposed by the petitioner testified that it was only because of his reverential fear towards his brother that he married the respondent. In the absence of his father in his life, the petitioner, being younger in age, was dependent on his older brother. According to all witnesses, it was because of the force exerted on him by his brother that he had consented to marry the respondent.

The judges found clear evidence in the acts of the case that the petitioner's older brother forced the petitioner into that marriage. The second instance tribunal concluded with moral certainty that the marriage in question was null and void on the ground of force or grave fear (reverential) on the part of the petitioner (*CCEO*, c. 825; *CIC*, c. 1103). Hence, the first instance decision was ratified by a decree. This case is an example of how significant others can unduly influence arranged marriages.

3.2.4 – Dependence on the Family

When we discuss the dependency of youngsters on the family in Indian society, economic dependency is the most important one. If a son or a daughter does not have a decent job with a relatively good salary, he or she will always be financially dependent on the parents. Even if a daughter is an earning member of the family, she will always be under the authority of her parents until she marries.

The father has a duty to support his daughters until they are settled in marriage, to find suitable marriage partners for them, and to provide adequate dowry in lieu of inheritance, which is usually bequeathed to the sons.[112] The dowry system can be the cause of force and fear which would coerce unwilling children into marriage. A girl, whose father cannot afford the financial demands of her intended's family, would not be able to marry that person. On the contrary, a girl may end up marrying an unsuitable partner when the latter is prepared to marry her with a lower dowry, which her father can afford at the expense of losing her freedom to marry the partner of her choice. In cases like this, economic dependency on the family may be the cause of grave reverential fear and the girl may unwillingly consent to marry in order to avoid displeasing and annoying her parents.

3.3 – PROOF OF INVALIDATING REVERENTIAL FEAR

A particular problem with regard to reverential fear is the fact that the proofs needed to demonstrate the presence of invalidating fear are difficult to obtain because no one wants to say anything negative about one's own family. The proofs often impact the family or professional relationships. However, the proof of force or grave fear is derived

[112] See MENDONÇA, "The Importance of Considering Cultural Contexts," p. 219.

from two arguments: the indirect argument, that is, by proving the aversion (indirect proof), and the direct argument, that is, by proving the coercion (direct proof). In both arguments, the tribunal should first of all consider the declaration of the victim of fear, because he or she alone can directly reveal both the existence of mental trepidation at the time of marriage and its gravity. However, such a declaration cannot have the value of full proof unless there are other indications and supporting factors, which corroborate it, together with the attestation to the credibility of the victim of fear by credibile witnesses (see cc. 1536, §2; 1679; *CCEO*, c. 1217, §2; 1366).[113] In many cases, the coercive action of the source of fear might have been external and notorious.[114] Therefore, the testimony of the source of fear must be given utmost weight if the person admits to be the cause of fear.[115]

3.3.1 – The Indirect Proof

In the above cited sentence of 25 October 2001, Stankiewicz writes, "The proof of grave, or qualified, reverential fear is deduced in the first place by the argument from aversion either towards the partner's person or towards marriage with him or her, and which therefore is rightly called the queen of proofs and is rightly the indirect argument of fear itself."[116] It must be shown that the person compelled to marry by grave reverential fear had an aversion toward the person of the partner or marriage itself to

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[113] See *coram* STANKIEWICZ, 25 October 2001, p. 161, n. 11.

[114] See VILADRICH, Commentary on c. 1103, p. 1430.

[115] See *coram* FALTIN, 27 April 1990, in *RRT Dec.*, 82 (1990), p. 333, n. 26.

[116] "Probatio metus reverentialis gravis, seu qualificati, in primis efficitur argumento ex aversione sive in personam compartis sive in matrimonium cum ea ineundum, quaeque igitur regina probationum merito dicitur atque argumentum indirectum ipsius metus iure habetur" (*Coram* STANKIEWICZ, 25 October 2001, p. 160, n. 11).

prove indirectly the fear that had forced the marriage. However, a person may actually like his or her partner as a friend but show aversion toward marriage with him or her.[117] Wrenn says, "The ordinary signs or symptoms of aversion are crying and complaining before marriage, sadness and denial of affection. The absence of such signs after the marriage proves nothing since it is then presumed that one is making the best of a bad situation."[118] Stankiewicz states that aversion cannot be conceived in the one who had an affectionate relationship for several years with his or her partner with marriage in mind. When there are no signs of aversion towards the person or marriage itself, one cannot speak of coercion. On the contrary, the more severe the aversion was before the marriage, the more effective one can presume that a mind contrary to marriage had only been triumphed over by grave coercion.[119]

If there are "other indications and supporting factors present," aversion alone may prove the presence of fear. Rodríguez González identifies the following "other indications and supporting factors" indicated in various Rotal decisions: 1) the party being forced into marriage engages in emotional or physical outbursts when the topic of marriage is brought up, or refuses to talk about the upcoming ceremony; 2) the party being forced into marriage suffers from nightmares, keeps on postponing the wedding, insists on having it in an out-of-the-way place, at an inconvenient time, in the presence of as few people as possible, or without any pomp or solemnity; 3) if after the wedding, the party who was forced into the marriage refuses to consummate the marriage or have any

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[117] See BEAL, Commentary on c. 1103, p. 1321; see also RODRÍGUEZ GONZÁLEZ, *La nulidad del matrimonio por miedo*, p. 124.

[118] WRENN, *The Invalid Marriage*, p. 165.

[119] See *coram* STANKIEWICZ, 25 October 2001, p. 160, n. 11.

further sexual relations with one's own spouse once the marriage has been consummated; 4) if the party who was forced into marriage remains in the marriage only for a brief period of time, or refuses to have children which might perpetuate the marriage, or procures an abortion so that the marriage will not be prolonged by the presence of children; 5) if the person who was forced into marriage wrote letters to friends that contain expressions of disrespect for the intended spouse, or an aversion to marriage. While each of these factors is not sufficient enough to prove the nullity of marriage in question due to common fear or reverential fear, taken together with other factors, like the cultural factors in cases of reverential fear (e.g., parental authority, filial reverence and submissive mentality, economic dependence of the children on the parents, respect towards the significant others, etc.), they may give rise to a strong presumption that the said marriage was entered into without sufficient internal freedom.[120] These above factors must be weighed and proved within the framework of aversion. Viladrich, however, expresses a different opinion on this matter: "Although aversion has great significance in the presumption of gravity and the inner causality of fear, it is not, however, a requirement imposed by c. 1103 for evaluating invalidating fear. Therefore, if it is lacking or plays only a small role in any given case neither does it prove the impossibility of invalidating fear."[121]

An important presumptive value, which has similarities to aversion, and which reflects the effects on the personality of the one who was forced to marry, might be

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[120] See RODRÍGUEZ GONZÁLEZ, *La nulidad del matrimonio por miedo*, pp. 125-130; see also P.R. LAGGES, "Force or Fear," in *CLSA Proceedings*, 58 (1996), p. 282.

[121] VILADRICH, Commentary on c. 1103, p. 1431.

attributed to the signs of sadness, bitterness, and depression in general. The mental illnesses that the party is suffering from now, especially from the very beginning of and throughout married life, and when the emotional disturbances are opposing and unintelligible in comparison with the normal personality and the mental state before suffering from fear, are equally important. Therefore, in addition to proof by deposition of the parties and testimony of the witnesses, psychological and medical experts may be able to contribute important support to prove the underlying cause of fear in temperamental and mental changes and subsequent situations of depression, aggression, anguish, or anxiety.[122] If it is proved that the basis for aversion, lack of love, or emotional changes in a person is not external, e.g., coercion from parents or a superior, then it is to be presumed that the person is suffering from some serious mental or psychic disorder, that is, the cause of fear is from inside the person. In such a situation, the particular matrimonial case cannot be processed on the ground (*caput*) of force or grave fear.

3.3.2 – The Direct Proof

The argument from aversion must be completed by the direct argument derived from the inflicted coercion. For this purpose, there must be proof of the existence of coercion, its gravity, the means used for coercion, and the link of at least indirect causality between coercion, causing fear in the subject, and matrimonial consent.[123] If the testimony of the one who has inflicted fear in the subject is credible, such deposition is a virtual proof of coercion. It must be said that the parent, superior, or any significant other

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[122] See ibid.

[123] See *coram* STANKIEWICZ, 25 October 2001, p. 161, n. 11.

who was the cause of reverential fear in the party does not have to be acting out of malice, or even be the conscious initiator of an unwanted marriage.[124]

Moreover, it is not sufficient merely to state the facts, e.g., that the parents of the alleged victim of reverential fear had demanded that he or she marry this particular person because of his or her family's financial status. It also should be shown why the parents of the victim of fear would have such a control over him or her; what their relationship had been hitherto; how they had handled their differences; whether there had been any occasion when the person ran away from home in order to escape the indignation of his or her parents, etc. In other words, what needs to be demonstrated is not just that someone was causing fear in one of the parties, but why that person could be said to be the cause of fear. With respect to proving coercion in reverential fear cases, the cultural factors must be considered. We have already discussed that, in the Indian society, the parental authority and the consequent obedience and submissive mentality of the children is very strong. Hence, there is every chance for reverential fear on the part of the children towards their parents if they were to disobey the wishes of the parents. Furthermore, because fear has been considered above all in a subjective sense, it is important to determine the reason why the person reacted in such a way to a particular person in this particular situation.[125]

With regard to proving mainly the gravity of coercion in reverential fear cases, the particular manner or style by which the parents exercise their intimidating authority over the children is to be evaluated. Even within the same cultural context, it may vary from

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[124] See SMILANIC, "Reverential Fear," p. 287.

[125] See LAGGES, "Force or Fear," p. 281.

family to family. For example, there are families in which the father's intimidating authority is exercised without much verbal force, whereas in other families the intimidating parental authority requires more explicit and forceful commands than simple requests. Before determining the gravity of reverential fear, a judge has to assess very carefully the manner by which the intimidating parental authority is exercised in that particular family. If parental indignation at a son or daughter disobeying their wishes is grave, reverential fear is grave as well.[126]

3.4 – THE PRINCIPLE OF SUBSTANTIAL OR EQUIVALENT CONFORMITY OF SENTENCES IN MARRIAGE NULLITY CASES

A single affirmative decision in a marriage nullity case does not establish freedom to marry. Canon 1682, §1(*CCEO*, c. 1368, §1) states, "The sentence which declared the nullity of the marriage is to be transmitted *ex officio* to the appellate tribunal within twenty days from the publication of the sentence, together with the appeals, if there are any, and the other acts of the trial."[127] This canon provides for a "mandatory review" of all sentences which first declare the nullity of marriage.[128] Canon 1682, §2 (*CCEO*, c. 1368, §2) states, "If a sentence in favour of the nullity of a marriage was given in the first grade of a trial, the appellate tribunal is either to confirm the decision at once by decree or to admit the case to an ordinary examination in a new grade, after having weighed carefully the observations of the defender of the bond and those of the parties if there are

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[126] See VILADRICH, Commentary on c. 1103, pp. 1428-1429.

[127] "Sententia, quae matrimonii nullitatem primum declaraverit, una cum appellationibus, si quae sint, et ceteris iudicii actis, intra viginti dies a sententiae publicatione ad tribunal appellationis ex officio transmittatur" (c. 1682, §1; *CCEO*, c. 1368, §1).

[128] See PCCICR, "De processibus," in *Communicationes*, 16 (1984), p. 75.

any."[129] Canon 1684, §1 (*CCEO*, c. 1370, §1) states the effects of conforming sentences in a marriage nullity case as follows:

> After the judgment which first declared the nullity of the marriage has been confirmed at appellate grade either by a decree or by a second sentence, the persons whose marriage has been declared null can contract a new marriage as soon as the decree or second sentence has been communicated to them unless a prohibition attached to the sentence or decree or established by the local ordinary has forbidden this.[130]

However, a case involving the "status of persons" never becomes *res iudicata*[131] (see c. 1643; *CCEO*, c. 1324), even if it otherwise fulfills all of the requirements stipulated in c. 1641 (*CCEO*, c. 1322). Since this canon is an exception to the law, it must be interpreted strictly (c. 18). Thus, this norm applies only to those types of cases clearly involving the status of the persons. According to c. 1691, marriage nullity cases by their very nature involve the "status of persons."[132] Nonetheless, such cases may attain a

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[129] "Si sententia pro matrimonii nullitate prolata sit in primo iudicii gradu, tribunal appellationis, perpensis animadversionibus defensoris vinculi et, si quae sint, etiam partium, suo decreto vel decisionem continenter confirmet vel ad ordinarium examen novi gradus causam admittat" (c. 1682, §2; *CCEO*, c. 1368, §2).

[130] "Postquam sententia, quae matrimonii nullitatem primum declaravit, in gradu appellationis confirmata est vel decreto vel altera sententia, ii, quorum matrimonium declaratum est nullum, possunt novas nuptias contrahere statim ac decretum vel altera sententia ipsis notificata est, nisi vetito ipsi sententiae aut decreto apposito vel ab Ordinario loci statuto id prohibeatur" (c. 1684, §1; *CCEO*, c. 1370, §1).

[131] This is sometimes referred to as the "closed judgment" or "adjudged matter." See C. A. Cox, Introduction to the commentary on cc. 1641-1644, p. 1740. A *res iudicata* is a definitive judicial sentence resolved in such a way that it is no longer subject to a direct challenge by means of an appeal, but, in cases of manifest injustice it may be directly challenged according to norm of c. 1645, c. §1, that is, by a petition for *restitutio in integrum*, that is, total reinstatement (see c. 1642, §1). *CCEO*, c. 1323, §1 supports this conclusion by specifically providing for a challenge to a *res iudicata* through a complaint of nullity. Unlike the Latin code, the Eastern code also allows a challenge by a third party. For more information on the institutes of *res iudicata* and *restitutio in integrum*, see J.G. JOHNSON, "*Res iudicata, restitutio in integrum*, and Marriage Nullity Cases," in *StC*, 28 (1994), pp. 323-327.

[132] See Cox, Commentary on cc. 1643 and 1691, pp. 1741 and 1786 respectively.

significant degree of judicial security in accordance with the provisions of c. 1644 (*CCEO*, c. 1325), that is, by means of a "new presentation of the case."[133]

While stating the general principles of *res iudicata* in the contentious trials, c. 1641, 1° (*CCEO*, c. 1322, 1°) specifies three criteria for conforming decisions. We read, "[...] a *res iudicata* occurs: 1° if a second concordant sentence is rendered between the same parties over the same issue, and on the same cause for petitioning."[134] Therefore, to result in conformity, two decisions must involve: 1) the same parties (*inter easdem partes*); 2) the same issue being petitioned (*ex eodem petito*), e.g., the nullity of the same marriage; 3) the same cause for petitioning (*ex eadem causa petendi*). The problem we face in determining the elements of c. 1684 (*CCEO*, c. 1370) does not concern very much the first two requirements of c. 1641, 1° (*CCEO*, c. 1322, 1°), but the identity of the ground of nullity (*caput nullitatis*) in a given case.[135] Therefore, the principle of conformity requires that the grounds, on which two decisions are pronounced by two tribunals, are identical. In jurisprudence this is called "formal" conformity of sentences.[136] This principle is now expressly articulated in the Instruction *Dignitas connubii* as a legal norm. In its article 291, §1, we read, "Two sentences or decisions are said to be formally conforming if they have been issued between the same parties, concerning the nullity of

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[133] See ibid., p. 1741.

[134] "[...] res iudicata habetur: 1° si duplex intercesserit inter easdem partes sententia conformis de eodem petito et ex eadem causa petendi" (c. 1641, 1°; *CCEO*, c. 1322, 1°).

[135] See A. MENDONÇA, "Equivalent Conformity of Sentences in a Marriage Nullity Process: A Case Study," in *StC*, 38 (2004), p. 330.

[136] See ibid.

the same marriage, and on the basis of the same ground of nullity, and the same reasoning of law and of fact (cf. c. 1641, 1°)."[137]

However, practical concerns and the importance of equity in ecclesiastical trials have led the Rotal jurisprudence to have recourse to the principle of "substantial or equivalent conformity" between sentences.[138] Mendonça states that for some time now canonical doctrine and jurisprudence have peacefully admitted the principle that the identity of grounds of two sentences can be substantial or equivalent.[139] M.F. Pompedda observes the following on this matter: "Nevertheless, we think that the principle of *substantial conformity* of sentences remains sound. And this presupposes that both sentences are pronounced not only between the same parties and over the same object (*petitum*), but also over the same '*petendi causa*'."[140] Doctrine and jurisprudence have

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[137] "Duae sententiae seu decisiones dicuntur formaliter conformes si intercesserint inter easdem partes, de nullitate eiusdem matrimonii et ex eodem capite nullitatis, eademque iuris et facti ratione (cf. 1641, 1°)" (PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, *Dignitas connubii: Instruction to be Observed by Diocesan and Interdiocesan Tribunals in Handling Causes of the Nullity of Marriage*, The Official Latin Text with English Translation [= *DC*], art. 291, §1, Città del Vaticano, Libreria editrice Vaticana, 2005, p. 208).

[138] See A. MENDONÇA, "The Principle of Substantial Conformity of Sentences Revisited," in *Philippine Canonical Forum*, 10 (2008), p. 157. In his decree of 22 March 1994, Stankiewicz affirms this principle in the following words: "Although, according to the prescript of c. 1641, 1°, the conformity of sentences should be based on the identity of the cause for petitioning, that is, of the ground (*caput*) of nullity (cf. cc. 1639, §1; 1683), the principle of jurisprudence nevertheless, led by practical concerns and equity, do not refuse to declare conformity of sentences, should perhaps one of the parties request, even in case of only an equivalent ground of nullity, without necessarily requiring the identity of the ground" (*Coram* STANKIEWICZ, 22 March 1994, in *ME*, 119 [1994], p. 344, n. 6; see also *coram* POMPEDDA, 19 November 1998, in *RRT Dec.*, 90 [1998], pp. 750-751, n. 5).

[139] See MENDONÇA, "Equivalent Conformity of Sentences in a Marriage Nullity Process," p. 330.

[140] "Nihilominus putamus semper salvum manere debere principium *substantialis conformitatis*, quod praesupponit quod ambae sententiae pronunciatae sint non solum inter easdem partes et super eodem 'petito', sed etiam super eadem 'petendi causa'" (*Coram* POMPEDDA, 19 November 1998, p. 751, n. 5).

explained that conforming decisions involve identical *causa petendi* if they deal with the same "juridical fact" that is the basis or foundation of the right under question.[141] Mendonça comments on the principle of substantial or equivalent conformity of sentences as follows:

> The principle of "substantial" or "equivalent" conformity of sentences in essence implies that it is not the legal formula of a ground but the juridic facts which underlie the formula that determine the concordance between two sentences. In other words, the source of nullity is not the formula stated in the canon or articulated in the petition or in the decree of joinder of issues, but the juridic facts that constitute the basis of a defect of consent in a given case. It is possible for two tribunals to read the same facts and assign to them two different legal formulae. If this happens in a particular case, a "substantial" or "equivalent" conformity of sentences can be declared by the competent tribunal.[142]

The principle of substantial or equivalent conformity of sentences has now become a norm of matrimonial law through the Instruction *DC*. Article 291, §2 of *DC* reads, "Decisions are considered to be equivalently or substantially conforming when, even though they specify and determine the ground of nullity [*caput nullitatis*] by different names, they are still rooted in the same facts [juridic facts] rendering the marriage null and the same proofs."[143] It is important to note that in a marriage nullity case, the ground(s) on which the nullity is alleged and proven must be on the same party and not

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[141] See, for example, M. LEGA, *Commentarius in iudicia ecclesiastica iuxta Codicem iuris canonici*, curante Victorio Bartocetti, vol. 3, Romae, Editiones Comm. A. Arnodo, 1941 – XIX, p. 4, n. 7; F. ROBERTI, *De processibus*, vol. 1, *De actione, de praesuppositis processus et sententiae de merito*, ed. 4a, in Civitate Vaticana, Apud Custodiam Librariam Pontificii Instituti Utriusque Iuris, 1956, p. 583, n. 248; *coram* RAAD, 23 June 1973, in *Verità e definitività della sentenza canonica*, Studi giuridici XLVI, Città del Vaticano, Libreria editrice Vaticana, 1997, p. 165, n. 8; see also J.J., CUNEO, "Toward Understanding Conformity of Two Sentences of Nullity," in *The Jurist*, 46 (1986), p. 570.

[142] MENDONÇA, "Equivalent Conformity of Sentences in a Marriage Nullity Process," pp. 330-331.

[143] "Aequivalenter seu substantialiter conformes considerantur decisiones quae licet caput nullitatis diverso nomine significent et determinent tamen super iisdem factis matrimonium irritantibus et probationibus nitantur" (*DC*, art. 291, §2, p. 208).

on two parties separately in order to declare either formal or substantial (equivalent) conformity of sentences.[144]

3.4.1 – The Concepts of a "Juridic Fact" and *Caput nullitatis* in a Contentious Case

The institutes of *res iudicata* and double conformity of sentences are directly linked to the elements of the cause for petitioning (*causa petendi*) (c. 1641, 1°; *CCEO*, c. 1322, 1°) and the ground of nullity (*caput nullitatis*) (see *DC*, art. 291, §1). The question naturally arises: are *causa petendi* and *caput nullitatis* the same? F. Roberti states that in contentious cases, *causa pentendi* is the juridic fact on which the action is based.[145] M. Lega also is of the same opinion: "As to the *second* element, namely the *same cause* for petitioning, we should note that, in personal or real actions and relative exceptions, the cause [for petitioning] is the juridic fact which constitutes the foundation of the right; that is to say, of the right which is disputed in a trial and defined by law."[146] Both of these authors identify *causa petendi* with the juridic fact (*factum iuridicum*).

We find the following description of a juridic fact in a decree of 23 June 1973 *coram* Raad: "A fact is called juridic when it produces, or is capable of producing, effects which constitute or modify or extinguish juridic relationships. According to the constant jurisprudence of Our Tribunal, the true cause for petitioning is a juridic fact (or a juridic

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[144] See MENDONÇA, "The Principle of Substantial Conformity of Sentences Revisited," p. 146.

[145] See ROBERTI, *De processibus*, vol. 1, p. 583, n. 248.

[146] "Quod *secundum* elementum nempe *eamdem causam* petendi advertatur, in actionibus personalibus et realibus et in relativis exceptionibus, causam esse factum iuridicum quod constituat fundamentum iuris, illius iuris scilicet in iudicio controversi et a iure definiti" (LEGA, *Commentarius in iudicia ecclesiastica*, p. 4, n. 7).

act), which the parties adduce in support of their action."[147] It is frequently stated in the Rotal jurisprudence, "The parties are very rarely expected to know the ground. It is the task of the judge to find and apply the appropriate norm to the juridic fact, because 'Curia knows the laws'. Abstract examples of a concrete fact are contained in the norms."[148] J.M. Serrano adds that juridic facts are those, which render a marriage invalid. These same facts may be open to evaluation under diverse headings but, nonetheless, prove the same underlying reality that leads to nullity.[149]

Roberti distinguishes a juridic fact from a "simple fact" in canonical issues. He says that while a juridic fact can invalidate a juridic act, a "simple fact is not sufficient to constitute the foundation of a juridic claim, for example, not any fear but only the qualified fear can constitute the cause of action of the nullity of marriage (c. 1087, §1; *CA*, c. 78, §1)."[150] In other words, a juridic fact is a factor or element, which renders a juridic act invalid or inexistent. Furthermore, Roberti explains, "One juridic fact can comprise several motives; thus, fear can be aroused by several impending evils, for example, death, indignation of parents (reverential fear); similarly impotence can be

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[147] "Factum dicitur iuridicum quando producit, vel producere potest, effectus qui relationes iuridicas constituunt vel modificant vel extinguunt. Iuxta constantem iurisprudentiam Nostri Fori, vera causa petendi est factum iuridicum (vel actus iuridicus), quod partes adducunt ad sustinendam actionem" (*Coram* RAAD, 23 June 1973, in *Verità e definitività*, p. 165, n. 8).

[148] "Partes perraro supponuntur caput cognoscere. Iudicis est normam legis aptam reperire et facto iuridico applicare, 'iura novit Curia'. In normis continentur exemplaria abstracta facti concreti" (ibid.).

[149] See *coram* SERRANO, 24 October 1986, in *ME*, 114 (1989), p. 285, n. 3.

[150] "Factum simplex non sufficit ad constituendum fundamentum iuridicae praetentionis; e.g., non quilibet metus, sed tantum metus qualificatus potest causam actionis nullitatis matrimonii constituere (c. 1087, §1; *CA*, c. 78, §1)" (ROBERTI, *De processibus*, vol. 1, p. 583, n. 248).

organic or functional, derived from one or another disease, etc."[151] The motives identified here by Roberti are presumably simple facts. These simple facts, according to Roberti, cannot cause the nullity of marriage. They can become the motive or *ratio* for the juridic fact.[152] Stankiewicz affirms this explanation by saying, "But in assessing the conformity of sentences one should consider the *principal fact* [juridic fact] only, that is, autonomous and constitutive, which by itself already causes the nullity of marriage, not however the secondary, that is, simple fact, which does not have any autonomous juridic qualification, although in matrimonial procedure it can attain the force of an argument which concerns truthfulness or falsehood of the declarations about the principal fact."[153] He presents some concrete examples of a principal fact and of a secondary fact. For instance, in a case of fear, "aversion" would be a secondary factor while "juridically qualified fear" would be the principal or juridic fact.[154]

E.M. Egan, who had done an in-depth study on *caput nullitatis*, translates it as "chapter of nullity," basically identifies *causa petendi* with *caput nullitatis*. For instance,

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[151] "Unum factum iuridicum potest plura motiva comprehendere; ita metus potest ex pluribus malis imminentibus generari, e.g., ex morte, indignatione parentum (metus reverentialis); impotentia potest esse organica vel functionalis, derivari ex uno vel altero morbo, etc." (ROBERTI, *De processibus*, vol. 1, p. 584, n. 248).

[152] See MENDONÇA, "The Principle of Substantial Conformity of Sentences Revisited," p. 149.

[153] "Sed in aestimanda sententiarum conformitate attendi debet ad *factum principale* tantum, hoc est autonumum et constitutivum, quod nullitatem matrimonii iam ex se efficit, non autem ad factum secundarium seu simplex, quod nullam qualificationem iuridicam autonomam habet, quamvis in processu matrimoniali vim argumenti consequi valeat quod spectat ad veritatem vel falsitatem declarationis circa factum principale" (*Coram* STANKIEWICZ, 22 March 1994, p. 346, n. 9).

[154] See *coram* STANKIEWICZ, 22 March 1994, p. 346, n. 9.

referring to Article 219, §2 of the Instruction *Provida Mater*,[155] Egan says, "[this] article clearly permits the introduction of a new '*caput nullitatis*' in the matrimonial court of appeal, and this despite the fact that *causa petendi* of a case concerning the invalidity of marriage is commonly understood to be *caput nullitatis*."[156] If we examine the understanding of the term *causa petendi* as a juridic fact as promoted by Roberti and others, it is very clear that the two terms do not connote the same meaning. In his decree of 23 June 1973, Raad argues that *causa petendi* and *caput nullitatis* do not necessarily mean the same thing. He says that *causa petendi* is broader than *caput nullitatis*.[157] If these two concepts are different, how is one to determine *res iudicata* in a contentious case in general or double conformity of sentences in marriage nullity cases in particular? We may find the answer in the following discussion.

Regarding the grounds of the nullity of marriage, Mendonça states that the law provides only general prescripts applicable to concrete cases. These general principles contain generic examples that are to be drawn down to their species and subspecies in order to determine their concrete applicability. Doctrinal and jurisprudential interpretation of a particular canon of the invalidity of marriage must determine the more specific factors or juridic factors that actually cause the invalidity of a given marriage.

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[155] SACRA CONGREGATIO PRO SACRAMENTIS, Instructio servanda a tribunalibus dioecesanis in pertractandis causis de nullitate matrimoniorum *Provida Mater*, 15 August 1936, in *AAS*, 28 (1936), pp. 313-361; English trans. "Instruction to Be Observed By Diocesan Tribunals in Handling Cases of Nullity of Marriages," in *Canon Law Digest*, 2 (1933-1942), pp. 471-530.

[156] E.M. EGAN, *The Introduction of a New "Chapter of Nullity" in Matrimonial Courts of Appeal. A Study of Legislation in the Code of Canon Law and the Instruction Provida Mater Ecclesia*, Rome, Officium Libri Catholici-Catholic Book Agency, 1967, p. 147.

[157] See *coram* RAAD, 23 June 1973, p. 165.

Thus, when a doubt is formulated in a given matrimonial case, the *caput nullitatis* to be spelled out in the formula is ordinarily the generic title. The juridic fact is the cause for seeking out (*causa petendi*) the tribunal's intervention in a concrete case. So, the juridic fact (*causa petendi*) and *nomen iuris* or *caput nullitatis* are not identical. The "simple fact" or "secondary fact" represents the facts adduced by the parties in support of their claim. These facts by themselves are not the cause of the invalidity of a juridic act. The juridic facts are determined on the basis of the simple facts presented by the parties. When parties and their witnesses present the simple facts in support of their claim, the judge ascribes the grounds to those facts. It is possible for two judges to read the simple facts differently and give different grounds to them. For instance, it is possible for one judge to attach the ground of "grave defect of discretion of judgment" to a set of simple facts, while another judge may assign to the same simple facts the ground of "exclusion of the good of offspring." However, the basis of both decisions may have the same juridic facts. Hence, decisions are considered to be equivalently or substantially conforming when, even though they specify and determine the ground of nullity (*caput nullitatis*) by different names, they are still rooted in the same facts (juridic facts) rendering the marriage null and the same proofs (see *DC*, art. 291, §2).[158]

[158] See MENDONÇA, "The Principle of Substantial Conformity of Sentences Revisited," pp. 179-181.

3.4.2 – Application of the Principle of Substantial or Equivalent Conformity of Sentences in Marriage Nullity Cases

An extensive interpretation of the principle of substantial conformity of sentences may jeopardize the right of defense of the aggrieved party in a marriage nullity case.[159] In his sentence of 25 June 2003, Huber says, "There is always a danger of denial of the right of defense of a party if the principle of conformity of sentences receives an extensive application. For, once conformity is declared, the party is deprived of further recourse at a higher grade of trial."[160] However, Huber states that judges adduce frequently pastoral reasons for a broad interpretation of the law. But such reasons, Huber argues, can never be dissociated from truth and justice.[161] After having raised his genuine concerns about the consequences of using extensive interpretation of the principle of conformity, Huber admits that the Rotal jurisprudence on the matter is consolidated, and it is not his intention to disprove or to disagree with it.[162] Huber states that the problem consists in understanding what a juridic fact is. As stated above, the juridic fact does not necessarily coincide with the ground of nullity (*caput nullitatis*).[163]

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[159] See MENDONÇA, "Equivalent Conformity of Sentences in a Marriage Nullity Process," p. 338.

[160] "Semper periculum instat, ne ex applicatione extensiva principii conformitatis sententiarum ius defensionis parti denegetur. Nam, conformitate sententiarum declarata, pars ulteriore iurisdictionis gradu privatur" (*Coram* HUBER, 25 June 2003, n. 4, Prot. no. 18,656, unpublished decree; see ibid.).

[161] See MENDONÇA, "Equivalent Conformity of Sentences in a Marriage Nullity Process," p. 338.

[162] See ibid., p. 339.

[163] See ibid.

Mendonça says that the defects of consent enumerated in the Codes of canon law are formally distinct and they cannot be considered as identical grounds. Hence, they should be treated as separate grounds. In other words, a marriage cannot be declared invalid under the global title of "defect of consent," an expression that covers all defects of consent. However, since different *capita* can be attributed to the same juridic facts, there exists the possibility of the application of the principle of substantial conformity between sentences. But if two tribunals use substantially different sets of juridic facts, there is absolutely no basis for the declaration of substantial or equivalent conformity between the two subsequent decisions in the same case.[164]

The principle of substantial or equivalent conformity of sentences can be applied when a tribunal declares a second affirmative judgement in the same case between the same persons and on the basis of same juridic facts but on two formally different titles unless there is an appeal, in which case it would be the responsibility of the higher court to make the declaration to that effect.[165] Regarding the competency of the tribunal to declare substantial conformity between sentences, the Instruction *DC* provides in article 291, §3 the following norm: "Without prejudice to art. 136 and without prejudice to the right of defense, the tribunal of appeal which issued the second decision is to decide the equivalent or substantial conformity, or else a higher tribunal."[166] Two sentences of marriage nullity cannot be considered substantially or equivalently conforming when one

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[164] See ibid., pp. 333-334.

[165] See A. MENDONÇA, "Equivalent or Substantial Conformity of Sentences in Marriage Nullity Cases," in *ELT*, 1 (2002), p. 58.

[166] "Salvo art. 136 et integro manente iure defensionis, de duarum decisionum aequivalenti vel substantiali conformitate videt tribunal appellationis, quod alteram tulit, vel tribunal superius" (*DC*, art. 291, §3, p. 208).

of them denies the juridic facts admitted by the other, even if they should agree in the dispositive part on the ground rejected by both of them. On the basis of the available jurisprudential insights provided by the sentences of the Apostolic Tribunals, it seems reasonable to suggest that the principle of substantial conformity of sentences can be applied even to cases that are resolved through the "abbreviated process" provided in the norm c. 1682, §2 (*CCEO*, c. 1368, §2).[167] Mendonça further remarks that the institute of "substantial conformity of sentences" is after all a tool placed implicitly by the legislator at the service of the tribunal ministry which is guided by the supreme law, that is, "the salvation of souls" (c. 1752). Therefore, it is important that this tool is used with utmost prudence and canonical equity.[168]

3.5 – RELATIONSHIP BETWEEN REVERENTIAL FEAR AND FEW OTHER GROUNDS OF NULLITY

Why do we trace the relationship between two grounds of marriage nullity in determining the conformity of sentences? In the decision of 11 March 1975, Anné said that if a certain intrinsic correlation between two different grounds was present, the declaration of substantial conformity of sentences would be legitimate.[169] Therefore, it is to explore the possibility of substantial or equivalent conformity between sentences that we try to identify the relationship between two grounds of nullity of marriage.

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[167] See MENDONÇA, "Equivalent or Substantial Conformity of Sentences," p. 58.

[168] See ibid., p. 59.

[169] See *coram* ANNÉ, 11 March 1975, in *RRT Dec.*, 67 (1975), p. 97, n. 4; see also R.C. BAUHOFF and A. MENDONÇA, "Psychic Impotence" (Part II), in *StC*, 24 (1990), p. 326. This study mentions the intrinsic relationship between psychic impotence and incapacity to contract marriage.

In addressing the possibility of substantial or equivalent conformity, however, the appellate tribunal must carefully assess the interrelationship between the two grounds at issue. For two different grounds to be based on the same juridic facts, there must be some intrinsic agreement between the grounds that would explain why one tribunal might choose one formulation (*caput*) and another tribunal prefers a different formulation. Mendonça states, "All defects of consent, even though formally distinguished in law, are ultimately rooted in the defects of subjective components or in the objective content of consent. Therefore, all defects of consent bear an intrinsic intra-structural and inter functional relationship."[170] In all cases, in decreeing the substantial or equivalent conformity of sentences, the judges of the appellate tribunal must be able to explain how the formally distinct grounds of nullity (*capita nullitatis*) are actually conforming in a particular case.[171]

3.5.1 – Reverential Fear and Discretion of Judgement

J.H. Provost suggests that an underlying "lack of liberty" (lack of freedom of choice) may be the common juridic fact behind the grounds of grave defect of discretion of judgement and force or grave fear.[172] In matrimonial consent a person's freedom to choose can be affected in two situations: first, in the case of force or of grave fear (c. 1103; *CCEO*, c. 825), and second, in the case of grave defect of discretion of judgement

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[170] A. MENDONÇA, "Practical Aspects of Using Multiple Grounds in Formal Marriage Nullity Cases," in *StC*, 30 (1996), p. 91.

[171] See C.A. COX, "Is It the Same Truth? Conformity of Sentences in Marriage Nullity Cases," in *CLSA Proceedings*, 62 (2000), p. 121.

[172] See J.H. PROVOST, "Jurisprudential and Procedural Approaches to Traditional and Modern Grounds and the Questions of Conformity of Sentences," in CANON LAW SOCIETY OF AUSTRALIA & NEW ZEALAND, *Proceedings of the Thirtieth Annual Conference*, Adelaide [Australia], St. Francis Xavier's Provincial Seminary, 1996, p. 109.

(c. 1095, 2°; *CCEO*, c. 818, 2°). Fear invalidates matrimonial consent only if it is caused by an external agent, who so interferes that the contractant's internal freedom is violated and there remains no other way to avoid the evil except by contracting marriage. Therefore, here, the mental trepidation has its origin in a cause not attributable to the victim but to a cause that is external, human, and free. For Pompedda, the internal freedom to make mature decisions is the third element of discretion of judgment, which he has explained in several of his sentences and scientific studies.[173] Without this internal freedom a person cannot choose one's state in life (c. 219; *CCEO*, c. 22). Pompedda goes on to say that this internal freedom can be seriously affected by a grave psychic disorder or by a combination of a person's mental state and external pressures.[174] In other words, a person with a weak personality may not be able to resist external pressures and make a decision without sufficient internal freedom.[175] In the case of marriage, consent given without sufficient internal freedom will be invalid.

In his sentence of 27 November 1998, Defilippi also states that the internal freedom to choose the object of matrimonial consent is one of the constitutive elements of discretion of judgment. This freedom may be impeded either by internal forces, like serious affective immaturity, personality disorders, etc., or by external free agents, through threats, pleadings, etc. In either case, the choice of one's state in life could be

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[173] See, for example, M.F. POMPEDDA, "Maturità psichica e matrimonio nei canoni 1095, 1096," in *Apollinaris*, 57 (1984), p. 134.

[174] See *coram* POMPEDDA, 18 December 1993, in *RRT Dec.*, 85 (1993), pp. 664-672.

[175] See MENDONÇA, "The Principle of Substantial Conformity of Sentences Revisited," p. 188.

seriously compromised and the decision made in such circumstances rendered invalid.[176] Defilippi writes the following with regard to the possibility of two tribunals pronouncing affirmative decisions on two different grounds (*capita*) of nullity but based on the same juridic facts:

> It can happen that in different instances of the process the preceding judges may declare the nullity of marriage on the basis of the same juridic facts due to the defect of discretion of judgment, with greater focus on the defects in the psychological condition of the contractant; while the later judges, after having completed a supplementary instruction of the case, may consider the nullity of marriage proven on the ground of defect of freedom provoked 'from without' especially in a psychologically fragile person.[177]

Therefore, when we think about the possibility of substantial or equivalent conformity of two sentences, even though the case was adjudged on two formally different grounds (*capita*) at two instances, there is a possibility of conformity between the two sentences provided both are based on the same juridic fact substantiated by the same simple facts contained in the same proofs. In the grounds of reverential fear (force or grave fear) and discretion of judgment, the common juridic fact is the "grave defect of internal freedom." It can be directly caused by fear or by a combination of internal and external factors. In the first case the ground of "fear" would be justified and in the second case the appropriate ground would be "grave defect of discretion of judgement."

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[176] See *coram* DEFILIPPI, 27 November 1998, in *RRT Dec.*, 90 (1998), pp. 788-807; see also MENDONÇA, "The Principle of Substantial Conformity of Sentences Revisited," pp. 171-172.

[177] "Fieri potest ut iudices in diversis instantiis processus de iisdem iuridicis factis priores nullitatem matrimonii declarent ob defectum discretionis iudicii, magis prementes mendositates psychicae conditionis contrahentis; dum posteriores, suppletiva causae instructione peracta, nullitatem matrimonii probatam habent ob defectum libertatis provocatum 'ab extrinseco' utique in personam paychologice debilem" (*Coram* DEFILIPPI, 27 November 1998, p. 799, n. 23).

3.5.2 – Reverential Fear and Simulation

We have already seen that there can be substantial or equivalent conformity of sentences even when two decisions may employ different formal statements of the grounds (*capita*) but nonetheless agree on the same underlying juridic facts. When we deal with the ground of reverential fear as a ground of marriage nullity, however, it is not any fear but only the grave (qualified) fear of the indignation of the parents that causes the nullity of marriage. Thus, the juridic fact identified here is the qualified fear. Should the first instance tribunal declare the nullity of marriage on the ground of reverential fear and the second instance tribunal declare the nullity of the same marriage on the ground of simulation, both on the part of the same person, could there be substantial or equivalent conformity between these two sentences?

Fear suffered by a party does not always have all the requisites indicated in c. 1103 (*CCEO*, c. 825) to be a sufficient cause of the invalidity of marriage. One of the requisites is that fear inflicted should be grave (juridically qualified). However, this trepidation of mind can vitiate the process of the elaboration of consent in a different way; that is, fear can act as an impulse or motivational cause of simulation on the part of the person suffering from the trepidation.[178] As we have already noted, in matrimonial cases, when the parties and their witnesses present the facts in support of their claims, the judge ascribes the *nomen iuris* to those facts. It is possible for one judge to attach the *nomen iuris* of "force or grave fear" to a set of simple facts, while another judge may assign to the same simple facts the *nomen iuris* of "simulation." However, the basis of both

[178] See VILADRICH, Commentary on c. 1103, p. 1431.

decisions may have the same juridic fact.[179] Here, in both situations the common juridic fact will be "grave (qualified) fear."

In the decision *coram* Ewers on 17 October 1970 we are told, "Substantial conformity of sentences is also verified whenever the judges of one tribunal relying on the same facts conclude for fear which invalidates marriage, while the judges of another instance decree invalidity of marriage on simulation, which had as the cause fear inflicted on the person who was simulating."[180] Hence, there can be substantial or equivalent conformity between two sentences if the first instance tribunal declared the nullity of marriage on the ground of reverential fear and the second instance tribunal declared the nullity of the same marriage on the ground of simulation, both on the part of the same person, and both decisions based on the same juridic fact.

CONCLUSION

The Supreme Legislator has established the invalidity of matrimonial consent given under the influence of force or grave fear because these attack the internal freedom necessary for giving consent, which is a juridic act. Also, the internal freedom can be substantially destroyed or diminished by intrinsic factors. These factors represent serious psychological disorders related mainly to the consensual incapacity mentioned in c. 1095 (*CCEO*, c. 818). Grave fear causes a defect in the consent because the passive subject accepts marriage because of fear induced by the threat of some evil (indignation of the

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[179] See MENDONÇA, "The Principle of Substantial Conformity of Sentences Revisited," p. 181.

[180] "Substantialis conformitas quoque verificatur quoties iisdem nisi factis Iudices unius Tribunalis pro metu matrimonium invalidante concludunt, dum Iudices alterius instantiae pro matrimonii nullitate quidem decernunt, sed ob simulationem, quae causam habuit metum simulanti incussum" (*Coram* EWERS, 17 October 1970, in *RRT Dec.*, 62 [1970], p. 901, n. 18); see also MENDONÇA, "Equivalent or Substantial Conformity of Sentences," p. 47.

parents or of a superior in the case of reverential fear). While force is physically irresistible, fear is morally so. Grave fear, including reverential fear, invalidates marriage by natural law itself. The contents discussed in this chapter allow us to draw the following conclusions:

First, grave fear referred to in c. 1103 (*CCEO*, c. 825) can be common or reverential. Common fear exists in the disturbance of the mind caused by an imminent evil. Canon 1103 (*CCEO*, c. 825) speaks about any fear, justly or unjustly inflicted from outside, even if not purposely, which can render marriage null in virtue of the subjective mental trepidation of the person marrying that compels him or her to choose marriage. Reverential fear is a discerning of a future evil as coming to us from those under whose lawful power we are and whom we regard with reverence and honour.

Second, although reverential fear can easily arise in any relationship of dependence or subordination, it usually occurs in the relationship of parents with their children or of a superior with a subordinate.

Third, the specific object of reverential fear is not any particular threat by the parent or by a superior, but the parental indignation itself.

Fourth, in order that reverential fear may invalidate matrimonial consent it does not require particular elements apart from those indicated in the canon on force or grave fear. However, it demands careful evaluation of the following elements, that is, the gravity, the externality, and the unavoidability of fear, considered together with other concrete factors such as education, maturity of the passive subject, level of affection existing between the person who is the source of fear and the victim of fear and other relevant cultural factors.

Fifth, reverential fear is relatively grave fear. Generally speaking, reverential fear is *per se* slight, and it does not have the invalidating effect on matrimonial consent. However, if, because of a relation of reverence and subjection, a person is compelled to abide by the authoritarian advice of parents or of a superior to contract marriage or to marry a specific person, then one would be consenting to such a marriage unwillingly, and that marriage is invalid. If threats, beatings, unreasonable demands, vexations, etc., are added to mere reverential fear, then it becomes grave. Even without threats, prolonged indignation, on the part of the parents, can wield undue influence on the child to make a choice of marriage that the child would not make under normal circumstances.

Sixth, the situation may be different when a son or a daughter marries in compliance with the wishes and advice of his or her parents in order to please them but without any threat or danger of grave indignation of parents. In this case, one must be said to marry freely, that is, without any external coercion. In such cases, reverential fear would not have the force to invalidate the matrimonial consent.

Seventh, there are, in fact, many cultural factors that can give rise to reverential fear. The main cultural factors identified in this study of the Indian society include parental authority, filial respect, respect for the significant others, and the economic dependence on the family.

Eighth, the proof of reverential fear is twofold: indirect, that is, through aversion and direct, that is, presence of coercion. In evaluating both proofs, one must weigh carefully the declarations of the parties and the testimonies of witnesses, the circumstantial evidence, and the cultural factors.

Ninth, in a marriage nullity case, two conforming sentences may be either of formal conformity or of substantial (equivalent) conformity. When two sentences have been issued between the same parties, about the same marriage, employing the same formulation of grounds (*capita*) with the same basic argumentation, then there is formal conformity between the sentences. But substantial or equivalent conformity between two sentences exists when both sentences are between the same parties, about the same marriage, based on the same juridic fact, which is derived from the same simple facts contained in the same proofs but under different grounds (*capita*).

Tenth, in a marriage nullity case, the true cause for petitioning (*causa petendi*) is a juridic fact which actually invalidates the marriage in question. Since all defects of consent are ultimately rooted in the defects of subjective components or in the objective content of consent, a common juridic fact may be identified between the two different grounds under consideration, e.g., lack of freedom of choice may be the common juridic fact behind the grounds of force or grave fear and of grave defect of discretion of judgment.

Hence, we have identified in this chapter the fundamental principles applied to reverential fear, the cultural factors that underlie it, the main proofs of invalidating reverential fear, and the relationship of the ground of reverential fear with some other grounds of matrimonial nullity. Now, what does the Rotal jurisprudence say about reverential fear and how do the local tribunals in India deal with marriage nullity cases involving reverential fear? How do judges in different tribunals understand and apply the principles on reverential fear to marriage nullity cases in the Indian cultural context? The final chapter of this study will attempt to respond to these questions.

CHAPTER FOUR

JURISPRUDENCE ON REVERENTIAL FEAR

INTRODUCTION

Marriage is a unique and very serious bilateral contract, a covenant which entails grave, lifelong obligations. Therefore, a person entering into marriage should enjoy sufficient freedom to give consent. Matrimonial consent, being a juridic act, implies a deliberate and free choice. Hence, if any cause interferes with this freedom of will, either by substantially depriving it or seriously jeopardizing it, the matrimonial consent will be defective and the marriage will be invalid.

Discerning the truth of the alleged invalidity of a marriage is an ecclesiastical judge's ultimate task. This chapter will examine how the principles on reverential fear enunciated in the previous chapter have been applied to concrete cases, taking into consideration cultural factors. Under the ground of grave fear (reverential), articulated in c. 1103 (*CCEO*, c. 825), the following specific factors are also to be established: 1) the unwillingness of the party to marry or to marry a particular person, or to marry a particular person at a specific time; 2) the reason behind the unwillingness; 3) the reason(s) to proceed with the marriage despite one's unwillingness to marry. It is our contention that the cultural factors involved in a marriage case play a crucial role in causing grave reverential fear.

In this chapter, therefore, we will present a selective analysis of matrimonial cases adjudged on the ground of reverential fear at the apostolic tribunal of the Roman Rota and in selected ecclesiastical tribunals in India. This analysis will be limited to sentences pronounced since the promulgation of the 1983 Code. Furthermore, the analysis of the

sentences will be categorized under the cultural factors which contribute to reverential fear in children in Indian society. These cultural factors are: *parental authority*, *filial respect*, *respect to significant others*, *financial dependence on the family*, and *age*. However, we note that this is not an exhaustive list of the cultural factors that underlie reverential fear.

4.1– PARENTAL AUTHORITY

Parental authority is deeply rooted in the Indian culture and in family life, and it is one of the dominant factors causing reverential fear in children. It is the right as well as the duty of parents and superiors to advise, guide, and admonish their children or subordinates in their choice of marriage partners. If parental intervention is unreasonable and extremely difficult for the children to accept, it may give rise to grave reverential fear, which can invalidate the marriage. We will analyze in the following matrimonial cases the influence of parental authority on the consent of their children.

4.1.1 – Sentence *coram* KOCHUTHUNDIL, 10 July 2004[1]

The marriage took place on 15 September 1969. Both parties belonged to the Syro-Malankara Church. It was an arranged marriage. The petitioner (man) was the oldest of four children. He was a practicing Catholic Christian and was always obedient and submissive to his parents.

The respondent came from a family which adhered to some Pentecostal church. The petitioner had no previous contact with the respondent. The petitioner consented to the

[1] METROPOLITAN EPARCHIAL TRIBUNAL OF THE ARCHDIOCESE OF TRIVANDRUM [SYRO-MALANKARA CHRUCH], *coram* KOCHUTHUNDIL, 10 July 2004, Case no. 90/2002, unpublished electronic copy. To ensure confidentiality, no mention is made of the real names of persons and places in our analysis of the sentences.

marriage only because of his father's stubbornness and because he was assured that the respondent would become a Catholic. From the first day of marriage, the respondent began to pressure the petitioner to participate in Pentecostal services. Problems began when the petitioner started questioning the respondent's behaviour. The marriage lasted only three months. No children were born of this marriage. All attempts at reconciliation failed and, consequently, the man petitioned for and obtained a civil divorce. Subsequently, he contracted a civil marriage.

On 1 July 2002, the man petitioned the metropolitan eparchial tribunal of the archdiocese of Trivandrum to declare his marriage null on the grounds of reverential fear on his part and fraud on the part of the respondent. On 30 November 2003, the tribunal determined the grounds of nullity: grave fear (reverential) on the part of the petitioner (c. 825; *CIC*, c. 1103) and fraud on the part of the respondent (c. 821; *CIC*, c. 1098).

In this sentence, the *ponens* Kochuthundil states that the nullity of marriage according to c. 825 can be proven only in the presence of fear (reverential) that is grave, externally inflicted, and of such severity that the person suffering the fear can free himself only by choosing marriage. To invalidate marriage, fear must be truly efficacious, that is, it must extort consent. It must be established that the person married not "with fear," but did so solely "because of fear." Reverential fear involves two factors: 1) dependence on parents or superiors; 2) indignation on the part of parents or superiors. In any relationship between parents (or their equivalent) and a young person, there is always the potential for fear on the part of the young person that he or she will incur indignation, disappointment, or rejection of the parents as the result of a certain action or inaction. This disposition is reverential in nature. When the simple reverential fear is qualified by

persistent demands, arguments, pressures, or unreasonable pleadings, it becomes grave.[2] When reverential fear becomes grave it invalidates marriage. Besides arguments, demands, pleadings, etc., reverential fear may be exacerbated by an absolute command from a domineering and obstinate parent, demanding a specific act on the part of the submissive young person. If a young person, who abhors a proposed marriage, repeatedly protests his or her unwillingness, but, still is unsuccessful in persuading the parents to desist from their insistence on the marriage, their obstinacy then gives rise to grave fear.

Reverential fear can become grave in a subjective or a relative sense. It can invalidate marriage depending on the character of the agent and that of the victim of fear, the likelihood of indignation being permanent, etc. It is to be noted that such a fear is based not always upon threats of physical harm but upon the quality of relationship between a superior and a subordinate, that is, a submissive relationship on the part of the subordinate. The fact of coercion will be the direct proof of this reverential fear while the aversion of its victim will be its indirect proof.

The testimonial evidence in this case did not seem to have provided any direct proof of reverential fear, but all witnesses depict the petitioner as an exceptionally obedient son toward his father in all respects. Since the petitioner was a practicing Catholic from his early childhood, he did not want to marry a girl belonging to a Pentecostal group. It was only because of pressure from his father and out of reverential fear that he consented to marry the respondent. This fact is confirmed by all witnesses. The respondent did not participate in the trial.

The petitioner's father was very strict with his wife and children. He had a

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[2] See *coram* STAFFA, 9 August 1951, in *RRT Dec.*, 43 (1951), p. 617, n. 2.

domineering character. The witnesses confirm this fact. The petitioner's mother testifies, "My husband would not tolerate any person who would disobey him. He was rigid and unyielding. All my children were afraid of him. He was good to me while I tried to adjust to his character. He was an autocrat. My son and I were against this marriage but nobody could go against his decision" (p. 45).[3] Another witness, the petitioner's catechism teacher, states:

> I knew his [petitioner's] father very well. He was very adamant and obstinate. He had some kind of relationship with the family of the respondent. The petitioner expressed his unwillingness to the marriage. He got married to the respondent only because of the stubbornness of his father. One of the relatives of the respondent brought the marriage proposal. The petitioner's father had a business relationship with that [marriage] broker and without further consultation of anyone even the petitioner, he agreed with the proposal. The petitioner had no previous contact with the respondent and even at the time of a first visit to the respondent's house he was under the control of his father. All the members of the family were against the marriage. The petitioner was not interested in the marriage due to several factors like his unemployment, poor financial set-up, etc., but he was not courageous enough to stand against his father's decision. In other words, it is evident from the petitioner's family background, his personality, and obstinate nature of his father that the petitioner's consent was seriously affected by reverential fear towards his father (pp. 50-54).

The conclusion of the judge was that the petitioner's father's domineering and obstinate character intensified the petitioner's reverential fear towards his father. Therefore, in order to avoid the indignation of his father by disobeying his demand, the petitioner consented to the proposed marriage compelled by reverential fear. The judge also concluded that there was fraud on the part of the respondent in becoming a Catholic. She seems to have become a Catholic just to marry the petitioner, and immediately after the marriage she returned to the practice of her faith. Thus, the first instance tribunal gave an affirmative decision on both grounds, that is, grave fear (reverential) on the part of the petitioner and fraud on the part of the respondent. This decision was confirmed by the

[3] The page numbers indicated in parenthesis refer to the page numbers in the dossier of each case.

second instance tribunal on 21 July 2004.

The above case exemplifies how parental authority, especially the domineering character of the father, can aggravate reverential fear in children and lead to the invalidity of their marriage.

4.1.2 – Sentence *coram* DE SOUSA, 14 January 2003[4]

The marriage in this case was celebrated on 25 June 2000. It was an arranged marriage. The man respondent had no interest in marrying the petitioner but was forced chiefly by his mother, and to some extent, by his employer and by his future mother-in-law. The couple lived together for a very short period of time and eventually separated. On 1 July 2002, the woman petitioned the tribunal of the archdiocese of Goa and Daman to declare her marriage null on the ground of grave fear (reverential) on the part of the respondent. The formula of doubt was determined by the tribunal as follows: "Whether or not the respondent gave matrimonial consent out of grave fear (reverential) according to c. 1103."

In this sentence, the *ponens* De Sousa states, "In order to vindicate this ground [reverential fear] in a given case, the following are to be proved: 1) grave fear imposed from outside; 2) from which a person has no escape other than by choosing marriage. Aversion is a correlative element, complementary to force and fear. Fear is the result of force" (p. 23). Fear is not only objective (e.g., threats of death, inheritance, loss of job in

[4] PATRIARCHAL TRIBUNAL OF THE ARCHDIOCESE OF GOA AND DAMAN, *coram* DE SOUSA, 14 January 2003, TG-Pr/23/2002, unpublished photocopy. "The Patriarch of the East Indies" in the Catholic hierarchy is the title of the archbishop of Goa and Daman in India. Unlike the patriarchs of the Eastern Catholic Churches *sui iuris*, the Patriarch of the East Indies enjoys a purely honorary title and is fully subject to the Apostolic See of Rome. Therefore, the first instance tribunal of the archdiocese of Goa and Daman is called Patriarchal Tribunal of the archdiocese of Goa and Daman.

retaliation, etc.) but also relative to the person on whom fear is inflicted. Grave reverential fear is proven by the reluctance or aversion on the part of the victim; it has three aspects: a) aversion towards marriage (*aversio ad matrimonium*), e.g., "I do not want to marry"; b) aversion towards the person (*aversio ad personam*), e.g., "I do want to marry, but not you"; c) aversion towards the time of marriage (*aversio ad statutum tempus*), e.g., "I do want to marry and I want to marry you, but not now" (p. 24).

When simple reverential fear is qualified, it is equivalent to grave fear. Qualified reverential fear is conceived because of signs of indignation, deep sadness, pestering or persistent pleadings from parents or superiors, especially when these signs are accompanied by threats. The circumstances that can produce such grave reverential fear are young age, a fearful and docile temperament, financial dependence, sensitive and receptive nature, etc. on the part of the subordinate, and an authoritarian and dictatorial temperament, unbending and irascible character on the part of parents or the superior. Even a deep sense of gratitude towards parents or a superior can contribute towards grave reverential fear (p. 24).

The respondent in this case says that he did not want to marry the petitioner. He married her only because of his mother's constant insistence. The respondent was always afraid of his mother. He respected and obeyed his mother's wishes all the time. The respondent states:

> I did not like the petitioner and kept on rejecting her for three years. Even though I did not want to marry the petitioner, I always wanted to get married. The petitioner was not as per my choice or as per my vision; she was not social as well. I got married because my mother insisted constantly that I should marry the petitioner. The good financial condition of the petitioner's family also impressed my mother. I was scared of my mother at all times. I was always an obedient son. I did not want to face my mother's anger. The petitioner's mother also was requesting me continuously to marry her daughter; since my mother-in-law liked me she kept on making empty promises and enticing me (p. 25).

To the specific question whether or not he was free to marry or to marry the petitioner, the respondent answered that he married the petitioner because of fear of his mother and would have chosen some other girl as his spouse. The respondent's statements confirm that he did not want to marry the petitioner (p. 26).

It is quite possible that the respondent never told the petitioner that he had been forced to marry her. However, the petitioner says:

> It was a marriage by proposal.[5] After the proposal, there was a big gap of several months and the respondent didn't show any interest in pursuing the proposal. If asked, he would say, 'I want to think and thereafter I will let you know'. He was hesitating and indecisive. I feel that he married me because of his mother's insistence and out of his respect and obedience towards her. They all were scared of their mother; she was a type who could kill anybody who disobeyed her (p. 26).

The respondent's mother admits all when she states, "My son did not wish to marry the petitioner, but was seduced by the petitioner's mother and forced by me. I was made to convince myself that the petitioner was a suitable girl for my son, and I forced him to marry her, thinking that he would not oppose me" (p. 26). The petitioner's mother confirms her own role in this marriage: "Yes, I was anxious about my daughter as she was catching up with age. I offered the respondent those gifts. It was uncle Boyer who advised me to entice him. He told me, 'Gift him; where will he escape' " (p. 27). Two more witnesses also confirmed that the respondent married the petitioner under grave

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[5] The customary type of arranged marriage is still common in India. First, parents and very close relatives or the significant others either by themselves or through a marriage broker make secret enquiries about the possible spouses. Their search for the future spouse is guided by practical considerations like good character, economic conditions, earning capacity, education, religious and moral backgrounds, reputation and status of the family, etc. of both parties. Then, the boy with some of his very close relatives visits the girl's house so that the future couple can have a look at each other. If the boy likes the girl, then girl's parents and their very close relatives visit the boys' house. If both families agree with regard to some of the factors of selection of a spouse then they fix a day for the engagement. This is the manner, in general, a marriage is proposed in India. Marriage arrangements become a family affair rather than an individual concern.

reverential fear towards his mother.

On the basis of the above testimonial evidence the *ponens* concludes that the domineering and possessive character of the respondent's mother exacerbated the gravity of the respondent's reverential towards her. The respondent knew that if he disagreed with the marriage proposal, he would have to face his mother's lasting indignation and anger. Hence, it was to avoid the indignation of his mother that the respondent consented to the marriage. The judge declared with moral certainty that the marriage was invalid on the ground of grave fear (reverential) on the part of the respondent. This decision was ratified by the second instance tribunal on 24 February 2003.

It is clear from the above case that it is the domineering, authoritarian, and possessive character of the respondent's mother that gave rise to grave reverential fear in him, which consequently caused the nullity of the marriage.

4.1.3 – Sentence *coram* KOLUTHARA, 25 March 1999[6]

On 28 December 1995, the parties in this case celebrated their marriage in the archdiocese of Bangalore. The man was Catholic and the woman was Anglican at the time of the marriage. The marriage was arranged by the man's father, who was a retired military officer. The marriage was a failure from the very beginning. Conjugal life lasted only one year and a half. Subsequently, the couple separated. Attempts at reconciliation were not successful. The man petitioned the archdiocesan tribunal of Bangalore on 6 February 1997 to declare his marriage null on the ground of grave fear (reverential).

The petitioner and his witnesses responded positively to the summons of the tribunal and submitted their testimonies, but the respondent indicated her intention not to

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[6] TRIBUNAL OF THE ARCHDIOCESE OF BANGALORE, *coram* KOLUTHARA, 25 March 1999, Prot. no. 5/97, unpublished photocopy.

participate in the process because she already had the civil divorce certificate dated 18 December 1998. Therefore, she was declared absent from the case. The tribunal decided to proceed with the case on the ground of force or grave fear (reverential) according to c. 1103.

In his sentence, the *ponens* considers the key factors which determine whether reverential fear seriously diminishes the freedom of the will or not: 1) the nature of the relationship between children and parents or between a subordinate and a superior; 2) the manner in which fear is induced; 3) the gravity of the resulting evil. He continues:

> The freedom of the will is easily diminished in a person having an unusually docile personality with a strong emotional or psychological dependence on a parent or a superior that in a person exhibiting a marked degree of independence. Whatever the nature of the force that induces fear, even if it amounts to a threat of permanent estrangement or indignation, if it weakens personal resolve against the marriage, it can amount to invalidating fear (p. 3).

If the parent-child relationship is marked by a degree of subservience and unquestioning obedience, the probability is high that marriages are entered into because of grave reverential fear. In all cases of invalidating reverential fear, the common jurisprudential principles are operative: the fear must be grave and extrinsic, and it is subjectively escapable only by giving consent to marriage. When a person marries out of fear that is both grave and causative, and when there is aversion on the part of the person experiencing reverential fear to marry the other party, such a marriage is certainly invalid (p. 3).

The petitioner alleges in his deposition that he did not marry the respondent freely, but he was forced into it by external pressure. In his petition, he states, "I could not do anything to displease my father and my mother. I was not free to say 'no' to the proposal prior to the marriage as that would have displeased my parents who had inadvertently

brought pressure to bear on me through their parental persuasion" (pp. 1-2). The acts of the case prove that it was out of grave reverential fear that the petitioner consented to the marriage. The petitioner, who wanted to marry later in life, was forced by his father to marry the respondent. The petitioner confesses before the tribunal, "If I had a chance at that time to postpone my marriage with the respondent or to anybody else, I would have preferred it. I was not at all prepared to get married at that time. However, since my father was over protective and authoritarian, I had no option but to say 'yes' to his proposal with the respondent" (pp. 3-4).

The petitioner's father testifies, "My son was not mentally prepared to get married at that early stage in life as he had only recently migrated to Australia. Therefore, though he was unwilling to get married at that stage, and though he pleaded with me many times not to impose my proposal on him, I insisted that he should accept my proposal seriously in the interest of his future happiness and well-being" (pp. 1-2).The petitioner's sister-in-law gives evidence that he was very docile and was brought up under strict parental authority, and that his father was monitoring him, guiding him, and even dictating his career (p. 1).

The petitioner says in the petition that he had an aversion towards the respondent: "I did not like the respondent and didn't want to get married at that time. I had an aversion towards her from the beginning of our conjugal life" (p. 2). In the same deposition, he adds, "I did not want her to come out with me alone. She brought her sister always with her whenever we had gone out" (p. 2). These statements show that the petitioner had expressed indirectly his unwillingness to marry the respondent by displaying his aversion towards her.

The *ponens* states in his sentence that the dictatorial and adamant character of the father exacerbated the petitioner's reverential fear. The petitioner was obedient and submissive to his father all the time. Thus, to avoid the grave indignation of his father in disobeying his wishes, the petitioner had to consent to marry the respondent. Therefore, the petitioner's consent was defective. Hence, the marriage was declared null in accord with the norm of c. 1103. This first instance sentence was confirmed by decree on 27 April 1999 by the second instance tribunal.

In this case, parental authority was certainly abusive. Even though the petitioner had requested many times not to compel him to get married at that time, his father, a retired military officer, did not heed his plea. But, because of his respect for his father, the petitioner obediently submitted to his father's wishes and married the respondent out of reverential fear.

4.2 – FILIAL RESPECT

Even today, filial respect plays an important role in parent-child relationships in the Indian culture. It is indeed an acceptable part of the way the children in India relate to their parents, elders, or superiors. Filial respect or reverence includes the duty of children to respect their parents, obey their wishes, take care of them in their old age, and, of course, to love them always. A rebellious disposition in the young, which is considered today as part of adolescent behaviour, is the antithesis of filial respect.

When parents arrange marriage for their children, in most cases, out of filial respect and obedience, the children accept their proposals. However, sometimes, a boy or a girl may not like the proposal. Nevertheless, they know that if they oppose their parents' wishes, they will have to face the anger of their parents. Therefore, in order to avoid such

a situation, out of reverential fear, a son or daughter complies with the wishes of his or her parents. Even after the marriage, because of the filial respect and submissive nature, in some cases, men may continue to cling to the parents for everything and anything even without regard for their wives' opinions and suggestions concerning family issues. Such a situation may result in drastic consequences for the family, sometimes leading to marriage breakdown. The following cases will demonstrate how filial respect may enhance the gravity of reverential fear in arranged marriages.

4.2.1 – Sentence *coram* SERRANO, 17 July 1992[7]

Vincent, the petitioner, and Maya Magdalene, the respondent, married on 17 January 1979. It was an arranged marriage. The common life lasted hardly eighteen days when Maya left her marital home because she could not put up with her mother-in-law's treatment of her. Even though she returned home a few times at the orders of her husband, she left home for good when she realized that her life with her mother-in-law would never become any easier. When he found no possibility of restoring conjugal life, Vincent petitioned the diocesan tribunal of Krishnagar on 11 May 1987 to declare the nullity of his marriage on grounds of total simulation and exclusion of unity on Maya's part. Later, in a formal petition, he wrote in a general way about the grounds of simulation and grave fear (reverential). The joinder of issues was done as follows, "Whether there is evidence of nullity of marriage on grounds of simulation (c. 1101) on the part of Maya Magdalene and grave fear (reverential) according to c. 1103 imposed on Mr. Vincent." Maya was opposed to the declaration of nullity and expressed her

[7] *Coram* SERRANO, 17 July 1992, in *RRT Dec.*, 84 (1992), pp. 425-432. The analysis of this sentence by Serrano is based mostly on MENDONÇA, "A Cultural Approach to Indian Marriage Cases," pp. 73-78.

willingness to reconcile, but Vincent rejected this offer.

The first instance tribunal rendered an affirmative decision on 26 February 1988 on grounds of grave fear (reverential) inflicted on the petitioner but a negative decision on simulation on the respondent's part. The appeal court of Calcutta overturned the affirmative decision on 3 January 1989. The Rotal court processed the case only on the ground of grave fear (reverential) on the part of the petitioner.

In his sentence Serrano writes eloquently on the inviolability of personal freedom in the choice of marriage and of a marriage partner:

> As we know, the Church has always considered it extremely important to protect the freedom of the partners in marriage. And this disposition of the Church seems much clearer in modern circumstances because the personal responsibility of a human being has become more transparent so that one could make better choices [...], and especially, those in which one's life should be spent.[8]

A complete mutual self-gift in marriage through one's consent is not possible in the presence of external force. Serrano continues, "But freedom from coercion, that is, the freedom which is positively proportionate to marriage is not a notion that is considered *a priori* as determined or to be determined, but is regarded as the same notion existing in all and always."[9] The very notion of freedom is rooted in culture and it must necessarily be defined within the context of concrete culture.[10] Serrano adds, "Then, not in every place nor in every time do they have the same image of freedom, particularly of the freedom

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[8] "Uti scitur, Ecclesia semper maximi habuit tueri libertatem nubentium in matrimonio. Quae Ecclesiae dispositio clarius in hodiernis adiunctis apparet cum magis perspicua facta sit personalis hominis responsabilitas ut potiores optiones compleat [...], et maxime illas in quibus de propria vita disponere debet (cf. c. 219)" (*Coram* SERRANO, 17 July 1992, p. 426, n. 4).

[9] "At immunitas a coactione seu quae in positivo est adaequata ad nuptias libertas non a priori constabilita vel constabilienda habetur notio in omnibus et semper eadem vigens" (ibid., p. 427, n. 5).

[10] See ibid.

that is necessary to marry and which must be exercised within the context of the family."[11] The intervention of parents or elders can amount to violation of such freedom.[12] The Second Vatican Council states that parents have the duty to guide their children in starting a family through prudent advice and by willingly listening to them. However, parents should never force, either directly or indirectly, their children to marry or choose their life partner (see *GS*, 52). Furthermore, the Commission for the Interpretation of the Code of Canon Law responded on 15 November 1986 that marriages entered upon by force are invalid even among non-Catholics,[13] and in so deciding the Commission implied that the freedom to marry is a natural right every person has and its origin is not positive ecclesiastical law (cf. c. 1075).[14]

Serrano argues that the above principles are particularly applicable to cultures in which marriages are arranged. He says:

> The first problem which confronts us is the freedom of consent in some traditional marriage situations [...]. Even in the West freedom from parental and other social impositions has not been totally achieved. Moreover, instances of interference on the part of the families, or even public councils in marriages which they consider to be very important simply underline the importance which marriage has in itself and not only in the cases of important persons.
>
> The social dignity of the persons involved does not have an influence on the nature of the marriage. Now, if such things take place in the West, then we should not be scandalized by similar practices in more ancient and traditional societies.

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[11] "Iam age non omnes loci nec in omni tempore eamdem imaginem libertatis habent eius praesartim quae ad nubendum attinet quaeque intra ambitum familiae exercenda est" (ibid.).

[12] See ibid.

[13] In its response of 6 August 1987, the Pontifical Commission for the Interpretation of Legislative Texts declared that the defect of consent caused by "force and fear" is applicable also to marriages of non-Catholics. See *AAS*, 79 (1987), p. 1132. It signifies that the ground of force and fear, including reverential fear, is of natural law, and therefore, retroactive in its applicability.

[14] See ibid., p. 426, n. 4.

> Two extremes are to be avoided by those concerned with parental or family intervention in the arrangement of marriages. On the one hand, it would be too much to exclude entirely those who have by tradition been responsible for the arranging of marriages. On the other hand, we have to insist that the parties to the marriage must sincerely accept what others have arranged for them and the arrangements should at all costs be submitted to them for their personal ratification.[15]

Serrano, however, warns against any rash judgment about the negative influence of "arranged marriages." One should be prudent in weighing the situations involving "arranged marriages" lest many marriages be declared null because of only an appearance of force. It is possible that people are content with the choice they make under the direction of their parents.[16] With regard to the proof for invalidating grave fear he says, "Unless we are mistaken, in these cases, among the two steps Our Jurisprudence has recognized for determining an unwanted marriage, namely, indirect, that is, 'aversion' and direct, that is, 'coercion', one should rather consider 'aversion'."[17] "Aversion" assumes special importance because, if a mental disposition opposed to marriage is not demonstrated, it may be an indication that the person is marrying willingly.[18]

In his sentence, Serrano repeats many of the quotes from the first instance sentence in order to show that there were several circumstances in this case that made it difficult to come to an easy conclusion. The facts of the case indicated no basis either for grave fear

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[15] Ibid., pp. 427-428, n. 6. This is a quote from his article published in 1978. See J.M. SERRANO RUIZ, "Values in the Formation of Christian Marriages," in *Vidyajyothi*, 42/4 (1978), p. 158.

[16] See ibid., p. 428, n. 7; see also MENDONÇA, "A Cultural Approach to Indian Marriage Cases," p. 75.

[17] "Ni fallimur his in casibus, inter duos quos Nostra Iurisprudentia discrevit gressus ad constabiliendas invitas nuptias, nempe indirectum seu 'aversionem' et immediatum seu 'coactionem', potius attendi deberet ad 'aversionem'" (ibid.).

[18] See ibid.

or simulation. The petitioner wrote the following about his arranged marriage and the events that occurred thereafter:

> My marriage was on 27 January 1979. Eighteen days after marriage, I went by myself to Ahmedabad for my work. I had told my wife Maya Magdalene that I would make arrangements for a house there and would take her there within a few days. However, about one month after my departure, my wife left our house without anyone's permission. As soon as I got this news from my house, I wrote a letter [to my wife] addressed to my father-in-law's house, instructing that as soon as she gets my letter she should return to our house. When she got my letter she came back [...]. But, after 15 days she again went away without anyone's permission. I again wrote a letter scolding her. She again came back immediately. However, this time I wrote to Maya that if she left the house again without anyone's permission, I would not accept her and that I would leave her forever [...]. Every year I came from Ahmedabad to Krishnagar for a month or two. Besides, Maya knew my address at Ahmedabad. But from 18 days after the marriage for six and a half years, there was no news about Maya [...]. For these reasons I cannot accept her as my wife. Therefore, I have resolved to renounce Maya Magdalene.[19]

The respondent presents her side of the story as well. She reports the following about the circumstances of the marriage and the events that occurred later in married life:

> Marriage was my first and arranged. First Vincent's parents paid visit to my father's house and on my consent, they brought the groom for a visit. I did not meet him between the engagement and marriage. I liked him [...]. I married him freely. He freely consented. We were happy. After 20 days, he left for Ahmedabad [...]. I finally left my in-law's place after six months on account of ill treatment by my mother-in-law. I used to write to my husband, but he would not believe me. I still pray and hope to be reunited with my husband [...].[20]

A qualified witness, a priest, described the manner in which the marriage was planned and the events that followed the marriage:

> After the marriage Mr. Vincent remained with Maya, his wife, for a short period. After that Vincent left for his work and then Maya remained with her mother-in-law, Mrs. Emilia. At this period all the information regarding Maya was given to Vincent by his mother. As far as I know a negative picture of Maya was presented to her husband Vincent. In the initial stages of their marriage they were happy and they loved each other. Due to the family dispute with the mother-in-law, the two married girls left home [...].The father of Maya, Mr. Peter, approached me to settle the dispute, but the

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[19] Ibid., p. 429, n. 9.

[20] Ibid., n. 10.

> mother-in-law of Maya did not receive me for negotiations. She was very rude and behaved in an unbecoming manner toward Mr. Gomes and me.[21]

Maya, the respondent, adds the following in her subsequent interrogation:

> Yes [I knew my husband] one year during the engagement. I liked him and he liked me [...]. His mother told my parents that I being educated, I would go and live with him in Ahmedabad [...]. He loved me much [...]. She [mother-in-law] reproached me. She did not show me how to do things. She scolded me. She struck me; she hit me, when I displeased her. She made life very difficult for me, did not feed me well. I wrote to my husband. He answered, 'I do not believe that my mother makes life difficult for you.' He believed his mother [...].We tried several times [reconciliation]. The mother-in-law was opposed to it.[22]

Serrano says that there is no evidence of aversion on the petitioner's part towards the respondent. He states, "The same wife presents several letters immediately that were sent by her husband while she was living with his parents. These letters are full of affection; hence constitute a clear, and completely free of any suspicion, indication of lack of aversion towards the woman and towards marriage."[23]

With regard to the petitioner's claim that he was a victim of force and fear, he wrote in his first letter, "So my father was enraged and told me 'if you don't marry this girl either I will commit suicide or I will leave you all.' So, I was compelled to marry Maya Magdalene to save my father from committing suicide."[24] But there was no confirmation of this claim from any of the witnesses. In his summary of the situation Serrano concludes that the petitioner always deferred to the expectations of his parents,

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[21] Ibid., p. 430, n. 11.

[22] Ibid., n. 12.

[23] "Eadem uxor exhibet plures litteras continuo a marito sibi missas dum penes maiores viri degebat. Hae litterae plenae affectionis signis sunt, unde indubium, praeter insuspectissimum, indicium faciunt carentiae aversionis in mulierem et in matrimonium" (ibid.).

[24] Ibid., n. 13.

particularly those of his mother. He acceded to the choice made by his parents on his behalf and ratified it. Therefore, the Rotal decision in this case was negative.[25]

In pronouncing a negative decision in this case, Serrano is applying the legal principle that even when a marriage is arranged by the parents following the tradition of a particular cultural society, if it is accepted and ratified by a son or a daughter, it may be difficult to prove the claim that grave fear (reverential) had affected the consent.

4.2.2 – Sentence *coram* KOCHUPURACKAL, 17 March 2005[26]

The marriage judged in this case involved two members of the Syro-Malabar archeparchy of Ernakulam-Angamaly. It was celebrated in the petitioner's parish on 28 June 1992 after completing the customary and canonical formalities of an arranged marriage. The petitioner alleged that the respondent was forced in the marriage by her parents and also that she was suffering from mental illness prior to the marriage. The respondent was an only child, and her parents showed a lot of affection to her. The man claims that it was because of the respondent's reverential fear towards her parents that

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[25] See ibid., pp. 430-432. A. Mendonça makes a reasonable observation on this Rotal negative decision: "Are there any peculiar factors that could have affected the consent of the parties in this marriage? For example, there is some evidence concerning the overly dependent behaviour of the petitioner. Even the Rotal court felt that the petitioner deferred to his parents on practically all matters. Was it possible that this person truly lacked the discretion of judgment at the time of contracting marriage? Was it possible that he merely went along with the choice his parents had made for him without making the choice of his life-mate his own? Is it possible to consider the denial of the right of *bonum coniugum* to the respondent due to the maltreatment she received from her mother-in-law, in which case the petitioner displayed his total impotence to intervene, thus confirming his own incapacity to honour the respondent's right to emotional, psychological, and physical wellbeing? In light of these questions, could the decision have been different if the woman had presented the petition on the basis of petitioner's incapacity to consent? In light of the peculiarity of our culture, these questions have a legitimate foundation and, in cases of this kind, these questions must be probed in order to arrive at a just and equitable resolution of the problem facing the tribunals" (MENDONÇA, "A Cultural Approach to Indian Marriage Cases," pp.77-78).

[26] SYRO-MALABAR MAJOR ARCHIEPISCOPAL ORDINARY TRIBUNAL, *coram* KOCHUPURACKAL, 17 March 2005, Prot. no. MAT 491/04/EKM, unpublished electronic copy.

she consented to marriage. The conjugal life was not happy and peaceful due to the respondent's non-cooperation in establishing an interpersonal relationship of life and love. The petitioner states that the respondent was not at all interested in sexual intercourse. The couple separated definitively after nearly two years of conjugal life.

The man petitioned the metropolitan tribunal of Ernakulum-Angamaly on 12 January 2004, requesting a declaration of nullity of his marriage on the grounds of 1) grave fear (reverential) on the part of the respondent (c. 825; *CIC*, c. 1103) and 2) inability to assume the essential obligations of marriage due to causes of a psychic nature on the part of the respondent (c. 818, 3°; *CIC*, c. 1095, 3°).The court determined the formula of doubt on the grounds alleged by the petitioner. The sentence of 11 June 2004 was negative. The petitioner appealed that sentence on 24 June 2004.

The major archiepiscopal tribunal, having received the observations of the defender of the bond of the second instance and of the parties, decided on 16 September 2004 to admit the case to an ordinary examination. After hearing the petitioner, the respondent and the defender of the bond, the tribunal formulated the doubt as follows: "Whether the sentence in the first instance can be confirmed or modified or reversed, that is, whether the marriage in question is null and void *ab initio* on the grounds of 1) grave fear (reverential) on the part of the respondent; 2) inability to assume the essential obligations of marriage due to causes of a psychic nature on the part of the respondent."

The *ponens* in this case explains at length the principles related to the norm on grave fear (pp. 2-4). In order that fear may invalidate matrimonial consent (c. 825; *CIC*, c. 1103), it must be grave; it must arise from an external agent; it must be of such a nature that the subject cannot otherwise escape the threatened evil except by choosing marriage.

Fear imposed from outside is distinct from irrational fear that arises without any external provocation, such as an inner compulsion caused by psychiatric or psychological disorders. Fear must be grave, at least subjectively; that is, when it is viewed as such by a particular person because of his or her peculiar disposition of mind, temperament, training, or other circumstances. The fear must be causative of marriage, that is, it must be the fear that moves the will of a person to marry.

The *ponens* states that the consequence of the clause "even if not purposely" in the canon is twofold: 1) it is not necessary that the source of fear actually intends to instill fear in the victim; 2) it is not necessary that the agent of fear specifically demands marriage. It is sufficient that the fear be indirect or mediate, that is, when it is induced by a situation that itself is caused by another person. Although not specifically pointed out in canon law as a separate ground of nullity, reverential fear is considered in jurisprudence as invalidating marriages in some given situations. Under the influence of the special relationship of the subject with the agent of fear, the victim is compelled to adhere, against his or her will, to a marriage proposed by the person in command. In order to invalidate matrimonial consent, reverential fear is to be qualified or grave as well. Kochupurackal is extensive also in stating the principles on c. 818, 3° (p. 4).

The petitioner alleges that the respondent was forced to marry him out of grave reverential fear. However, the respondent herself and her witnesses categorically deny such allegations. The testimonies of the witnesses corroborate that the allegation was baseless and totally false (I/63, 8; I/58, 13). Canon 1207, §1 (*CIC*, c. 1526, §1) states, "The burden of proof rests upon the person who makes the allegations."[27] The petitioner

[27] "Onus probandi incumbit ei, qui asserit" (c. 1207, §1; *CIC*, c.1526, §1).

has not adduced any satisfactory proof to substantiate his allegation of grave reverential fear on the part of the respondent. Therefore, the judges come to the conclusion that the nullity of marriage on the ground of grave reverential fear on the part of the respondent is not established. The defender of the bond has not adduced any valid objection which would counter the aforesaid conclusion. Regarding the second ground, after looking into the proofs, especially the expert opinion, the judges could not come to a moral certainty that the marriage was invalid on the alleged ground. Therefore, the appellate tribunal answered in the negative to the concorded doubt (p. 6).

4.2.3 – Sentence *coram* FRANK, 11 December 2003[28]

The marriage in this case was celebrated on 29 April 1980. Both partners were from a tribal caste called Koragas. As both of them were from the same parish, they had seen each other previously. The woman had been working in Bombay as a house maid for about two and a half years prior to marriage. By the time she came home for the holidays, her parents had already fixed her marriage with the petitioner.

The couple lived together for about two years. A child was born to them, but died a few days later. After the death of their first child, the wife began to go constantly to her parents' house, and her husband would then have to bring her back. She would quarrel with him, refusing to come back. This situation persisted for a while. Another female child was born. After the birth of this child, the wife left her husband for good. He tried several times for reconciliation, but she refused. The man finally petitioned the ecclesiastical tribunal of Mangalore on 9 September 2002 requesting it to declare his marriage null on the ground of grave reverential fear on the part of the respondent. The

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[28] ECCLESIASTICAL TRIBUNAL OF MANGALORE DIOCESE, *coram* FRANK, 11 December 2003, Ref. no. 5/03, unpublished photocopy.

tribunal accepted the petition on the ground of grave fear (reverential) according to c. 1103 on the part of the respondent.

The *ponens* states that according to c. 1103, to result in the invalidity of marriage the fear must be inflicted from outside. To invalidate marriage, reverential fear, which *per se* is slight, must have some objective gravity as well. In other words, the person must have some probable basis for believing that his or her refusal to marry will result in harsh and enduring parental indignation (p. 3). Considering the cultural situation of a tribal community, the judge says:

> In a tribal community, especially in a poor family and when persons have no education or job, and when women have no say, a young girl is dependent on her parents financially and in every other respect. In such a community, when parents arrange marriage for a girl, if the girl does not marry the boy, she will incur the wrath of her parents. Hence, even when the girl, in fact, does not want to marry the boy as arranged by the parents, she will have to marry him in order to avoid disastrous consequences on her life. In reality, the party cannot make a choice contrary to the parents'. Consent given under such circumstances invalidates a marriage (p. 3).

Hence, it is quite clear that a particular culture can impact negatively on the matrimonial consent of the persons belonging to such a community.

The petitioner explains to the tribunal how his marriage with the respondent was arranged by the respondent's parents. He declares, "Her parents wanted to give the girl in marriage, so they brought her from Bombay and the marriage was arranged" (p. 4). The respondent actually did not want to marry the petitioner, but the decision was already made by her parents, and she had no say in that decision. The respondent says, "I did not want to marry the petitioner. I had cried before my parents telling them that I didn't want to marry the petitioner because he was neither educated nor good-looking. However, my parents forced me to go ahead with the marriage. I had no other way out. So, I had to marry" (p. 4). Regarding the marriage ceremony the respondent says, "I answered the

questions because my parents had arranged the marriage. It was a custom in our society that we wouldn't say 'no' when our parents had arranged the marriage. If I had the freedom to marry the person I liked, I would not have married the petitioner" (p. 4).

The *ponens* says that as per the custom of that community, a girl could not say "no" when parents arranged her marriage. The judge argues that if that was a true marriage in question, that could have been a valid marriage in the eyes of the Church. However, the respondent had pleaded with her parents many times that she did not want to marry the petitioner, and her parents did not heed her pleas. Hence, the respondent married the petitioner unwillingly, against her wish due to external pressure (reverential fear).

There was only one other person who testified in this case. However, he was not aware that the respondent had married the petitioner under force from her parents. Nevertheless, he knew that the respondent was going frequently to her parental home; he attributed this behaviour to her being a girl who always wanted her own way. The witness said that the petitioner had tried his best to bring the respondent back to the conjugal home through the mediation of the parish priest. The respondent, however, refused to respond to those efforts; instead, her relatives came to question the parish priest (p. 5).

From what the petitioner has declared before the tribunal and from the social and cultural backgrounds of both parties, despite a lack of witnesses, the single judge concluded that the respondent lacked sufficient freedom to choose her marriage partner. The idea that if the respondent did not marry the boy chosen by her parents she would incur the grave wrath of her parents intensified the reverential fear she had of her parents. Hence, in order to avoid their wrath and its consequences, the respondent married the petitioner unwillingly. Therefore, the sole judge pronounced an affirmative decision in

this case. This first instance decision was ratified by the second instance tribunal on 14 February 2004.

4.3 – RESPECT TOWARDS "SIGNIFICANT OTHERS"

The expression "significant others" in the Indian cultural context signifies not only all those persons who have significant influence in the life of a person but also all those people who stand in the place of parents (*in loco parentis*). There is always reverence and obedience towards these people on the part of their subjects. In the case of marriage, when the person in authority arranges a marriage for his or her subject, the expectation is that the subject will accept that decision. Failure to accept such a decision will cause grave indignation and resentment on the part of the "significant other." Therefore, in order to avoid such consequences, a boy or a girl may consent, albeit unwillingly, to the proposed marriage. What follows is a brief analysis of a few marriage nullity cases which involve the role of "significant others" in arranged marriages of their subjects.

4.3.1 – Sentence *coram* DE ATAÍDE, 13 September 2001[29]

The parties in this marriage nullity case celebrated marriage on 10 May 1997. It was a proposed marriage. The marriage lasted only a few months. On 12 March 1998, the man petitioned the metropolitan tribunal of Goa and Daman to declare his marriage null on the ground of grave fear (reverential) on his own part. The tribunal formulated the doubt as follows: "Whether the marriage in question was null and void *ab initio* on the ground of grave fear (reverential) suffered by the petitioner in terms of c. 1103."

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[29] PATRIARCHAL TRIBUNAL OF THE ARCHDIOCESE OF GOA AND DAMAN, *coram* DE ATAÍDE, 13 September 2001, TG-Pr/33/98, unpublished photocopy.

The *ponens* in this case says that according to c. 1103, to have a marriage declared invalid there should be aversion or reluctance on the part of the victim of fear towards the other party or towards marriage itself and there should be an external agent who is the source of fear in the victim. Aversion is expressed by words, tears, sad face, tension, etc. Force is expressed through commands, insistent requests, pestering, scolding, etc. The *ponens* continues, "It is the grave fear in the passive subject that causes nullity of the marriage, not the force by the agent, for there can very well be force, which has not generated fear. However, there cannot be fear causing nullity of the marriage in terms of the quoted canon, if it is not caused by force, and there cannot be a force as defined, if there is no aversion or reluctance" (p. 4). In order to prove fear, one must have on record the specific good that is in danger of being lost, which intimidates the victim. In reverential fear, such a good is the agent's goodwill, friendship, protection, etc.

The gravity of fear must be determined by taking into consideration the depth and closeness of the relationship between the agent and the victim of fear, the characters involved, the victim's age, the means used to instill fear in the victim, etc. One can infer gravity of fear only after a comprehensive review of all these factors. To declare a marriage invalid, the causal nexus between the fear and the marriage should be established. This may not necessarily be in the intention of the agent but must certainly be in the mind of the victim, that is, even if the agent has caused fear in the victim with some other purpose in mind, yet if the victim views the marriage as the only way out from such fear, the marriage would be invalid (p. 6).

The petitioner states that he suffered from reverential fear that forced him to contract marriage with the respondent:

> I did not want to get married in my life, but my paternal aunt forced me to marry the respondent. She said that help was needed at home. I was telling her that I did not want to marry the respondent. My aunt scolded me, telling me that I should get married. I agreed to marry because I was forced by her. The marriage was rushed through within a short time. I was not happy that I was getting married. I had no fondness for girls [...]. My mother died long ago. My father sided with his sister. Still today, I am afraid of my aunt, who brought us up after our mother's death [...]. I didn't want to displease my aunt either. Moreover, I did not want to lose my aunt's affection and good-will towards me. I did not want to face the anger of my aunt. I went to the wedding crying as well (p. 6).

The petitioner, being mildly retarded, is unable to give further details. However, whatever he has expressed is sufficient to reveal that he had no desire to marry the respondent and that his aunt, whom he looked upon as his mother, forced him to marry the respondent (p. 6).

The petitioner's sister and his second cousin attest that the petitioner, in fact, married the respondent out of reverential fear towards his aunt. His sister testifies, "My brother was saying that he did not want to marry the respondent. All the family members advised him to get married because help was needed in the house and he listened to us. He was not very happy that he was getting married. Now, he says that he married the respondent out of his fear towards our paternal aunt" (p. 8). The petitioner's cousin adds, "He [the petitioner] was saying that he did not want to marry the respondent. However, his paternal aunt forced him to marry the respondent. She compelled him to get married, as his mother was not alive and his father was old, and there was need for help in the house [...]. He was unhappy that he was getting married. He looked very sad in the church during the marriage ceremony" (p. 9). However, the respondent affirms categorically that the petitioner married her willingly. The respondent's witnesses have no knowledge about the fear suffered by the petitioner.

The judge argues that the petitioner, being mildly retarded, was unable to resist the force from his aunt. The petitioner thought that if he disobeyed his aunt he would lose her affection and goodwill towards him. This idea increased the petitioner's reverential fear towards his aunt. Hence, the petitioner married the respondent to avoid his aunt's resentment (p. 9). Therefore, the petitioner's matrimonial consent was defective. The decision of the first instance court was affirmative. This sentence was confirmed by the second instance tribunal on 12 November 2001.

This is an example of how the cultural factor of "respect towards the significant others" can cause defective matrimonial consent. What actually led to the nullity of marriage in question was the lack of internal freedom to make one's own decision. The petitioner lacked the internal freedom caused mainly by the grave reverential fear towards his aunt.

4.3.2 – Sentence *coram* BOCCAFOLA, 21 February 1991[30]

Francis, a Catholic, the petitioner, and Ganapati, a Hindu, the respondent, fell in love during their college studies. Their friendship eventually led to sexual intimacy. Within a few months Francis learned of Ganapati's love affair with another young man and of their mutual proposal to get married, but the young man's parents had prohibited such a union for reasons of unfavourable astrological signs. At this point, Ganapati's mother informed Francis that Ganapati was pregnant by him and that he should marry the girl in reparation. However, Francis rejected such a proposal. Ganapati's mother denounced Francis to college authorities. As soon as they came to know of the sexual

[30] *Coram* BOCCAFOLA, 21 February 1991, in *RRT Dec.*, 83 (1991), pp. 101-111. The analysis of this marriage nullity case is based on MENDONÇA, "A Cultural Approach to Indian Marriage Cases," pp. 69-72.

relationship between Francis and Ganapati, without even looking into the relationship between Ganapati and the other young man, the superiors of the college insisted on the celebration of marriage with a threat of expulsion from the college if he did not agree. The local bishop, Francis's two uncle priests, and his whole family were informed of the girl's pregnancy and of the impending marriage. Ganapati was baptized on 30 April 1954 and the marriage was celebrated that very day. A male child was born to them on 17 September 1954. Conjugal life lasted about a year when Ganapati left her husband's house and the infant to complete her college studies and then moved on to Calcutta where she was reconverted to her native Hinduism. She rejected all efforts for reconciliation, and finally obtained a civil divorce in 1977.

After the divorce, Francis entered into a civil marriage with Susheela, whom he had hired as a nanny to care for his son. Five children were born of that union. It was only after living for 28 years in a civil marriage that Francis presented the petition for a declaration of the nullity of his marriage. In his petition of 23 December 1983 to the Madras-Mylapore (Tamil Nadu) tribunal, Francis accused his marriage of nullity on the ground of reverential fear on his part and simulation on the respondent's part. The first instance decision was negative on fear with no mention made of the ground of simulation. The appeal court of Coimbatore pronounced affirmatively on both grounds.[31] The petitioner appealed to the Roman Rota on 12 January 1989. The Rotal court decided to proceed with the case on the ground of grave fear (reverential) according to c. 1103 on the part of the petitioner.[32]

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[31] See MENDONÇA, "A Cultural Approach to Indian Marriage Cases," pp. 69-70.

[32] See *coram* BOCCAFOLA, 21 February 1991, p. 103, n. 4.

In his sentence Boccafola says, "The Church, protector of the dignity of the human person, has always tried to proclaim and protect freedom in contracting marriage. The Church continues to teach that contractants should exchange between themselves a matrimonial consent that is not only integral, that is, without any detraction of some essential element, but also free from all external and grave coercion.[33] Boccafola adds, "The very nature of marriage demands such a freedom that the intimate communion of life and conjugal love may be validly established."[34] Thus, it is to safeguard the internal freedom of the person in choosing his or her partner in marriage that the Supreme Legislator establishes in c. 1103 that a marriage is invalid when entered into under force or grave fear inflicted from an outside agent.[35]

Boccafola continues, "Common, or reverential, or mixed fear renders marriage invalid provided that it simultaneously has these three characteristics: it is grave, inflicted from outside, and is the efficacious cause of matrimonial contract."[36] He explains reverential fear as follows:

> Reverential fear, however, is that which is inflicted by those whom we honour with respect and reverence [...]. Its specific object is the indignation of parents or superiors, which, if it is foreseen to be grave and long lasting, can inflict grave force on the subject; and, therefore, to transform reverential fear which is *per se* light, into

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[33] "Ecclesia, dignitatis humanae personae vindex, libertatem in contrahendis nuptiis proclamare ac tutari semper sategit. Nam ecclesia perrene docet consensum matrimonialem inter contrahentes non solum integrum commutari debere, scilicet absque ulla detractatione alicuius elementi essentialis, sed etiam liberum, i.e., a quancumque externa ac gravi coactione ab eis praestari oportere" (ibid., n. 5).

[34] "Ipsa enim naturalis indoles matrimonii postulat eiusmodi libertatem ut intima communitas vitae et amoris coniugalis valide instaurari posit" (ibid.).

[35] See ibid.

[36] "Metus communis vel reverentialis aut mixtus, coniugium invalidum reddit dummodo his tribus notis simul ornetur: sit gravis, ab extrensico incussus et causa efficax matrimonialis contractus" (ibid., p. 104, n. 6).

> qualified fear; and this usually happens whenever it is simultaneously grave, extrinsic by a human agent, unjust, from which one may be forced to choose marriage to free oneself.[37]

Boccafola states that the constant jurisprudence of the apostolic tribunal has indicated two arguments to identify reverential fear: "Indirect argument, namely, from the aversion toward the person of the partner or at least to contract marriage with the same person, and direct argument, pertaining to the very exercise of coercion."[38]

In the argument section, Boccafola makes some remarkable and critical comments on the decisions of the first and the second instance tribunals. The first instance collegiate tribunal of Madras-Mylapore did not dispute the petitioner's claim of reverential fear, but the court held that the fear was only light. They concluded, "Although this marriage could be declared null in virtue of c. 1101 if real circumstantial evidence is proven, here we have only the declaration of the petitioner. Enough evidence has not been presented to declare this marriage null and void with a safe conscience."[39] The defender of the bond also expressed an opinion similar to that of the judges.[40]

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[37] "Metus, autem, reverentialis ille est qui ab iis incutitur, quos obsequio reverentiaeque prosequimur [...]. Eius specificum obiectum est parentum vel superiorum indignatio, quae, si praevideatur gravis et diuturna, gravem vim subiecto incutere potest; ac proinde efficere ut metus reverentialis, qui per se levis, qualificatus fiat; quod contingere solet, quoties erit una simul gravis, extrinsecus ab homine, iniustus, a quo ut quis se liberet, eligere cogatur matrimonium" (ibid., n. 7).

[38] "Argumentum indirectum, scilicet ex aversione in personam compartis vel saltem in matrimonium cum eadem contrahendum, et argumentum directum, ipsum exercitium coactionis respiciens" (ibid., p. 105, n. 8).

[39] Ibid., p. 106, n. 9.

[40] Ibid. Looking at the views held by the judges and the defender of the bond of the first instance tribunal in this case, A. Mendonça has the following comment: "One could legitimately question the knowledge of the judges and the defender about the juridic principles as well as their appreciation of the cultural factors involved in this case" (MENDONÇA, "A Cultural Approach to Indian Marriage Cases," p. 70).

However, the judges of the appellate tribunal of Coimbatore weighed very critically the same facts and documents and came to a different conclusion:

> Though the cause for pregnancy was not certain, [Francis] is made to accept and to marry her by force and grave fear by the Jesuit Fathers on the menace of dismissal from the college or failure in the exam. [...]. Reverential fear here deserves special attention since the displeasure of parents or persons in authority can easily diminish the voluntary quality of the act. The pressure applied externally may seem slight, but due to the relationship in fact, it may leave the person no liberty of choice. [Francis] had this sort of fear before the marriage as he declared in his answers to the questionnaire [...]. Considering the circumstances in which [Francis] was before the marriage as per canon 1103 as stated above and the way [Ganapati] behaved before and after the marriage, as per canons 1101, §2 and 1055, §1, as noted above force or grave fear on the part of [Francis], simulation, total and partial, regarding the very nature and the essential element of marriage on the part of [Ganapati] are the factors that make this marriage null and void.[41]

The Rotal tribunal considered this decision at the second instance to be in conformity with the canonical principles and with the facts reported in this case.[42]

In his petition to the Madras-Mylapore tribunal for a declaration of the nullity of his marriage, Francis had stated:

> This norm (c.1103) can be applied in my case with reference to pregnancy of the girl whom I was compelled to marry under force and grave reverential fear [...]. Thus a situation was created wherein I could not escape unless I concede for the marriage to the said girl. I was not able to write my BA degree examination also, because of this disturbance I could neither go back to my parents and relations nor face the society without marriage [...]. The reverential fear for parents, relations, society, and Jesuit Fathers of St. Joseph's College and the two priests of my family to safeguard their prestige, I had to give my consent for the marriage.[43]

The petitioner in his deposition before the first instance tribunal restated the same fact:

> Ganapati's mother came to me and informed me that she [Ganapati] was carrying [pregnant]. I was responsible for it. When I refused to accept the responsibility for the pregnancy, she reported the matter to Fr. Fournier, who was our French professor as well as a successful social worker in Srirangam Tiruchi. He took it seriously, believed their version completely, and brought pressure on me to marry Ganapati [...]. Fr.

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[41] *Coram* BOCCAFOLA, 21 February 1991, p. 106, n. 10.

[42] See MENDONÇA, "A Cultural Approach to Indian Marriage Cases," p. 71.

[43] *Coram* BOCCAFOLA, 21 February 1991, pp. 106-107, n. 11.

> Sequeira told me I would have to leave the hostel unless I found a solution. The Rector of the College, Fr. Kalathil also severely warned me to find a solution to this. The entire campus was charged with the news and agitation against me, particularly among the Brahmin students.[44]

The respondent confirmed the petitioner's statement in her letter of 12 September 1984 to the Archbishop of Madras-Mylapore:

> I hereby affirm and state the following voluntarily and on my own free will [...]. This marriage took place under compelling circumstances and was defective in consent [regarding] the Christian Baptism and Catholic form of marriage. Consequently I was reconverted to Hinduism in 1958 [...]. As a Hindu, I do not want to be questioned by any Christian authority on my personal life and matters as I do not stand in the way of granting the annulment of Catholic marriage dated 1 May 1954 of Mr. Francis by Christian religious authorities.[45]

The Rotal court considered this statement to carry weight not only in relation to force or fear but also in simulation on the respondent's part, even though she seems to have reversed her statement in a subsequent letter.[46]

In a letter to the Roman Rota on 6 January 1990, Msgr. Navamoney, one of Francis' priest uncles, states the following about coercion on the petitioner and its consequences:

> Mr. [Francis], being the general captain of the College and the New Hostel and good in sports, was in touch with all the Jesuit fathers of the College and this close association with Jesuit fathers evoked in his mind the reverential fear not to incur their displeasure, the displeasure of his parents, his uncles Fr. A. Ghanem, and myself, who were all quite upset by the very word "pregnancy".[47]

The Rotal judges found in the testimonies of the other credible witnesses sufficient evidence in support of the petitioner's statements. The overall conclusion of the Rota was that there was proof of grave reverential fear inflicted on the petitioner that deprived him

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[44] Ibid., p.107, n. 11.

[45] Ibid., p.108, n. 13.

[46] See ibid.

[47] Ibid., p.109, n. 14.

of the benefit of internal freedom in choosing marriage and his marriage partner. Thus, the Rotal decision of 21 February 1991 *coram* Boccafola was affirmative on the ground of grave fear (reverential).

After analyzing this case, we realize that many cultural factors had an impact on the alleged marriage. The most predominant is the abuse of authority by the "significant others," or the superiors. From the petitioner's own statements before the first instance tribunal and from the testimony of credible witnesses, even from the respondent herself, it is clearly established that the petitioner was forced to consent to the alleged marriage. He was compelled to marry the respondent as reparation for the pregnancy for which he was responsible. The pregnancy issue placed the petitioner's superiors in the College, parents, and close relatives in an embarrassing situation. In order to be relieved of this embarrassment, they compelled the petitioner to marry without even giving him a chance to reveal his side of the story. The petitioner wanted to avoid the indignation of the superiors and of his parents and consented to marriage. Hence, his consent was defective because he lacked the freedom of choice of his marriage partner.

4.3.3 – Sentence *coram* JABAMALAI, 15 February 1996 [48]

The petitioner in this marriage nullity case was an orphan girl, brought up in a convent by Sisters from the age of four. The Sisters made arrangements for her marriage when she was about twenty-five years old. At that time, the respondent came to the convent, looking for a girl to marry. The Sisters were pleased with the boy and so told the petitioner to marry him. The marriage lasted only two years. According to the petitioner,

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[48] TRIBUNAL OF THE ARCHDIOCESE OF BANGALORE, *coram* JABAMALAI, 15 February 1996, Prot. no. 16/95, unpublished photocopy.

she was kicked out of the house by the respondent and returned to the convent for good. All attempts at reconciliation failed, and the woman petitioned the archbishop of Bangalore for a declaration of nullity of her marriage on the ground of grave fear (reverential). The tribunal of Bangalore processed the case on the ground of grave fear (reverential) in accord with c. 1103 on the part of the petitioner.

The *ponens* in the case states that matrimonial consent as a subjective act of the will is vitiated because of pressure brought to bear on the exercise of one's freedom of choice either by force or by fear. The concept of grave fear is relative. It can become grave due to attendant circumstances such as the prolongation of indignation and anger of parents or superiors so as to become a threat to the child who fears losing the affection of the parents or superiors (p. 3). When fear becomes grave, it renders the matrimonial consent defective.

One of the Sisters testified to the truthful character of the petitioner: "She is very truthful and reliable" (p. 3). Hence, the petitioner's words can be trusted when she states:

> One Sister, who was in charge of us, informed me of the proposal of marriage with the respondent. I was told that he was a good boy, had a good job, and was Catholic. So, I agreed to the marriage. Meanwhile, somebody told me that the respondent was not a good man and also that he was being forced by his relatives to marry me. So, I had my own doubts about him and I told the Sister in charge of us that I did not want to marry the man. The Sister assured me that he was a good man. The Sister told me not to say 'no, no' to every boy, and that she could not find boys to each one's taste. I had nobody to consult with and so I agreed to that marriage proposal hoping that everything would be okay eventually. I did not want to marry the man, but I had to marry him only because of the order of my Sister (p. 4).

Another Sister from the same convent testifies, "I had known before her marriage that the girl did not like the boy. She had told me that she did not wish to marry the respondent. The boy came from a slum area and was without a job. I could not do much at that time as the Sister in charge had already made the necessary arrangements for the

marriage" (p. 4). The number of witnesses was limited as the petitioner was an orphan girl. However, according to the two witnesses interviewed, the petitioner had expressed her dislike for the marriage with the respondent.

The *ponens* states that since the convent had more orphan girls to be married, the Sister superior in charge appeared to have forced the petitioner to marry the respondent. The orphan girl depended on the Sisters for everything, and so she felt she should not create problems for the Sisters who had brought her up and had given her an education. In this case, reverential fear towards the "significant other" becomes grave due to the attendant circumstance, that is, the fear of losing the affection of the Sister superior in charge. Therefore, the petitioner married the respondent unwillingly. If the girl had been given freedom to choose her life partner, she would not have married the respondent. On the basis of this conclusion, the court rendered an affirmative decision on the ground of grave reverential fear on the part of the petitioner. This first instance affirmative sentence was confirmed by the second instance tribunal on 18 April 1996.

4.4 – DEPENDENCE ON THE FAMILY

We have noted in the previous chapter that in the Indian society, young persons in general depend on their parents for financial needs. Even though dowry is legally prohibited in India, it is still considered as one of the main factors that impacts the arrangement of marriages. The dowry system may lead to the use of force to extract matrimonial consent from the unwilling children. For instance, a girl, coming from a very poor family with many children, may, at times, consent to marry a person she does not like, simply because he is willing to marry her for a dowry that is within the financial resources of the family or with no dowry at all. In such a case, the financial dependency

of a child on parents can lead to grave reverential fear, and the girl may give matrimonial consent unwillingly to avoid the discontentment and indignation of her parents. The following cases illustrate this situation.

4.4.1 – Sentence *coram* DE ATAÍDE, 11 January 2001[49]

The marriage in this case was celebrated on 25 May 1997. It was a proposed marriage. The interval between the proposal and the marriage was only two months with no courtship. The marriage lasted only a few months. This brief union produced one child, born after the actual separation. The petitioner did not even care for the child because he disputed the child's paternity. On 4 September 1998, the man petitioned the tribunal of Goa and Daman for a declaration of nullity of his marriage on the ground of grave fear (reverential) on the part of the respondent. The tribunal determined the formula of doubt as follows: "Is it proven that the marriage in question is null and void on the ground of grave fear (reverential), suffered by the respondent, in terms of c. 1103?"

The *ponens* reiterates the juridic principles applicable to cases involving reverential fear. The respondent, the alleged victim of reverential fear in this case, states:

> My sister [...] and the petitioner's sister [...] came with the marriage proposal [...]. When my mother called me for interview I was reluctant to go. But, she came along with my brother-in-law [...] and took me out. The petitioner and I saw each other from a distance. He liked me and conveyed it to me through his sister [...]. I did not want to give an immediate answer. Thereafter, I told my people that I did not like him. My sister [...] coaxed me to marry the petitioner and, not to displease [...], I agreed. I was not at all happy because, by looking at him, I did not like him. He was not a good-looking guy. I was pensive all the time, and my mother would ask me why I was so sad. We are altogether five sisters, and have no brother. We are financially poor. My father died when I was eight years old. My sister [...] and her husband help us financially right now. No one from my family backed my stand. It is my three brothers-in-law who made the marriage arrangements. During that time I was not happy at all [...]. I would often express my reluctance to my mother, but she would try to calm me. She would ask me why I was reluctant to accept the proposal that had

[49] PATRIARCHAL TRIBUNAL OF THE ARCHDIOCESE OF GOA AND DAMAN, *coram* DE ATAÍDE, 11 January 2001, TG-Pr/57/98, unpublished photocopy.

> come to us [...]. Let me remark also that the petitioner had not asked for a dowry. I went to the marriage in an equally pensive mood (pp. 4-5).

The respondent's mother and her two sisters totally corroborate the respondent's deposition, leaving no doubt whatsoever that the respondent in fact married under grave reverential fear. The respondent's mother says:

> At our house, my daughter showed her aversion by asking why we were making haste [to arrange her marriage] [...]. I asked her whether she liked the petitioner or not. She made a sad face and said, 'yes'. I could see that she gave this answer out of fear towards me. The marriage took place within one month. All the marriage arrangements were done by my three sons-in-law. We are financially very poor. I have five daughters. I have no son. My husband died soon after my oldest daughter's marriage. The respondent is the last one. The petitioner did not ask any dowry from us for the marriage (p. 7).

The respondent's sister testifies, "She [respondent] was saying that she did not want to get married, for she was afraid [...]. I asked her whether she liked the petitioner or not. She said 'yes', but not in a happy tone, for she did not have a wish to get married to the petitioner [...].The marriage took place within a month [...].We are economically poor [...].The petitioner did not demand a dowry" (p. 7). The respondent's other sister says, "When I spoke to her [respondent] about the marriage proposal, she told me that because her boyfriend had ditched her, she had lost interest in getting married" (p. 7). On the force undergone by the respondent, the petitioner said, "The respondent told me that she had no desire to marry me, but was forced by her mother, sisters, and brothers-in-law. She told me this in the presence of her mother" (p. 8). All the petitioner's witnesses confirm this fact.

It is clear from the evidence in this case that the respondent did not like the petitioner and was reluctant to marry him. She had expressed her aversion in various ways (e.g., by clearly mentioning it, by being unhappy, by not taking an active part in the marriage arrangements, by crying, etc.). The respondent's mother and her oldest sister

cajoled her into marrying the petitioner by pestering her, continuously insisting, and harping on the fact that the petitioner was not demanding a dowry. The respondent thought that if she did not agree to the proposed marriage she would lose the affection and support of her mother and other family members. This thinking increased the gravity of her reverential fear towards her mother. Therefore, the respondent agreed to marry the petitioner reluctantly. The first instance decision was affirmative and was confirmed by the second instance tribunal on 16 April 2001.

This is a clear example of how the cultural factor of financial dependence on the family can have an impact on the gravity of reverential fear in the children leading to a defective matrimonial consent. In this case, the respondent's family was very poor and could not afford a dowry. Therefore, a marriage was arranged by the family of the respondent with a man who did not demand a dowry. In making their decision, the family members did not take into consideration the freedom of the respondent in choosing her life partner.

4.4.2 – Sentence *coram* ALAPPATT, 10 March 2004[50]

The marriage in this case was solemnized at the petitioner's parish church on 30 December 2001 after completing the customary formalities of an arranged marriage. The woman alleges she was not interested in marrying the man but did so because of reverential fear of her parents. The man was from a more affluent family than the petitioner.

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[50] METROPOLITAN TRIBUNAL OF TRICHUR, *coram* ALAPPATT, 10 March 2004, Prot. no. MT 5/2003 (ET 2/2003), unpublished electronic copy.

The man and his family insulted the woman on the day of the wedding, saying that the dowry they received was insufficient and that the woman came from a slum background. The woman disliked the man to the point that she hated him. As a result, she did not even allow him to touch her on the wedding night. Even though the couple lived in the same room for two months, they had no physical contact and never had any sexual relationship. The woman openly told the man that she could not accept him as her husband. Since it was not possible for her to build a partnership of life and love with the man, she returned to her parents after two months. On 27 July 2003, the woman petitioned the archieparchial tribunal of Trichur for a declaration of nullity of her marriage. Since all attempts at reconciliation had failed, the tribunal accepted the petition on the ground of grave fear (reverential) on the part of the petitioner (c. 825; *CIC*, c. 1103).

The *ponens* in the case explains at length the ground of grave fear. He states that as in the case of any human act, the consent exchanged in marriage should be an act of free will of the person entering into marriage. Since the decision to marry carries with it lifelong commitments, it must be personal and independent, and not imposed from outside.

Often fear is the outcome of moral or physical violence inflicted on a person. Both force and fear are correlative and negatively affect the voluntary action as they restrain the freedom of the will, and force the person to choose what is inevitable to avert the evil. In order for fear to be invalidating, it must satisfy all the requirements enunciated in c. 825 (*CIC*, c. 1103) and established jurisprudence. Fear must be so grave that it leaves its victim with the only alternative, that is, to marry or to face the threatened harm or evil.

JURISPRUDENCE ON REVERENTIAL FEAR

Reverential fear can invalidate a marriage under certain conditions. It is aroused in a person by those to whom one is related by some special bonds such as blood, love, gratitude, veneration, respect, and even financial dependence. Because of this dependent relationship, the victim of reverential fear is often compelled, against his or her will, to accept or agree to a marriage proposed by the persons in authority. The consent given in such situations will be devoid of internal freedom. The existence of reverential fear is proven by two arguments: *indirect argument*, that is, by proving the presence of aversion, and *direct argument*, that is, by proving the fact of coercion.

Because of the financial disparity, the petitioner expressed her unwillingness to marry at the time of prenuptial enquiry and during the exchange of visits between families (p.14-A.1). The petitioner says that during the marriage preparation course she noticed some peculiarities in the respondent's behaviour. She disliked the way he talked, laughed, and behaved (p.15-A. 3). She shared her feelings with her parents, telling them of her dislike for the respondent and for the marriage itself. However, the parents consoled her, saying that because they had neither a good home nor much wealth it was difficult for them to find another boy for her (p.15-A.1).

In his deposition, the respondent denied the allegation that the petitioner consented to marry under grave fear, because during the marriage preparation course he openly asked the petitioner whether she had any dislike for the marriage proposal, but she responded that she had "no objection for this marriage" (p. 20-A. 4). The respondent painfully describes that they never had any sexual contact. Though the respondent tried many times to have sexual intercourse, the petitioner was always unwilling. She told him once, "I have put a full stop on sex till my death" (p. 21-A. 5). The respondent also adds

that the petitioner never met any of his needs and even never cooked food for him (p.12-A. 5). According to the respondent, married life lasted two months only and was never a happy partnership. He says that the main reason for the failure of the marriage was the petitioner's refusal to accept him as her husband (p. 22-A.7).

The petitioner's witnesses unanimously supported her claim that she had consented to marry the respondent because of reverential fear towards the parents. The petitioner's mother says, "We forced her saying that we were financially poor and we did not have a huge amount of money to give as dowry. The boy's economic set-up was good. His family didn't demand any specific amount of money as dowry. My daughter was beyond the marriageable age, and we could not find such an alliance for her again in the future" (p. 41-A.1). The petitioner's brother also testified that his sister was forced to marry the respondent because of the family's poor financial situation (p. 29-A1; p. 30-A.4). The petitioner's maternal uncle stated that as the petitioner returned from the marriage preparation course, with tears in her eyes, threw her handbag and cried aloud, "I do not want this marriage" (p. 30-A.4). The petitioner's father agreed that his daughter was not prepared to marry the respondent. As everything was arranged for the marriage and the relatives were invited for the wedding, the petitioner was compelled to go ahead with the marriage under the presumption that everything would be all right after marriage (p. 57-A.5). All the witnesses introduced by the petitioner corroborated these statements.

All the members of the petitioner's family knew that there was a serious disparity in financial status between the two families. Because of their anxiety over giving their daughter in marriage as she was advancing in age, and because some previous proposals had failed, the parents were compelled to force their daughter to marry the respondent.

Since all members of the family were aligned with each other in this matter, the petitioner was helpless and was not able to resist the proposal on her own. The petitioner repeats verbatim her father's statement: "Where can a man, who has no good house and wealth, find another proposal?" (p.15-A.1). She was touched by her father's pain because of his inability to find her a better match. The petitioner thought that if she disobeyed her parents she would incur their grave indignation. Therefore, she consented unwillingly to marry the respondent. The court found sufficient evidence to substantiate a claim that the petitioner consented to marry the respondent out of grave reverential fear towards her parents. Therefore, the decision was affirmative, and this decision was ratified by the second instance court on 10 July 2004.

This is a typical example of how the financial dependence on the family can have a negative impact on a person's matrimonial consent. Her parents' poverty compelled her to consent to an unwanted marriage.

4.4.3 – Sentence *coram* FERNANDEZ, 3 November 1986[51]

The parties in this marriage case married on 11 May 1982. Their marriage was arranged by the woman's mother, who had shown her daughter's photo to the man while he was in Bahrain. He liked her, but she was friendly with someone else whom she really wanted to marry. However, she was forced to marry the man proposed by her mother. The marriage was short-lived. She left him on 14 May 1986 and went to live with a Hindu man. As reconciliation was not possible, the man petitioned the tribunal of Goa and Daman on 1 August 1986 for a declaration of nullity of his marriage on the ground of

[51] PATRIARCHAL TRIBUNAL OF THE ARCHDIOCESE OF GOA AND DAMAN, *coram* FERNANDEZ, 3 November 1986, TG-Pr/15/86, unpublished photocopy.

grave fear (reverential) on the part of the woman. The woman did not appear before the tribunal and, therefore, was declared absent from trial. The tribunal had to respond to the doubt, "Whether the alleged marriage is null and void on the ground of grave fear (reverential) as per c. 1103" (p. 45).

The *ponens* in this case states that in the case of reverential fear, if the indignation of the parents is light, then the reverential fear is light. The *ponens* gives an example of grave reverential fear: a financially poor widow decries the fact that her daughter does not agree to marry the person she proposes. The best criterion to prove whether a person was forced to marry or not is the presence of aversion in the victim to marriage itself or to the person proposed, e.g., a girl may like a boy but still may have aversion to marry him. Signs of aversion are crying and complaining before marriage, sadness, and denial of signs of love, etc. When there are signs of aversion, we can rightly presume that the victim was forced to marry. If the aversion is strong, then the presumption is that fear is grave. The absence of such signs of aversion after marriage does not necessarily exclude grave fear since it is then presumed that one is making the best of a bad situation (p. 48).

The evidence on record shows that the respondent's mother forced her to marry the petitioner. The petitioner says that the respondent, before the marriage, was scared of her mother and was financially dependent on her. After the marriage he saw the respondent and her mother quarrelling and fighting with each other, and the respondent blaming her mother for forcing her to marry the petitioner under the threat of stopping financial support (p. 48). The respondent's aunt testifies:

> The respondent wanted to marry a boy from [...]. I know this because she was staying in my house before her marriage. The respondent's mother forced her to marry the petitioner. She was not working, and was totally dependent on her mother. I know that her mother used to send money to her by drafts. After the marriage, I saw the respondent and her mother quarrelling, and the respondent telling her mother that she

> had forced her to marry the petitioner threatening that otherwise she would not support her (p. 49).

This statement is very important because both the respondent and her mother were staying in the witness' house; she, therefore, has personal knowledge of these facts. It appears from her statements that the reason why the respondent's mother stopped her marriage to the boy is that he was a baker belonging to *sudra* caste while the respondent was *chardo*, as was the petitioner. The sister of the boyfriend, whom the respondent wished to marry, states:

> The respondent was often at our house before the marriage and she had manifested many times her wish to marry my brother [...]. My brother also had agreed to marry her [...].The respondent was forced to marry the petitioner. I know this because she herself had shown me her mother's letter from Bahrain saying that she would not allow the respondent to marry my brother, but she should marry the boy chosen by her mother. Her mother had written in the same letter that she would not support the respondent anymore if she would marry my brother [...].We could not do anything because the respondent was totally dependent on her mother and within a month the marriage took place (p. 51).

Threats to stop financial support are, by themselves, sufficient to break the will of a well-balanced person and cause grave fear in that person, and, therefore, a marriage contracted under such threats would be invalid as per c. 1103.

There was clear proof of aversion on the part of the respondent towards the marriage with the petitioner. The petitioner confirms, "I went to Saudi Arabia twenty days after our marriage. I did not see any signs of love towards me during those days although there were no problems for sexual contacts" (p. 51). Sexual relations do not necessarily mean love, because one can have sex with a prostitute or any other girl just for the sake of pleasure without love. The judge further states that the respondent was afraid of losing her mother's affection and financial support if she did not obey her. This idea intensified the respondent's reverential fear towards her mother. Therefore, it is

evident that it was out of her grave reverential fear towards her mother that the respondent married the petitioner. Hence, the verdict of the court was in the affirmative. This decision was confirmed by the second instance tribunal on 10 December 1986.

This is another example of how the financial dependency of the children on the parents in a particular culture influences the gravity of reverential fear towards their parents. We mentioned, in the first chapter, that the caste system is one of the factors that influences arranged marriages. This is evident in the case analyzed above because the respondent could not marry the boy whom she really wished to marry because he was from a lower caste. Hence, out of grave reverential fear towards her mother, the respondent had to marry the person belonging to her caste.

4.5 – AGE

We have seen in the first chapter that age is an important element that enters into the choice of marriage partners in the arranged marriage system. According to many local customs, it is not proper for the younger sisters to get married before the older ones. The same holds true for boys. However, there may be exception to this rule. Parents have great concern that their older son or daughter gets married first. Therefore, a boy or a girl may give into force and marry, out of reverential fear, anyone proposed by his or her parents, guardians, or the significant others. Analysis of the following cases may shed more light on this fact.

4.5.1 – Sentence *coram* JOSEPH, 18 June 1998[52]

The marriage in question was celebrated on 30 August 1990. It was an arranged marriage through the parties' brothers. Since the woman's father had died, her oldest

[52] THE METROPOLITAN TRIBUNAL OF THE ARCHDIOCESE OF MADRAS-MYLAPORE, *coram* JOSEPH, 18 June 1998, Ref. no. 8/97, unpublished photocopy.

brother-in-law was responsible for the well-being of the family. Her only brother became a priest and there were two younger sisters to be married. The man was from a small village. The petitioner did not wish to live in a village. Hence, she resisted marriage to the respondent, but her mother and the other family members compelled her to marry him.

All her hopes were shattered when the woman learned that her husband was an alcoholic and was not looking after the family properly. Their child died immediately after birth. The man neither visited her in the hospital nor went to the child's funeral. He did not help the petitioner financially when she was hospitalized. These problems led to the break-down of their relationship. The woman returned to her parents' home hoping not to return. However, through the mediation of the parish priest, the woman returned to her husband. Since he was not ready to change his ways, she left him for good shortly thereafter. All attempts at reconciliation failed because the woman was not interested in living with her husband anymore. On 7 July 1996, the woman petitioned the archbishop of Madras-Mylapore to declare her marriage null on the ground of grave fear (reverential) on her part (c. 1103). The tribunal accepted this ground for the trial.

In the sentence, the *ponens* explains at length the principles of grave fear (c. 1103). Acceptance of a person as a life partner is a personal act of the will, and it cannot be forced in any way. If force is used in any form, the consent will lack the requirements necessary for its validity. The gravity of fear depends on the life situations of the victim and the gravity of the threatened evil. Two elements are necessary to prove the presence of reverential fear: *aversion* and *coercion.* If aversion is proven there is a strong presumption that consent was elicited by coercion (pp. 51-52). While speaking about reverential fear the *ponens* says:

> A person with a docile personality, with a strong emotion or psychological or financial dependence on a parent will have diminished freedom of the will. In order that reverential fear should be grave, it is not enough to ask the person simply to marry rather there should be excessive cajoling, coercion from home, loss of financial support, sympathetic presentation of the family situation, etc. In countries like India, where arranged marriages are still the normal way of settling marriages and the influence of parents especially over a girl-child is so strong, there is every possibility that a girl is truly under grave reverential fear where she gives her consent (p. 53).

In any case, the judge must have the moral certainty that fear was at least subjectively grave, extrinsic, and escapable only by giving consent to marriage.

The petitioner had stated in her petition that she married the respondent against her free will and that she was forced particularly by her mother to marry. She repeated the same thing while being interviewed by the tribunal:

> They showed me a photo of the respondent. I had told them already that I didn't want to get married. But, my mother forced me saying that I was getting old and there were two more sisters after me to be given in marriage [...]. When I was studying in Standard X, I wanted to become a nun. So, I didn't like marriage at all. When my mother forced me to marry, I told her that at least the boy must have a job. However, the respondent was not up to my expectation in appearance, education, and life situations (p. 54).

The petitioner adds that she had disclosed her mind to the persons concerned, but they did not listen to her: "I mentioned my dislike to the proposed marriage to the persons who arranged the alliance [...]. But, nobody listened to me. They only wanted to finish with the marriage somehow" (p. 54). The petitioner's mother states, "She had not told me that she did not want marriage at all. But she had told her older sister, her husband, and me that she did not want to marry the respondent [...]. I told her that her sister married the boy whom I had found for her and asked why she was refusing the marriage proposal. She had no other way out than accepting the marriage" (p. 54). The petitioner's older sister testifies, "She had told me that she did not want to marry the respondent. But, she was forced to marry, because we lost our father and there were two more sisters to be settled in marriage. She was getting old as well" (p. 55).

Because the marriage was arranged against the petitioner's will, there were always problems in their family, a result of the petitioner's aversion towards the respondent. The respondent says, "From the beginning of marriage she had been telling me that she married me out of her obedience and respect towards her mother. She did not want to displease either her mother or her family members" (p. 55).

The petitioner thought that if she did not marry first it would be difficult for her younger sisters to be given in marriage. The petitioner did not want to jeopardize her younger sisters' future. She also thought that if she did not agree to the proposed marriage she would have to face the indignation of her mother. Hence, the petitioner consented to the proposed marriage against her will. The court was morally certain that the marriage in question was null. Its affirmative decision was confirmed by the second instance court on 16 August 1998.

In the above case, the concern of the family was to somehow give their daughter away in marriage as soon as possible because she was getting older and she had two younger sisters waiting to be married. Nobody paid any attention to the petitioner's desire to choose her own partner in marriage. It is clear in this case that age played an important role in the system of arranged marriage.

4.5.2 – Sentence *coram* GRACIAS, 24 October 1995[53]

On 15 May 1994, the marriage in question was celebrated in the archdiocese of Goa and Daman. The petitioner's father wanted to have his daughter married as soon as possible because she was the oldest child in his family and she was advancing in age.

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[53] PATRIARCHAL TRIBUNAL OF THE ARCHDIOCESE OF GOA AND DAMAN, *coram* GRACIAS, 24 October 1995, TG-Pr/20/1995, unpublished photocopy.

When his second daughter's marriage to a boy, who was settled in Canada, was already fixed, the father's anxiety increased. Therefore, he arranged his daughter's marriage with the man through a professional match-maker. Even though the woman was unwilling to marry him, her parents forced her to marry him.

Right from the beginning of marriage, the man displayed signs of mental abnormality. He was violent towards his wife and his mother, he was stealing, he was not working, and his behaviour was unpredictable. The woman's father did his best to help his son-in-law. The petitioner tried to make the best of the situation. However, when the woman realized there was no future in her marriage, she returned to her parents for good. She then petitioned the archdiocesan tribunal of Goa and Daman on 29 May 1995 to declare her marriage null on the grounds of grave fear (reverential) on her own part and the inability to assume the essential obligations of marriage on the part of the respondent. The tribunal determined the grounds of "grave fear (reverential)" on the part of the petitioner according to c. 1103 and "inability to assume the essential obligations of marriage for causes of a psychic nature" on the part of the respondent according to c. 1095, 3°.

The *ponens* states in his sentence that, according to c. 1103, fear is intimidation of mind that results from the force. Fear arises inside of a person. Force and fear are relative, depending on the capacity of a person to resist force or to handle fear (p. 58). A marriage contracted under the influence of grave fear caused by a human agent is always invalid, even if the person inflicting the fear did not realize that, in fact, fear was generated in the victim. Grave fear brings about violation of his or her natural right to choose his or her partner in marriage.

In reverential fear, the victim has a built-in-respect, reverence, and obedience for the authority; he or she is particularly fearful of offending the authority and most of all arousing the indignation of that authority. If the victim could have done something other than consenting to the proposed marriage to avoid the indignation of the authority, then this canon would not be applicable (p. 58).

The petitioner's aversion to the respondent, her parents' coercion, and grave reverential fear in the petitioner are established in the acts of the case. The petitioner states, "I did not like the boy. As the marriage was approaching, I was more and more sad [...]. I was rather indifferent and resigned to my fate and was thinking why my daddy had to force me into this marriage" (p. 60). She continues:

> On the day of the marriage, since everybody was in a happy mood, I also was getting distracted. However, again and again, I was becoming increasingly sad and was asking myself why my daddy had to force me. I was also frightened with regard to my future in married life. It was not a happy day for me. During the marriage ceremony, I did not want to marry the respondent. However, I could not do anything else because I was scared of my parents (p. 60).

Concerning the aversion of the petitioner towards the marriage, the petitioner's sister testifies, "On the day of the wedding, while setting out for the wedding, she was crying. As a matter of fact, she was crying even on the previous day. She was in her own world. We could not console her. We felt our consolation might hurt her still more" (p. 60).

Her parents' coercion is the only motive why the petitioner consented to the proposed marriage. Her father testifies, "I am sure that my daughter would not have married the respondent if I had not pressured her into this marriage" (p. 60). The petitioner's mother states, "My daughter married the boy only because we forced her and because of her fear towards us" (p. 60). The petitioner's uncle testifies, "From what I

know of her character and her parents' character, I think that my niece would not have married the respondent if her parents had not forced this marriage on her. She had no other alternative, and she could not choose any other way to escape her parents' force. Even her sisters could not do anything as their father was very strict and imposing" (p. 61).

The *ponens* states that the petitioner's parents abused their authority and the filial reverence their daughter had for them. The petitioner is described as timid, cool, fully respectful, obedient, and submissive towards her parents. She was not capable of displeasing her parents or to answer back to them (p. 61). The petitioner's mother testifies, "If she is scolded or even beaten, she suffers patiently" (p. 61). Despite their knowledge of their daughter's character and her dislike toward the proposed marriage, they coerced her into contracting the marriage through threats, scolding, and even beatings. The petitioner's mother states:

> My daughter did not want to marry the respondent. She had told me that clearly. My second daughter's marriage was already decided and the boy was supposed to come from Canada for the marriage. My husband said that if the petitioner did not accept her marriage proposal, he would break my second daughter's. I scolded the petitioner because she was refusing to marry the respondent. I even beat her and told her to tell my husband that she would agree to marry the respondent. She told my other daughters that she would marry the respondent because of my second daughter and only because of our force. I scolded her several times whenever my husband was bringing up the topic of her marriage with the respondent. When I beat her with an electric wire she promised me that she would marry the respondent (p. 62).

This fact is corroborated by the petitioner and her two sisters [...]. The petitioner's father, although not aware that his wife had beaten their daughter, says:

> I saw that the respondent's family had a good business and since he had accepted the proposal, I felt that this chance should not be missed. My daughter was crying when I scolded her. Her reaction was negative towards this marriage, but I had to force her [...]. She is mild and timid in expressing her feelings. I do not control my temper. I am serious with my children. I get annoyed with my wife if something goes wrong at home. My children are aware of that. And, that is why they are completely submissive to me

> and to my wife. My children do not dare go against my word. I love my children, but I demand from them whatever I want and they follow my views (p. 62).

It is clearly established from all the above evidence that the petitioner entered into this marriage due to grave reverential fear towards her parents. The court also found sufficient proof on the second ground of nullity, that is, incapacity to assume on the respondent's part. Therefore, the decision in this case was affirmative, which was confirmed by the second instance tribunal on 4 March 1996.

In this case one can clearly see that the petitioner's parents did not consider at all her wishes with regard to the proposed marriage, thereby denying her the right to choose the partner of her choice for marriage. When the petitioner opposed her parents, they scolded, beat, and forced her into agreeing to marry the respondent. The motive behind the marriage was to open the door to the marriage of the petitioner's younger sister. The cultural factor that an older son or daughter in a family should be married first is the principal reason for forcing this marriage. The age factor together with the petitioner's docile character created in her grave reverential fear towards her parents which deprived her of the substantial internal freedom necessary to elicit a valid matrimonial consent.

4.5.3 – Sentence *coram* D'SOUZA, 2 April 2001[54]

The marriage in this case took place on 30 January 1999. It was arranged through the aid of a marriage bureau. The parties met at the marriage bureau. After deciding to marry, they informed their families. Once the respective families agreed to their decision they fixed the wedding date. Since the marriage was celebrated in a hurry, both parties did not have enough time to get to know each other. Many problems arose immediately

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[54] ECCLESIASTICAL TRIBUNAL OF MANGALORE DIOCESE, *coram* D'SOUZA, 2 April 2001, Ref. no. 20/00, unpublished photocopy.

after the wedding. The marriage lasted less than a month. All reconciliation attempts failed. The woman was upset with married life and filed a case before the civil court for divorce and then submitted a petition to the diocesan tribunal of Mangalore for a declaration of the nullity of her marriage on the ground of grave fear (reverential) on the part of the respondent. The tribunal accepted the petition and the doubt was formulated as follows: "Whether the marriage is invalid on the ground of grave fear (reverential) articulated in c. 1103 on the part of the respondent."

The *ponens* explains at length the principles of reverential fear as outlined in the previous chapter. He says that reverential fear is a fairly common occurrence and is, therefore, well grounded in doctrine and jurisprudence. Gravity of reverential fear is measured by taking into account the character, the age, the circumstances, etc. of the victim of fear and the gravity of the feared indignation. If reverential fear is grave, then the matrimonial consent elicited would be defective.

According to the petitioner, the marriage proposal and the marriage itself took place in a hurry; everything was completed within eighteen days. On the day following the wedding, the respondent's brother's wedding took place. On the second or third day after the wedding, the respondent told his sisters that he was forced to marry the petitioner, but they thought that he was just joking. The respondent did not show much interest in the petitioner. He stopped going out with the petitioner or even talking to her. Rather, he was spending his time with his sisters and other relatives. When the petitioner brought this to his attention, he replied, "Let me be alone spending some time with my sisters. You will be given time later" (p. 5). The respondent confesses before the tribunal about the force and reverential fear behind the marriage:

> I wanted to cancel the proposed marriage, as I was unhappy. I doubted we could live as spouses given her personality. I told my mother about this and she convinced me to marry her as everything was prepared for the celebration of marriage. She told me that everything would be all right after the marriage. In fact, I relied on my mother as she had a good sense in all these types of decisions. She had experience in dealing with my siblings' marriage proposals and weddings. Moreover, my younger brother's marriage was to take place on the day following my marriage. Since my mother did not allow me to break off the engagement, out of reverence for her, I went ahead with the marriage even though I did not want it. I have always obeyed my mother in whatever she asks from me (p. 6).

The petitioner's sister testifies that the respondent had told her that he was forced into the marriage by his mother and his older sister. Another witness states that the respondent used to tell her that he was not interested in marrying the petitioner, and it was just because of his younger brother that he consented to marry. The respondent wanted to cancel the wedding, but he was not allowed to do so by his family (p. 6).

All the witnesses confirm that the respondent did not want to marry, that he had confided this matter to many of his relatives, and that he went ahead with the marriage because of the pressure from his family and reverential fear towards his mother. The respondent's younger brother confirms this fact:

> Just one week before the marriage and after all the invitation cards had been sent my brother told me that he did not want to marry. He did not offer me any reason. Everything was finalized. All at home persuaded him to marry. My marriage was the next day. Everybody was worried about my marriage. We printed one invitation card for two weddings, one to take place on 30th and the other to take place on the 31st, mine. Everyone at home convinced my brother to go ahead with the marriage. It was not possible to postpone my marriage. Because of this predicament my brother [respondent] went ahead with the marriage (p. 7).

The parties and the witnesses clearly indicate that the respondent did not commit himself to his spouse.

The judicial confession of the respondent that he married out of grave reverential fear towards his mother and his close relatives must be taken within the context in which the marriage of the respondent and his younger brother were finalized. Likewise, the

custom where the older brother must marry before the younger brother had to be maintained. Also, the family risked having a bad name if the wedding did not take place after everything was prepared (p. 6). Hence, the judge's decision was affirmative on the ground of grave reverential fear on the respondent's part towards his mother. This decision was confirmed by the second instance court on 24 June 2001.

This is another example which supports the fact that in the Indian culture, age plays a crucial role in the arrangement of marriages, and consequently, in sometimes causing a defective consent. The practice by which the older brother or sister marries before the younger brother or sister in a family is upheld in the Indian culture. Such a practice may force the children into accepting the marriage proposed by the parents without their consent.

CONCLUSION

In this chapter we have analysed several marriage cases judged on the ground of grave fear (reverential) by the Roman Rota and by several matrimonial tribunals in India. We presented our analysis of the cases under the headings of the main cultural factors identified in this study that generate grave reverential fear in the children within the Indian cultural context. The goal of this analysis was to see how a judge understands and applies the legal principles related to reverential fear to concrete cases in their diverse aspects and arrives at a definitive decision with moral certitude.

The ultimate aim of a marriage nullity trial is to establish whether or not an allegation made by a petitioner concerning the nullity of his or her marriage is proven in the acts of the case. The law is meant to assist the judge in attaining this goal, in pronouncing a just and equitable judgment. In order to do this, a judge should understand

the spirit of the law and the mind of the legislator before interpreting it. Positive law is always to be understood and interpreted in light of the culture of each community. Should a judge apply the law to the facts of a matrimonial case without understanding the culture of the community to which the parties belong, he could not pronounce a fair and impartial judgement. Our analysis of the concrete marriage cases judged within the Indian cultural context involving reverential fear yields the following conclusions and suggestions for avoiding reverential fear situations:

First, what is feared in all these matrimonial cases is the indignation of one's parents, superiors, or significant others which would result from disobeying their wishes. It must be a real fear of a real evil.

Second, to vitiate matrimonial consent, reverential fear should be grave. It can become grave due to attendant circumstances, that is, protraction of the indignation of the parents so as to become a real threat to the child, who sees in it the danger of losing the affection of the parents, which in many places, especially in India, constitutes a very serious evil. Marriage is seen as the only way to escape this difficult predicament.

Third, when parents arrange marriage for their son or daughter, they should not take his or her consent for granted for the proposed marriage. If an arranged marriage is obviously not wanted by a son or a daughter, the parents themselves should try to explain to their son or daughter that he or she is free to refuse it because valid matrimonial consent should be a free act of the will.

Fourth, the reasons "all preparations are done" (*omnia parata sunt*), loss of prestige, or shame to the family if the marriage is cancelled at the last minute, can never justify the parents' forcing a boy or a girl to marry, especially when he or she insistently

says that he or she does not want to marry at all or does not want to marry a particular person.

Fifth, the judge must understand the role that a specific cultural factor/factors play in the system of arranged marriages and how they affect matrimonial consent elicited under their influence. When dealing with a marriage nullity case on the ground of reverential fear, the judge must evaluate how much a specific cultural factor has contributed to the gravity of reverential fear in its victim.

GENERAL CONCLUSION

The basic question that we raised at the outset of this study is: how does culture impact matrimonial consent? And more particularly: what is the impact of reverential fear that is deeply embedded in the Indian culture on matrimonial consent? Our research was centred on answering this principal question.

A careful analysis of various issues related to the question of the impact of culture on matrimonial consent leads us to conclude that cultural factors have significant impact on the consent of the spouses and, indeed, culturally rooted reverential fear can seriously affect the freedom of choice of marriage and of the marriage partner. If reverential fear is proven to be grave, it renders matrimonial consent defective and consequently the marriage would be invalid.

The four chapters of our study have dealt at length with questions concerning the relationship between culture and law, the nature and the elements of matrimonial consent as a juridic act, the factors that cause defects in matrimonial consent and particularly reverential fear, the factors that generate reverential fear in the Indian cultural context, and finally the jurisprudence on reverential fear. Through a systematic analysis of the different cultural and canonical issues related to reverential fear as a ground of marriage nullity, we have been able to draw some substantial conclusions with regard to how culturally influenced reverential fear can seriously impede a person's internal freedom in the choice of marriage and of the marriage partner.

Culture is the way of life of a group of people, the configuration of all of the more or less stereotyped patterns of learned behaviour which are handed down from one generation to the next through the means of language and imitation. It is the fabric of

meaning in terms of which human beings interpret their experience and guide action. Culture consists of the values and beliefs that people use to interpret experience and general behaviour and which are reflected in their behaviour. These are shared by members of a society, and when acted upon, they produce behaviour considered acceptable within that society. All cultural groups cherish their own values such as conjugal love, procreation, family loyalty, family status, prestige, etc. Culture constitutes the lived experience of a particular community. We could also say that a human being is a product of one's own culture and his or her mind is always conditioned by the influences of that culture.

There is a very close link between culture and law. Every cultural society has its laws and customs. Behind each law and custom there are values upheld by a given community. Hence, there is always a dynamic interaction between culture and law. Laws, therefore, are norms of action, established by the lawful authority for the appropriation of values by a cultural society.

Interpretation and application of law is a human act and, therefore, an interpreter of law is likely to be influenced by the personal modes of perception, cognitive styles, skills, limitations, biases, etc. Even within the same culture, interpretations of law sometimes vary and conflict. This is evident in the contradictory decisions local first and second instance tribunals sometimes pronounce on the same ground. Therefore, in order to have a just and equitable interpretation and application of law, an interpreter of law must have, first of all, a clear knowledge of one's own culture; second, he or she must have a good grasp of law itself and must develop skills in interpreting laws within the context of that culture; third, an interpreter of law must know the culture of a society that is not his or

her own either by personally learning the language and the way of life of the people of that culture or through an interpreter. Understanding the cultural background of a person or of a community is very important to provide a just and equitable interpretation of law, marriage law in particular, and in applying it to a concrete case.

Marriage is a natural reality and is perceived, celebrated, and lived within a specific socio-cultural setting. What people expect from marriage and how responsibilities are defined in marital relationships are all determined largely by the culture of a given society. Matrimonial consent, as an act of the will, is a human act with juridic consequences; therefore, it is a juridic act.

The parties to a sacramental marriage are a baptized man and a baptized woman qualified in law, who freely express their consent. In other words, the man and the woman should be *iure habiles* in order to bring marriage into existence (c. 1057, §1; *CCEO*, c. 776). The *habilitas* mentioned in c. 1057, §1 includes both *natural* and *juridic habilitas* on the part of the spouses to elicit a valid matrimonial consent. To be *habilis* for exchanging matrimonial consent, besides being free from diriment impediments, one must possess at least the minimal psychological *capacitas* to intend with sufficient deliberation and internal freedom to establish and sustain the intimate community of life and conjugal love. Like any other juridic act, matrimonial consent may become defective due to internal as well as external factors. The factors which render the act of matrimonial consent defective are incapacity (consensual incapacity), ignorance, error of fact, fraud (deceit), juridic error, simulation, condition, and force or grave fear.

In both Codes of canon law, reverential fear has not been specifically identified as a defect of marital consent. Nevertheless, both doctrine and jurisprudence have treated it

under the canon on force or grave fear (c. 1103; *CCEO*, c. 825). Jurisprudence has developed a juridic structure, which clearly distinguishes reverential fear from common fear. Thus, Rotal jurisprudence of recent decades has consistently maintained that reverential fear is a legitimate and an autonomous ground of nullity of marriage.

Reverential fear has deep roots in the Indian culture. It consists of the fear of offending or saddening one's parents, guardians, or the significant others who play an important role in a person's life like the arranging of one's marriage. The arranged marriage system is customary and is still prevalent in India. In the Indian culture, which nurtures tight-knit family relationships, because of the parental role in decision-making on matters affecting the family unity and strong parent-child interdependence, the personal freedom of children may be unduly restricted by the fear of indignation of their parents or guardians or superiors if they disobey them.

Because the same principles applicable to the verification of force or grave fear are to be applied also to reverential fear, the conditions stipulated in c. 1103 (*CCEO*, c. 825) must be present also in cases of reverential fear to effect an invalid matrimonial consent. But it requires a careful evaluation of the following elements, namely, the gravity, the externality, and the unavoidability of fear, considered in light of the concrete life situations of the victim of fear and its agent and other relevant cultural factors.

Reverential fear is *per se* slight, and it does not have the invalidating effect on matrimonial consent. But, if the indignation of parents, a superior, or the significant other is grave either in itself or because of the circumstances, then reverential fear becomes grave and invalidates matrimonial consent. Beatings, threats, whether explicit or implicit, and ill treatment can qualify simple reverential fear and make it grave. Even without

threats, prolonged indignation of parents or superiors, accompanied by annoying demands, constant pleas, arguments, unreasonable requests, complaints, commands, etc., can make a child uncomfortable, fearful, and can arouse grave fear and trepidation. Therefore, reverential fear is a relatively grave fear. If it is proven that one has elicited matrimonial consent because of grave reverential fear, then that consent is devoid of the internal freedom sufficient to choose freely the object of consent, that is, either marriage itself or the partner in marriage. The internal freedom to choose the object of consent is one of the subjective constitutive elements of matrimonial consent. If a juridic act lacks any of its essential constitutive elements, then that act is invalid (cf. c. 124, §1; *CCEO*, c. 931, §1). Here, the relatively grave reverential fear, which is a cultural factor, affects the free exercise of one's freedom, and, then, that person lacks the internal freedom sufficient to choose the marriage partner or marriage itself. Substantially grave reverential fear, therefore, can cause a substantial defect in matrimonial consent.

There are several cultural factors that can exacerbate reverential fear in children in the Indian cultural context. Such factors identified in the third chapter of this study are parental authority, filial respect, respect towards the significant others, and the economic dependence on the family. This is only a nominal list of those cultural factors which can aggravate reverential fear.

Marriage nullity cases judged on the ground of reverential fear are very frequent in the ecclesiastical tribunals in India. Proving the invalidity of a marriage on the ground of reverential fear is certainly not an easy task. Proof of reverential fear is to be established through two kinds of arguments: *indirect*, that is, by determining the aversion, and *direct*, that is, by identifying the facts that *expressly* demonstrate the presence of fear in the

subject and the coercive methods adopted. When aversion is proven, a firm basis is thereby established for the presumption that marital consent was coerced. But it could happen that the signs of aversion may not be manifest in every case because one might have tried to overcome it or is trying to make good the situation without complaining about the coercion. In such cases an ecclesiastical judge must weigh very carefully the facts of the case to arrive at moral certitude regarding the nullity of the marriage in question by taking into consideration the impact of the specific cultural factor (s) involved, such as reverential fear. Pope John Paul II rightly pointed out that an ecclesiastical judge, who is the law personified, in order to live up to that title, must be a person of great learning and wisdom, with a zeal to defend the law and prudence to interpret the law according to the spirit of the law, applying justly in accord with the principle of canonical equity.[1]

In an ordinary judicial contentious trial, before the parties can be allowed to marry validly again in the Church, there must be two conforming affirmative decisions (see c. 1684, §1; *CCEO*, c. 1370, §1). In a marriage nullity case, two conforming sentences can be either of formal conformity or of substantial (equivalent) conformity. The Church has already articulated norms on formal and substantial (equivalent) conformity between two sentences. When two sentences have been issued between the same parties, about the same marriage, using the same formulae of grounds (*capita*) with the same basic argumentation, then there is formal conformity between the sentences (see *DC*, art. 291, §1). But substantial (equivalent) conformity between two sentences exists when both sentences are between the same parties, about the same marriage, based on the same

[1] See JOHN PAUL II, *Allocution to the Roman Rota*, 4 February 1980, in *AAS*, 72 (1980), p. 177, n. 8; English trans. in WOESTMAN, *Papal Allocutions*, p. 163, n. 8.

juridic fact or the principal fact, which is derived from the same simple facts contained in the same proofs but under different grounds (*capita*) (see *DC*, art. 291, §2).

In a marriage nullity case, the true cause for petitioning (*causa petendi*) is a juridic fact or the principal fact which actually invalidates the marriage. Since all defects of consent are ultimately rooted in the defects of subjective components or in the objective content of consent, a common juridic fact may be identified between the two different grounds under consideration, e.g., qualified or grave fear may be the common juridic fact behind the grounds of grave reverential fear and simulation of marriage consent.

From the analysis of concrete marriage nullity cases judged on the ground of reverential fear, we highlight the following principles, which might be helpful to any judge dealing with such cases.

First, reverential fear can become grave due to attendant circumstances, such as the young age, timid and submissive temperament, financial dependence, sensitive nature, etc. on the part of the child or the subordinate and an authoritarian and domineering temperament, unbending and irascible character, etc. on the part of parents or a superior. Even a deep sense of gratitude towards the parents or a superior can exacerbate the gravity of reverential fear.

Second, it is a serious duty on the part of the parents or those who arrange marriage for their children to know whether the children freely accept the proposed marriage, that is, whether or not a child is freely consenting to that marriage. When a boy or a girl shows explicit signs of hesitation in consenting to the proposed marriage partner or marriage itself, if parents or those responsible for arranging the marriage still proceed

with arranging the marriage, he or she may consent to that marriage, but such consent will be defective for lack of sufficient freedom.

Third, presumption of free consent in an arranged marriage is perilous. What happens, as a rule, in marriages alleged to be invalid on the ground of reverential fear is that, in exercising their authority, the parents, or those assuming parental responsibility, take for granted the consent of their children to the proposed marriage. For instance, a remark like this: "She is my daughter and she will always obey my decisions," reveals the authoritarian mentality of the agent of grave fear. In many cases, the parents may not ask their son or daughter his or her opinion about a proposed marriage. If a boy or a girl accedes reluctantly to the wishes of the parents in order not to lose the parental affection, concern, and security, such a consent cannot produce a valid marriage. Therefore, a judge who is adjudicating a marriage case on the ground of reverential fear must ascertain whether matrimonial consent was simply presumed by the parents or by those who stand in their stead in arranging the marriage.

Fourth, the evil that is feared in cases of reverential fear is not the loss of inheritance or expulsion from the house but the indignation of parents and the consequent cessation or discontinuance or interruption of affection, friendship, and security. In the Indian cultural milieu, it is very painful, especially for a girl, to lose her parents' affection and fondness for her. Such a thought seriously disturbs her mind. The girl realizes that if she does not obey her parents' wishes and consent to the proposed marriage she will have to face their indignation, which is feared to last for a long time. Therefore, to escape from such a situation, the girl finds accepting the proposed marriage as the only solution. Such a decision is invalid because it lacks the sufficient internal freedom.

Fifth, in order to attain moral certitude on the ground of reverential fear, the judge instructing the case must take into consideration several factors, namely, the nature of the relationship between the agent and the victim of fear, the family situation of the victim of reverential fear, the character of the agent of fear and that of the victim, etc. The closer the relationship between parents and children, the more intense will be the reverence and the sense of gratitude of the children towards their parents. Any breach in such a relationship resulting from the disobedience of the children is likely to arouse a high degree of indignation on the part of the parents. In this situation, a son or a daughter might comply with the proposed marriage solely to avoid parental indignation, that is, without sufficient internal freedom.

Sixth, in dealing with a marriage nullity case, which involves an arranged marriage and in which the alleged ground is reverential fear, a judge is not to overlook the impact of cultural factors which might negatively affect the matrimonial consent in question.

Seventh, when the validity of a marriage is challenged on the ground of reverential fear, a judge must follow closely the jurisprudential principles applicable to such cases. Any definitive decision made by the judge must reflect those jurisprudential principles.

It is our hope that this study will provide some helpful insights into the ground of reverential fear to those who offer ministry in ecclesiastical tribunals, so that any decision they make in a given case will truly reflect justice, equity and Christian charity and thus promote the salvation of souls, which is the ultimate goal of all ecclesial ministry (c. 1752).

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