

**MIXED-MARRIAGE IN THE CODE OF CANONS OF THE
EASTERN CHURCHES AND THE PARTICULAR LAW
OF THE SYRO-MALABAR CHURCH**

by
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ABSTRACT

This study, consisting of three chapters, is a systematic analysis of the canons on mixed marriage in *CCEO* and the particular legislation recently promulgated by the Syro-Malabar Major Archiepiscopal Church *sui iuris*. The study has two principle dimensions, namely juridical and pastoral. The juridical aspect focuses primarily on the legislative norms governing the canonical form of mixed marriage as found in legislation of Eastern Catholic Churches and the particular law of the Syro-Malabar Church and the pastoral aspect comprises mainly of practical inquiry.

While recognizing the competence of the civil authorities with respect to the civil effects of marriage (cf. *CCEO* c. 780 §1; *CIC* c. 1059), the Church, through appropriate laws, shows its responsibility of protecting the natural and divine institution of marriage from possible dangers to the faith of the Catholic spouse and the children. The present legislation on mixed marriage is pre-eminently pastoral and ecumenical in its approach.

In this regard this study examines different concrete or existential problems faced by those contracting mixed marriage, the study indicates approaches, which are more likely to respond effectively to the pastoral care of those contemplating mixed marriage and their families. It also offers a critical review of the existing legislation, both common and particular, and provides some pastorally useful suggestions concerning effective care of those who might plan on entering upon a mixed marriage or those who are already in a mixed marriage situation.

The Syro-Malabar Church has taken courageous and commendable steps in bringing its governance in line with the Code of Canons of the Eastern Churches. This is particularly evident in the legislation the Syro-Malabar Church has enacted on mixed marriage and the pastoral care of the mixed marriage families.

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ABBREVIATIONS

AA	SECOND VATICAN COUNCIL, Decree <i>Apostolicam actuositatem</i>
AAS	<i>Acta Apostolicae Sedis</i>
<i>Acta et documenta</i>	<i>Acta et documenta Concilio oecumenico Vaticano II apparando, Series I: Antepreparatoria, vol. II: Consilia et vota Episcoporum ac Praelatorum.</i>
Art.	Article
ASS	<i>Acta Sanctae Sedis</i>
c., cc.	Canon(s)
CA	PIUS XII, <i>Motu proprio Crebrae allatae</i>
Cap.	Caput
CCCB	CANADIAN CONFERENCE OF CATHOLIC BISHOPS
CCEO	<i>Codex canonum Ecclesiarum orientalium</i>
CD	SECOND VATICAN COUNCIL, Decree <i>Christus Dominus</i>
CDF	CONGREGATION FOR THE DOCTRINE OF THE FAITH
CDWDS	CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS
CEC	CONGREGATION FOR EASTERN CHURCHES
CIC/17	<i>Codex iuris canonici</i> 1917
CIC/83	<i>Codex iuris canonici</i> 1983
CICO Fonti	<i>Codex iuris canonici orientalis, Fonti</i>
CL	JOHN PAUL II, Apostolic Exhortation <i>Christifideles laici</i>
CLD	<i>Canon Law Digest</i>
CLSA	CANON LAW SOCIETY OF AMERICA

<i>CLSA Proceedings</i>	<i>Proceedings of the Annual Convention of the Canon Law Society of America</i>
<i>CLSA Comm 1</i>	CORIDEN, J.A., T.J. GREEN, D.E. HEINTSCHEL (eds.), <i>The Code of Canon Law: A Text and Commentary</i>
<i>CLSA Comm 2</i>	BEAL, J.P., J.A. CORIDEN, T.J. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i>
<i>CM</i>	CONGREGATION FOR EASTERN CHURCHES, Decree <i>Crescens matrimoniorum</i>
<i>CMI</i>	Carmelites of Mary Immaculate
<i>Congregationes gen.</i>	<i>Sacrosanctum oecumenicum Concilium Vaticanum II: Congregationes generales</i>
<i>DH</i>	SECOND VATICAN COUNCIL, Decree <i>Dignitatis humanae</i>
<i>DV</i>	SECOND VATICAN COUNCIL, Dogmatic Constitution <i>Dei Verbum</i>
<i>DVK</i>	Dharmaram Vidya Kshetram, Pontifical Athenaeum, Bangalore
<i>Exegetical Commentary</i>	Á. MARZOA, J. MIRAS, and R. RODRÍGUES-OCAÑA (eds.), <i>Exegetical Commentary on the Code of Canon Law</i> , prepared under the responsibility of the Martín de Azpilcueta Institute, University of Navarre, Montréal, Wilson & Lafleur, 2004, 5 vols.
<i>FC</i>	JOHN PAUL II, Apostolic Exhortation <i>Familiaris consortio</i> .
<i>FLANNERY I</i>	A. FLANNERY (gen. ed.), <i>Vatican Council II: The Conciliar and Post Conciliar Documents</i>
<i>FLANNERY II</i>	A. FLANNERY (gen. ed.), <i>Vatican Council II: More Post Conciliar Documents</i>
<i>GS</i>	SECOND VATICAN COUNCIL, Pastoral Constitution <i>Gaudium et spes</i>
<i>HPR</i>	<i>Homiletic and Pastoral Review</i>
<i>JCD diss.</i>	Doctoral dissertation in Canon Law
<i>LG</i>	SECOND VATICAN COUNCIL, Dogmatic Constitution <i>Lumen gentium</i>
<i>MM</i>	PAUL VI, <i>Motu proprio Matrimonia mixta</i>

<i>MS</i>	CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction on Mixed Marriages <i>Matrimonii sacramentum</i>
<i>OE</i>	SECOND VATICAN COUNCIL, Decree <i>Orientalium Ecclesiarum</i>
<i>ORE</i>	<i>L'Osservatore romano</i> , English edition
<i>PB</i>	JOHN PAUL II, Apostolic Constitution <i>Pastor bonus</i>
PCCICOR	PONTIFICIA COMMISSIO CODICI IURIS CANONICI ORIENTALIS RECOGNOSCENDO
<i>PDV</i>	<i>Pastores dabo vobis</i>
<i>PG</i>	J.P. MINGE (ed.), <i>Patrologia graeca</i>
<i>PL</i>	J.P. MINGE (ed.), <i>Patrologia latina</i>
<i>PLSMC</i>	Particular Law of the Syro-Malabar Church
<i>Quaestiones de ...</i>	<i>Quaestiones de disciplina Sacramentorum: Schema decreti de Matrimoniis mixtis propositum a Commissione de disciplina Sacramentorum.</i>
<i>SC</i>	SECOND VATICAN COUNCIL, The Constitution on the Sacred Liturgy <i>Sacrosanctum Concilium</i>
<i>StC</i>	<i>Studia canonica</i>
TPI	Theological Publication of India
<i>UR</i>	SECOND VATICAN COUNCIL, Decree <i>Unitatis redintegratio</i>

GENERAL INTRODUCTION

There was a time when practically all marriages in India were arranged and were strictly endogamous. Prospective spouses, whether they were Catholics, Protestants, Hindus or Muslims, married each other within their own community defined by their ethnicity/caste and religion. The values, which provided intrinsic unity and continuity to the community, were thus safeguarded from the potentially destructive intrusions of values extraneous to their own. But now all communities in India are experiencing unprecedented changes, which are affecting the way people arrange and celebrate their marriages. For example, because of changes in their social and religious consciousness, people are questioning age-old values, including arranged marriages. Similarly, the younger generations challenge the very custom and relevance of getting married within one's own ethnic or religious community. Numbers are on the increase of marriages that take place either before civil registrars or ministers belonging to religious denominations different from that of the bride or the groom. Even Catholics are questioning the relevance and value of restrictions placed by the Church on inter-faith or inter-ecclesial mixed marriages. From our pastoral experience, we know of many instances in which Catholics have either given up practicing their faith or embraced the faith of their spouse, precisely in reaction to such restrictions.

Furthermore, even those who are prepared to accept the *cautiones* prescribed by the Code are seeking clarifications of the meaning of such *cautiones*. The legislation on mixed marriage, both in the Latin and Eastern Codes, was historically meant to safeguard certain values, namely the faith of the Catholic party, the education of children born of the union in Catholic faith, the unity of faith and harmony within the family. But today people, even Catholics, are asking serious questions about the relevance or value of such legislation. As long as such legislation exists, those involved in pastoral ministry must try to make it as useful and meaningful as possible. At the same time, the Church also

has the obligation to catechize people about these values so that they are adequately helped in understanding and accepting or even rejecting, after a conscientious assessment, the values the Church desires to propose to them through those restrictions.

Our study was inspired by several questions, which call for a reassessment of the current legislation on mixed marriage contained in the *CCEO* and the particular law of the Syro-Malabar Church. The principal question that stands out is: What is the rationale underlying the legislation presented in the *CCEO* and in the particular legislation of the Syro-Malabar Church on mixed marriage? In other words, what values do these legislations on mixed marriage intend to promote and safeguard? These questions are in fact loaded because they include several other interrelated issues. A mixed marriage presupposes that one of the spouses to be married is not a Catholic, whether baptized or non-baptized. But our study will concentrate only on the mixed marriage in a restricted sense i.e., a marriage between a Catholic and a baptized person who is not in full communion with the Catholic Church.

Every person, whether baptized or not, has his/her own dignity and belief system. Not infrequently a person, who is a validly baptized non-Catholic and wishes to marry a Catholic, may feel unjustly treated by the Catholic Church's lack of sensitivity to his/her own beliefs, convictions, and personal dignity. Often this type of situation includes also their families and faith communities. This case scenario forces us to consider further questions like: How do we reconcile the Church's legislation on mixed marriage with the freedom and personal dignity of non-Catholics, especially in respect to *cautiones*? What are the ecumenical implications of the Church's legislation on mixed marriage? How do we prepare couples for marriage who might be burdened with questions related to their obligations toward their potential offspring? What is the Church's pastoral obligation toward mixed marriage families? What concrete steps can be taken to prepare spouses

for such marriages without unduly burdening their conscience? These and several other related issues will be the focus of our study.

There are a number of studies and articles published on mixed marriage. But so far we have not come across any major study exclusively on *CCEO* and the particular law of Syro-Malabar Church.

J.T. Kaniamparambil, in his doctoral thesis, defended at the Pontifical Athenaeum Sanctae Crucis in 1997,¹ provides a historical survey of the competence of the Catholic Church in mixed marriages starting from the patristic era to the *motu proprio Matrimonia mixta*. It also contains a comparative and exegetical study of *CCEO*, c.780 and *CIC/83*, c. 1059 and an explanation of the application of the canon 780 § 2 in mixed marriage and identifies areas of possible conflict.

After having presented the Church's teaching on mixed marriage from the early Church to *CIC/17*, M. Sweeting, in his thesis, *Les Eglises et les mariages mixtes*,² presents different views on mixed marriages in the Catholic and Protestant Churches during and after the Second Vatican Council.

J. D'Mello's doctoral thesis, *The Dual Religious Marriage Celebration in India*,³ analyses the mixed marriage within the socio-religious context of India. The concentration is more on the disparity of cult marriages and is focused on the Latin Code.

¹ J.T. KANIAMPARAMBIL, *Competence of Catholic Church in Mixed Marriages: The New Vision of the Oriental Code*, JCD diss., Rome, Pontifical Athenaeum Sanctae Crucis, 1997.

² M. SWEETING, *Les Eglises et les mariages mixtes*, Paris, Éditions du cerf, 1969.

³ J. D'MELLO, *The Dual Religious Marriage Celebration in India*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1985.

The doctoral thesis, *The Sincerity of the Mixed Marriage Promises According to the Recent Legislation*, of J. M. Makothakat defended in 1978,⁴ is divided into two parts. In the first part the author makes an analytical study of the sources of canon 1061 of *CIC/17*, the post-code legislation and the jurisprudence of the Roman Rota. The second part focuses on the conciliar and post-conciliar developments. The concentration of this study is solely on the sincerity of mixed marriage promises according to the legislation in force prior to the promulgation of the 1983 Code of Canon Law.

Our study will have two principal dimensions, namely juridical and pastoral. The juridical aspect will focus primarily on the legislative norms governing the canonical form of marriage as found in Eastern Churches' legislation. The elaboration of this aspect will involve a systematic analysis of the canons of *CCEO* and the particular legislation recently promulgated by the Syro-Malabar Major Archiepiscopal Church *sui iuris*. This approach is meant to enter directly into an analysis of pertinent legislation without going into its historical sources, in order to limit the scope of the study, although some discussion of relevant historical background of the canonical form will be inevitable. But the principal methodology used in the first two chapters of the study will remain predominantly analytical in nature.

The pastoral aspect will comprise mainly of practical inquiry. We will examine different concrete or existential problems faced by those contracting mixed marriages and indicate approaches, which are more likely to respond effectively to the pastoral care of those contemplating mixed marriage and their families. We hope this mixed method will enable us to review critically the existing legislation and to provide some pastorally

⁴ J. M. MAKOTHAKAT, *The Sincerity of the Mixed Marriage Promises According to the Recent Legislation*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1978.

useful suggestions concerning effective care of those who might plan on entering a mixed marriage or those who are already in a mixed marriage situations. Our concentration will be mainly on the norms on mixed marriage in the Eastern Code, but we will also make reference to the parallel canons in the Latin Code. Since we do not have any commentary or official study on the particular law of the Syro-Malabar Church, our study has a limited scope in analyzing the particular legislation on mixed marriage. The content of this project will be structured as follows:

In chapter one, we will first present a very brief overview of the sources of the present legislation on mixed marriage. Then we will enter into a systematic analysis of the actual legislation contained in *CCEO* in order to establish the common principles affecting matters related to mixed marriage and are applicable to all Eastern Catholic Churches *sui iuris*.

The second chapter will begin with a succinct historical background of the Syro-Malabar Church and then subject to a critical analysis the legislation recently promulgated by the Syro-Malabar Church on mixed marriage. Such a critical analysis of the particular legislation both from a theoretical and from a practical perspective could enable us to provide appropriate answers to some of the above questions.

The third chapter will be practical in nature. We will study the practical possibilities and guidelines for pastoral care of couples in mixed marriages. This way the Church could demonstrate to critics that its laws are not meant to burden people's lives and consciences but oriented primarily to offer continued pastoral care to parents and families involved in such situations. In this way we hope to produce a study that will not only explore the true relevance and values of the legislation on mixed marriage but also to provide practical guidance to those who will be involved in preparing couples to live out their faith in married and family life.

CHAPTER ONE

MIXED MARRIAGE IN THE *CODE OF CANONS OF THE EASTERN CHURCHES*

INTRODUCTION

Marriage is a natural reality and, when celebrated between two validly baptized persons, is also a sacrament. Therefore, the Church has always claimed her role in regulating the discipline concerning the marriages of the faithful. This is particularly obvious in the Church's approach to mixed marriages.

Mixed marriages have always been the object of special pastoral concern for the Catholic Church, both in its Latin and Eastern Churches. These problems are not only canonical but also theological¹ and historical.²

The problem with respect to mixed marriages first arose when a Jew or a Gentile was converted to Christianity. St. Paul addresses the pastoral problem of when a

¹ For some theological discussions on mixed marriages, see J.A. HARDON, "Mixed Marriages," in *L'Église et théologie*, 1 (1970), pp. 229-260; L. ÖRSY, "The Complex Question of Mixed Marriages," in *The Heythrop Journal*, 4 (1963), pp. 367-385; A. LAMBING, *Mixed Marriages: Their Origin and Their Results*, Notre Dame, IN, Ave Maria Press, 1973; B. HÄRING, *Marriages in the Modern World*, Westminster, Maryland, The Newman Press, 1965; J. MCHUGH (ed.), *Marriage in the Light of Vatican II*, Washington, DC, Family Life Bureau, United States Catholic Conference of Bishops, 1968; E. SCHILLEBEECKX, *Marriage: Human Reality and Saving Mystery*, New York, Sheed and Ward, 1965.

² For historical details on mixed marriages, see A. CONNICK, "Canonical Doctrine Concerning Mixed Marriages Before Trent and During the Seventeenth and Early Eighteenth Centuries," in *The Jurist*, 20 (1960), pp. 294-326, 398-418; F.J. SCHENK, *The Matrimonial Impediments of Mixed Religion and Disparity of Cult*, Canon Law Studies 51, Washington, DC, The Catholic University of America, 1929, pp. 4-69; V.J. DOYLE, *The Pre-Nuptial Promises in Mixed Marriages: An Historical and Canonical Analysis*, Canon Law Studies 461, Washington, DC, The Catholic University of America, 1968, pp. 1-6; J. DAHYOT-DOLI, "Les mariages mixtes en droit byzantin," in *Apollinaris*, 43 (1970), pp. 571-582.

Christian could not cohabit in peace with a non-Christian. Paul writes to the Church of Corinth:

To the rest I say, not the Lord, that if any brother has a wife who is an unbeliever, and she consents to live with him, he should not divorce her. If any woman has a husband who is an unbeliever, and he consents to live with her, she should not divorce him. For the unbelieving husband is consecrated through his wife, and the unbelieving wife is consecrated through her husband. Otherwise, your children would be unclean, but as it is they are holy. But if the unbelieving partner desires to separate, let it be so; in such a case the brother or sister is not bound. For God has called us to peace. Wife, how do you know whether you will save your husband? Husband, how do you know whether you will save your wife? (1 Cor 7:12-16).

The theology underlying the norms on mixed marriage is expressed in this scriptural passage. The key factor here is peace in the family and the salvation of the soul, i.e., the faith of the believer. According to Paul a believer shall not divorce his/her non-believing husband/wife as long as the partner is willing to live with him/her. For he says: "For the unbelieving husband is consecrated through his wife, and the unbelieving wife is consecrated through her husband (1 Cor 7:14)." However, if the desire of the unbelieving partner is to separate, he says, "let it be so; in such a case the brother or sister is not bound." The Church prohibited Christians from marrying non-Christians. The fundamental values the Church intended to safeguard from the beginning through its discipline of mixed marriages were the faith of the Catholic party and the upbringing of children born of such unions in the Catholic faith.

During the early years of the Church, this prohibition was conveyed principally through the teachings of the Church Fathers. Then, the Church Councils began to

legislate against mixed marriages.³ Much of the ecclesiastical legislation on marriage took centuries to crystallize and was summarily stated in the 1917 Code, where the marriages between Catholics and baptized Christians were affected by a prohibition of “mixed religion,” while those between Catholics and non-baptized persons were impeded by the impediment of “disparity of worship.”

In their turn Eastern Catholic Churches had for centuries followed, besides the regulations enacted by the Popes, the legislation that emerged from ecumenical councils, patriarchal synods, or assemblies of each Eastern Catholic *sui iuris* Church. As far as legislation on mixed marriages is concerned, each Eastern Catholic Church had its own practices and customary laws on the canonical form and priestly blessing. However, a systematic and unified legislation was enacted exclusively for the Eastern Catholic Churches in the *motu proprio Crebrae allatae*, promulgated by Pius XII on 22 February 1949.⁴ This *motu proprio* was the result of the unification of most of the existing customs, traditions and laws of different Eastern Catholic Churches. The prohibitive stance of the Church has continued to be in force even after the Second Vatican Council, although with substantial changes in related legislation.

There is no doubt that the Second Vatican Council ushered in some important doctrinal and disciplinary principles concerning mixed marriages. On the one hand, the

³ For example, the Councils of: Elvira, c. 16, in MANSI, vol. 2, p. 8; Laodicaea, c. 10, in MANSI, vol. 2, p. 585; Chalcedon, c. 14, in MANSI, vol. 7, p. 388. These councils are cited in J.A. CORIDEN, T.J. GREEN, D.E. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary* (= *CLSA Comm1*), Commissioned by the Canon Law Society of America, Bangalore, Theological Publications of India (= TPI), 2000, p. 800.

⁴ PIUS XII, *Motu proprio Crebrae allatae*, 22 February 1949, in *AAS*, 41 (1949), pp. 89-117.

Council strongly affirmed the inviolability of a person's conscience and freedom of religion, including even certain aspects of marriage, while on the other hand, it also recognized the need to protect and safeguard the faith of its own members. Therefore, it called for a revision of the discipline on mixed marriages to reflect such an emphasis. The ecumenical spirit of the Council was stressed in the conciliar decree on ecumenism *Unitatis redintegratio*,⁵ and the same spirit is also reflected in the decree on Eastern Catholic Churches *Orientalium Ecclesiarum* (nn. 24-29).⁶ These decrees provided the basic doctrinal principles on which the Church's discipline on diverse inter-Church issues was to be based.⁷ In response to these decrees, the Congregation for the Doctrine of the Faith issued an instruction on mixed marriages *Matrimonii sacramentum*, 18 March 1966,⁸ addressed to Latin Catholics, and the Congregation for Eastern Churches published an equivalent decree on marriages between Catholics and the Orthodox

⁵ SECOND VATICAN COUNCIL, Decree on Ecumenism *Unitatis redintegratio* (= UR), 21 November 1964, in *AAS*, 57 (1965), pp. 90-112; English trans. in A. FLANNERY (gen. ed.), *Vatican Council II*, vol. 1, *The Conciliar and Postconciliar Documents* (= FLANNERY I), Mumbai, St. Pauls Publications, 1999, pp. 408-424.

⁶ SECOND VATICAN COUNCIL, Decree on Eastern Catholic Churches *Orientalium Ecclesiarum* (= OE), 21 November 1964, in *AAS*, 57 (1965), pp. 76-89; English trans. in FLANNERY I, pp. 398-407.

⁷ The Second Vatican Council also, at the same time, upheld the unique nature of the Catholic Church explaining the mystery of the Church through its Dogmatic Constitution on Church. See SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen gentium* (= LG), n. 8, 21 November 1964, 15, in *AAS*, 57 (1965), p. 9; English trans. in FLANNERY I, p. 326.

⁸ SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction on Mixed Marriages *Matrimonii sacramentum* (= MS), 18 March 1966, in *AAS*, 58 (1966), pp. 235-239; English trans. in FLANNERY I, pp. 427-431.

Crescens matrimoniorum, 22 February 1967,⁹ and Pope Paul VI promulgated the *motu proprio Matrimonia mixta*, 31 March 1970.¹⁰ The conciliar doctrine was finally codified in the *Codex iuris canonici* (= *CIC*'83)¹¹ for the Latin Church *sui iuris* (1983) and in the *Codex Canonum Ecclesiarum Orientalium* (= *CCEO*)¹² for all Eastern Catholic Churches (1990). These two Codes now contain in gist the conciliar doctrine and disciplinary norms regulating the celebration of mixed marriages.

One of the essential features of both Codes is the recognition of the principle of subsidiarity. According to this principle, a higher authority is not to usurp the authority and functions of his or her subordinate. It also means that the decisions must be made at the appropriate level where life really unfolds. The higher authority must assist those at the subordinate level in every aspect of their ministry or functions so that the common goal of a particular organism or institute is attained without an undue waste of energy and resources. The present Codes, especially the Eastern Code, highly respect this principle and make provision for particular legislation on a series of pastoral matters that need to be handled at the level of each Catholic Church *sui iuris*. This is particularly true in

⁹ CONGREGATION FOR EASTERN CHURCHES, Decree on Marriages Between Catholics and the Orthodox *Crescens matrimoniorum* (= *CM*), 22 February 1967, in *AAS*, 59 (1967), pp. 165-166; English trans. in FLANNERY I, pp. 434-435.

¹⁰ PAUL VI, *Motu proprio Matrimonia mixta* (= *MM*), 31 March 1970, in *AAS*, 62 (1970), pp. 257-263; English trans. in FLANNERY I, pp. 457-462.

¹¹ *Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Libreria editrice Vaticana, 1983; English trans. *Code of Canon Law, Latin-English Edition, New English Translation*, Prepared under the auspices of the Canon Law Society of America (= CLSA), Washington, DC, CLSA, 1999.

¹² *Codex canonum Ecclesiarum orientalium, 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.

CCEO's legislation on mixed marriages, the principal object of our study, that is, an analysis of the particular legislation of the Syro-Malabar Church concerning the celebration of mixed marriages.

This chapter aims to provide a historical and canonical context to the particular legislation enacted by the Syro-Malabar Church on the celebration of mixed marriages. Therefore, the chapter will be divided into two parts. The first part will include a very brief survey of the canonical legislation on mixed marriages from the early Church until the promulgation of *CCEO*. In the second part we will enter into a systematic analysis of the norms on mixed marriages as contained in *CCEO* with particular consideration given to the relevant ecumenical issues.

PART ONE

1.1 — HISTORICAL SYNOPSIS OF THE LEGISLATION ON MIXED MARRIAGES

The expression "mixed marriage" is a term that overarches two categories of marriage, namely a marriage between a Catholic and a non-baptized person, which is prohibited by means of an invalidating impediment, and a marriage between a Catholic and a baptized non-Catholic, which entails a prohibition of an impeding nature.¹³ In a broad sense, or as frequently used in popular discourse,¹⁴ the term means any union between a Catholic and a non-Catholic, whether baptized or not. In the strict canonical sense, however, the term refers to a sacramental union between a Catholic and a baptized

¹³ See T.P. DOYLE, Commentary on cc. 1124-1129, in *CLSA Comm 1*, p. 800.

¹⁴ See J.P. BEAL, Commentary on cc. 1124-1129, in *CLSA Comm 2*, pp.1341-1342.

non-Catholic.¹⁵ A mixed marriage, therefore, is one in which one party is either baptized in the Catholic Church or received into it after baptism and the other is a baptized member of a Christian Church or ecclesial community, which is not in full communion with the Catholic Church.¹⁶ This category of non-Catholics would include members of Eastern Orthodox Churches as well as Protestants.¹⁷ The term “mixed marriage” is used in this study in the strict sense because the canonical implications of marriages between Catholics and baptized non-Catholics are quite different from those of marriages between Catholics and non-baptized persons.¹⁸ However, the examination of the patristic texts includes marriage between Christians and non-Christians, which is not in the strict canonical sense of mixed marriage.

1.1.1 – The Teachings of the Fathers

From its infancy, the Church was deeply aware of its responsibility to safeguard the faith of its members. The common feeling in the Church was that a mixed marriage posed a proximate threat to the faith of the Catholic spouse. So, on the basis of patristic teachings, the Church began to instruct the faithful on the danger of entering into a marriage with those professing other beliefs. The Fathers of the apostolic period and those who followed them during the first centuries of the Church intervened in the

¹⁵ See DOYLE, Commentary on cc. 1124-1129, in *CLSA Comm 1*, p. 800.

¹⁶ See BEAL, Commentary on cc. 1124-1129, in *CLSA Comm 2*, p. 1341.

¹⁷ See DOYLE, Commentary on cc. 1124-1129, in *CLSA Comm 1*, p. 801.

¹⁸ See BEAL, Commentary on cc. 1124-1129, in *CLSA Comm 2*, p. 1342.

marriages of Christians in order to prepare them to live according to the Gospel.¹⁹ Prominent among the early Fathers were St. Ignatius of Antioch, Tertullian, St. Cyprian, St. Ambrose, St. Jerome, St. Augustine of Hippo and St. John Chrysostom. None of these Fathers, however, spoke directly on the problem of mixed marriages. Nevertheless, they did not fail to express their genuine concern for the safety of the faith of the Christian faithful who were in danger of losing their faith due to their marriage with pagans or infidels.

The basic teaching of the Fathers was derived from the Scriptures.²⁰ The literature of the patristic period contains an abundance of precepts and advice on the indissolubility of marriage, its moral value as compared with the state of virginity, second marriages, chastity in conjugal relations, and the religious duties of the spouses.²¹

(A) St. Ignatius of Antioch (+107): St. Ignatius is one of the earliest Apostolic Fathers to speak about the sanctity of marriage. He described Christian marriage as a marriage “in the Lord” and, therefore, he insisted that it would become more authentic if celebrated with the approval of the Church. His teaching influenced especially the Church in the East to intervene in the celebration of the marriages of Christians. Therefore, the Church cited his teaching that those who marry do so with the consent of

¹⁹ See R. PAGÉ, “Marriage: Sacrament of Love or Sacrament of Bond?” in *Studia canonica* (= *StC*), 34 (2000), p. 9.

²⁰ The following are some of the Scripture passages the Fathers of the Church used in their arguments against mixed marriages: Exodus 34: 16; Deuteronomy 7: 1-4; Joshua 23: 12-13; I Cor. 7: 39; II Cor. 6: 14-16.

²¹ See L. ANNÉ, “La conclusion du mariage dans la tradition et le droit de l’Église latine jusqu’au IV siècle,” in *Ephemerides theologicae lovanienses*, 12 (1935), p. 550; also PAGÉ, “Marriage: Sacrament of Love or Sacrament of Bond?” p. 9.

the bishop, so that the marriage will be a marriage “in the Lord” and not according to one’s personal desire.²² When believers married they were urged to marry “in the Lord”, that is to say among themselves, rather than with those who were not “in the Lord”, that is, non Christians.²³

(B) Tertullian (+223): Tertullian saw Christian marriage as a transcendental reality and championed it as an ideal that should be earnestly sought.²⁴ He believed that marriage with a non-Christian was an outrage against the Christian community because Christians are redeemed by the blood of Christ. This kind of marriage should not be tolerated because it would harm the Church by dividing the faithful between service to God and the allurements of worldly lusts.²⁵

(C) St. Cyprian (+ 258): Saint Cyprian, the bishop of Carthage from 249-258, characterized marriage between Christians and unbelievers as a sign of moral decadence.²⁶ Although Cyprian was moderate in his teachings, he strongly believed that Christians should not marry non-believers. He viewed a marriage between a Christian

²² See PAGÉ, “Marriage: Sacrament of Love or Sacrament of Bond?” p. 10.

²³ See *ibid.*, p. 12.

²⁴ See F.X. WERNZ, *Ius canonicum*, vol. 5, *Ius matrimoniale*, Editio tertia, Romae, Apud aedes Universitatis Gregoriana, 1946, pp. 663-671.

²⁵ See J.P. MIGNE, *Patrologiae cursus completus*, Series Latina (= *PL*), vol. 1, cap. III, pp. 1293-1294.

²⁶ St. Cyprian equated a marriage between a Christian and an “infidel” with defilement or prostitution. See St. CYPRIAN, *De lapsis*, Chap. VI, in *PL*, vol. 4, col. 240.

and a non-believer as a manifest abandonment on the part of a member of Christ's Body to the worldly vices and licentiousness of the pagan world.²⁷

(D) St. Ambrose (+397): St. Ambrose prohibited baptized Christians from marrying Jews and non-believers. He looked uncompromisingly on mixed marriages, considering them as a real danger to the faith of the Christian spouse. Canonists and theologians consider the teachings of St. Ambrose to be the earliest historical source which regarded baptism as essential for Christian marriage.²⁸

(E) St. Jerome (+420): The teachings of St. Jerome on the matter under consideration are somewhat similar to that of St. Ambrose. St. Jerome was very strict in his prohibition against the marriage between a Christian and a Jew or a pagan. He contrasted the marriage between a Christian and a non-baptized person in terms of justice with iniquity, light with darkness, a covenant of Christ with Belial. All his arguments were drawn from the Sacred Scriptures.²⁹

(F) St. Augustine of Hippo (430): St. Augustine seems to have adopted a more lenient approach towards mixed marriages. He did not agree with the position of St. Cyprian that marriage with a non-Christian was sinful.³⁰ Although he was lenient with

²⁷ ST. CYPRIAN, *De lapsis*, Chap. VI, in *PL*, vol. 4, cols. 470-471.

²⁸ See ST. AMBROSE, *De Abraham*, lib. 1, cap. IX, in *PL*, vol. 14, col. 451.

²⁹ See ST. JEROME, *Adversus Jovinianum*, lib. 1, cap. X, in *PL*, vol. 23, cols. 223-224.

³⁰ See ST. AUGUSTINE, *De conjugis adulterinis*, lib. 1, cap. XXV, in *PL*, vol. 40, cols. 468-469.

regard to mixed marriages, he always expressed serious concerns for marriage situations where there was a conflict in religious beliefs.³¹

(G) St. John Chrysostom (+407): St. John Chrysostom had a kinder and more positive disposition towards mixed marriages. He considered mixed marriages as a special sign of God's goodness. According to him, a mixed marriage can certainly create a salvific atmosphere, contributing to the conversion of the partner.³² He based his argument on I Cor. 7:16: "Wife, for all you know, you might save your husband. Husband, for all you know, you might save your wife," which speaks of the "saving" role of the spouse. Therefore, as for St. Chrysostom, a mixed marriage could prove to be a mixed blessing leading the non-baptized to rebirth in Christ.

1.1.2 – The Early Legislation on Mixed Marriage

Legislation prohibiting mixed marriages began from the Council of Elvira.³³ Although early Councils prohibited marriages between Christians and heretics or schismatics, they were concerned mainly with the marriages of clerics and their children.³⁴ The French Council of Arles (314) prescribed temporary denial of Holy

³¹ ST. AUGUSTINE, *Epistola XXII*, n. 5, in *PL*, vol. 33, col. 97.

³² ST. J. CHRYSOSTOM, *Hom. XXVI in Genesim*, Chap. VIII, in *PG*, vol. 53, col. 232.

³³ Elvira (306), cc. 15 and 16. The Council of Elvira addressed the problem of regulating marriages of the faithful with the non-believers and set forth conditions under which they were prohibited. See P.W. HILL, *Mixed Marriages and Their Pre-requisites in the Light of Ecumenism: The Cautiones and Mixed Marriages*, JCD diss., Roma, Pontificia Università Lateranense, 1980, p. 160.

³⁴ Elvira (306), c.16; Laodicaea (343-381), cc. 10 and 31; Hippo (393), c. 12; Chalcedon (451), c.14.

Communion to those who had married pagans.³⁵ The Council of Laodicea (341-381) warned the parents to be careful about the marriages of their children with pagans or heretics.³⁶ The Ecumenical Council of Chalcedon (451) was the first general Council to legislate specifically on the issue of mixed marriages.³⁷

The council of Orleans (533) explicitly forbade marriages between Christians and Jews.³⁸ The third (589)³⁹ and the fourth (633) Councils of Toledo also legislated on mixed marriage.⁴⁰ Canon 72 of the Council of Trullo declared the marriages between Orthodox and heretics as invalid and such marriages were to be dissolved.⁴¹ Although the Latin Church rejected this canon, it influenced legislation of the Eastern Church for

³⁵ Council of Arles (314), c. 11; see MANSI, 2, p. 8.

³⁶ Council of Laodicea declared it unbecoming for the members of the Church to let their children marry the children of heretics. See Laodicea (341-381), c. 10; See MANSI 2, p. 566. Canon 31 says such marriage is possible provided the other party promises to join the Christian household. When marriages are celebrated within the liturgical settings, c. 33 prohibits *communicatio in sacris* with heretics and schismatics. See MANSI 2, p. 569.

³⁷ The disciplinary canons of this Council demanded that unmarried clergy, chanters and lectors, avoid marriage with heretics and those already married must not allow their children to enter unions with Jews, heretics or pagans. See P. HUGHES, *The Church in Crisis: A History of the General Council, 325-1870*, New York, Image Books, 1961, pp. 94-96. Canon 14 prohibited marriage with Jews, heretics and pagans. See MANSI, 7, p. 388.

³⁸ See MANSI, 8, p. 838.

³⁹ Canon 14 of the third Council of Toledo prevented public officials from providing the occasion for, and offering assistance to couples who wished to enter marriages forbidden by the Church. See MANSI, 9, p. 996.

⁴⁰ Canon 63 of this Council ruled that a woman converted to Christianity must separate from her husband unless he too embraced the Christian faith and that the children be raised in the Christian faith. See MANSI, 10, p. 634.

⁴¹ In its c. 72, Synod of Trullo explicitly forbade Christians to marry heretics and it declared such marriages invalid and the "nefarious" unions dissolved. See MANSI, 11, p. 975.

centuries.⁴² The Council, however, did not speak of schismatics. It just prohibited the marriages between the faithful and the heretics.⁴³ In 743 the Council of Rome and in 845 the Council of Meaux prohibited any association with non-Christians.⁴⁴

The decretals of pseudo-Isidore appeared in the ninth century.⁴⁵ These decretals were compiled between 847 and 852.⁴⁶ They assumed special importance in the history of ecclesiastical law on marriage because they gave civil proceedings a canonical significance.⁴⁷

By the eleventh and twelfth centuries, there emerged a strong and vibrant legislative system in the Church.⁴⁸ During this period the Church banned clandestine

⁴² See F.X. WERNZ, *Ius decretalium ad usum praelectionum in scholis, textus canonici sive iuris Decretalium*, vol. 4, Prati, Giachetti, 1912, p. 576; also see H.A. AYRINHAC, *Marriage Legislation in the New Code of Canon Law*, New rev. ed., New York, Benziger, 1932, n. 98, p. 99.

⁴³ Since the civil law prohibited the marriages between Christians and non-Christians, the Trullan Council does not treat the subject. D. SALACHAS, "Le normative del Concilio Trullano commentata dai canonisti bizantini del XII secolo Zonaras, Balsamone, Aristenos," in *Oriente Cristiano*, 2-3 (1991), pp. 98-99.

⁴⁴ Canon 10 of the Council of Rome and canon 73 of the Council of Meaux prohibited marital relations with the Jews. See MANSI, 12, p. 384 and 14, 836-839 respectively.

⁴⁵ This collection contains Papal documents from Clement I to Melchiades and includes sixty pseudo-apocryphal letters besides the genuine ones and interpolates thirty or more false decretals among valid documents for the period from Sylvester I (335) to Gregory II (731). See W. ULLMAN, *The Growth of Papal Government in the Middle Ages*, New York, Barnes and Noble, 1955, p.180.

⁴⁶ F. KEMPF et al., "The Church in the Age of Feudalism," in H. JEDIN and J. DOLAN (eds.), *Hand Book of Church History*, vol. 3, New York, Crosroad, 1965, pp. 168-169.

⁴⁷ C. VOGEL, "Le rôle de la liturgie dans la formation du lien conjugal," in *Revue de droit canonique*, 30 (1980), p. 19; SCHILLEBEECKX, *Marriage, Human Reality and Saving Mystery*, p. 269.

⁴⁸ K. BIHLMAYER, *Church History*, trans. from the 13th German ed. by V.E. MILLS and F. J. MULLER, Westminster, Newman Press, 1958-1966, vol. 2, pp. 254-256.

marriages.⁴⁹ A penance was imposed on those who had contracted marriage without the Church's blessing and without the proper formalities; nevertheless, such marriages were not considered invalid.⁵⁰ The fourth Lateran Council (1215) prohibited such marriages.⁵¹

The *Decretum* of Gratian confirmed the special norms governing mixed marriages. Gratian compiled the teaching of the Church Fathers and many of the early conciliar decrees in the form of canons.⁵² He considered marriages with infidels as invalid. Peter Lombard and the school of Paris (1095-1160) treated mixed marriages under the category of diriment impediments. Peter Lombard, however, did not distinguish between the impediments of disparity of cult and mixed religion.⁵³

The *Summa theologiae* of St. Thomas Aquinas (1225-1274) taught that lack of faith constituted an impediment to marriage between a Catholic and an unbeliever.⁵⁴ In the middle of the 13th century, Pope Innocent IV (1243-1254) issued a decree recognizing implicitly the difference between the impediments of disparity of cult and mixed religion. However, he never questioned the validity of marriages which involved mixed religion;

⁴⁹ Since clandestine marriages could not be readily authenticated, the way was open for easy abandonment of spouses and children, false accusation, deceit in order to prevent marriages from taking place, and for conflicts and feuds among families. See T. MACKIN, *What is Marriage?* New York, Paulist Press, 1982, p. 194.

⁵⁰ See B. WORMATIENSIS, *Libri decretorum XX*, lib. XIX, cap. 5, in *PL*, vol. 140, p. 958.

⁵¹ See MANSI, 22, pp. 676 and 1038.

⁵² Although the *Decree* of Gratian was not universally binding, he considered baptism as the determining factor in establishing the validity of marriage.

⁵³ P. LOMBARDUS, *Sententiae in IV Libris distinctae*, ed. 3a ad fidem codicum antiquorum restituta, Roma, Editiones Collegiis S. Bonaventurae ad Claras Aquas, Lib. IV, dist. XXXIX, cap. 1, vol. 2, 1981, pp. 483-484.

⁵⁴ T. AQUINAS, *Summa theologica*, Suppl. q. 45, art. 4.

rather he discouraged them through his emphasis on their prohibitive nature.⁵⁵ It seems that, at least by the thirteenth century, the Church had recognized the distinction between the diriment impediment of disparity of cult and the prohibitive impediment of mixed religion based on the solid theological understanding of the sacrament of baptism as the foundation of the *matrimonium ratum*.⁵⁶ However, the main concern of the Church was always aimed at rooting out infidelity and heresy in order to propagate and protect the Church of Christ.⁵⁷

The Council of Trent (1545-1563) addressed the problems raised by the Protestant Reformation.⁵⁸ The Council formally declared marriage as one of the seven sacraments.⁵⁹ In 1563, it issued the decree *Tametsi* on the canonical form of marriage. Although the main target of this decree was clandestine marriages, it indirectly spoke of mixed marriages while dealing with the requirement of the canonical form.⁶⁰ Its application in different parts of the world created a lot of confusion, which was later addressed by Pope

⁵⁵ See INNOCENT IV, *De haereticis*, VI, 5, 2, 14).

⁵⁶ See U. NAVARRETE, "Competentia Ecclesiae in matrimonium baptizatorum eiusque limites," in *Periodica*, 67 (1978), p. 101.

⁵⁷ WERNZ, *Ius decretalium*, vol. 4, p. 576.

⁵⁸ N.P. TANNER (ed.), *The Decrees of the Ecumenical Councils*, vol. 2: *Trent to Vatican II*, London, Sheed & Ward, 1990, p. 657.

⁵⁹ CONCILIUM TRIDENTINUM, c. 1, *De sacramento matrimonii*, Sess. XXIV, 11 November 1563, in MANSI, 33, p. 149.

⁶⁰ The canonical form demanded that all marriages be celebrated before the proper pastor or some other priest enjoying the permission of the pastor or the ordinary, in addition to the required two or three witnesses. CONCILIUM TRIDENTINUM, *De reformatione matrimonii*, Sess. XXIV, 11 November 1563, cap. 1, *Tametsi*, in MANSI, 33, p. 152. For a detailed description of the application of *Tametsi*, see J.A. ABBO and J.D. HANNAN, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, vol. 2, Saint Louis, Herder, 1957, pp. 242-250.

Benedict XIV through a declaration.⁶¹ On 18 January 1906, Pope Pius X issued the Apostolic Letter *Provide*,⁶² and in 1909 the same pontiff again implemented the decree *Tametsi* through the decree *Ne temere*.

The canonical legislation on mixed marriages was finally codified in the *Code of Canon Law*, promulgated on 27 May 1917 for the Latin Church. Through this Code the Church claimed power over the marriages of all baptized (c. 1016) and exclusive jurisdiction to judge marriage cases of the baptized (c. 1960). With respect to mixed marriages, canon 1060 declared: "The Church everywhere most severely forbids the contracting of marriage between two baptized persons of whom one is a Catholic whereas the other is a member of a heretical or schismatical sect; and if there is danger of perversion for the Catholic party and the children, the marriage is forbidden also by the divine law itself."⁶³

1.1.3 – *Crebrae allatae* (1949)

As mentioned in the introduction of this chapter, Pope Pius XII promulgated the *motu proprio Crebrae allatae* on 2 February 1949. This *motu proprio* contained 131 canons which replicated verbatim canons 1012-1143 of the Latin Code on marriage and

⁶¹ BENEDICT XIV, Declaration *Matrimonii*, 4 November 1741, in P. GASPARRI, *Codicis iuris canonici fontes*, vol. 5, Romae, Typis polyglottis Vaticanis, 1926-1939, n. 3527, p. 968.

⁶² *Provide* required the observance of the form, introduced by the Council of Trent, in a marriage between two Catholics. PIUS X, Apostolic Letter *Provide*, 18 January 1906, in *Fontes*, vol. 3, n. 670, p. 660.

⁶³ Canon 1060: "Severissime Ecclesia ubique prohibet ne matrimonium ineatur inter duas personas baptizatas, quarum altera sit catholica, altera vero sectae haereticae seu schismaticae adscripta; quod si adsit perversionis periculum coniugis catholici et prolis, coniugium ipsa etiam lege divina vetatur."

maintained the same general structure and content. In substance, *Crebrae allatae* restored the norms on this matter which the Church had always followed, but it also contained regulations which created problems and embarrassment in ecumenical relations.⁶⁴ For example, *Crebrae allatae* stated that a marriage between a Catholic and an Orthodox Christian is valid only if celebrated before a Catholic priest, who had to ask and receive the consent of the couple. *Crebrae allatae* c. 53 states:

§1. Although the dispensation from the impediment of mixed religion has been obtained from the Church, the parties cannot approach, before or after the marriage has been entered into before the Church, either in person or through proxy, a non-Catholic minister in his ecclesiastical capacity to give or renew marriage consent.

§2. If the pastor knows for certain that the parties will violate or have already violated this law, he shall not assist at their marriage, except for very grave reasons, only after scandal has been removed and the Hierarch has been previously consulted.

§3. It is not disapproved if the spouses, because civil law decrees so, appear also before a non-Catholic minister who acts solely in his capacity of a governmental official, and this only in performing the civil act, in order to ensure the civil legal effects.⁶⁵

⁶⁴ The embarrassment was caused by the new ruling on the form of marriage. For a better understanding of this situation, it is good to recall that according to the Eastern understanding of a marriage between a Catholic and an Orthodox Christian celebrated before an Orthodox priest was considered valid and a true sacrament by the Catholic Church, with the exception of marriages in the territories where the Eastern Catholics were subject to the canonical form prescribed by the Decree of *Tametsi* or the Decree *Ne temere*. See G.A. COUSSA, *Epitome praelectionum de iure ecclesiastico orientali*, vol. 1, Grottaferrata, Typis Monasterii Exarchici Cryptoferratensis, 1948, pp. 15-20; and *De matrimonio*, vol. 3, Romae, Typis Monasterii Exarchici Cryptoferratensis, 1948, nn. 7-10, pp. 11-15.

⁶⁵ *Crebrae allatae*, c. 53 §1. Etsi ab Ecclesia obtenta sit dispensatio ab impedimento mixtae religionis, coniuges nequeunt, vel ante vel post matrimonium coram Ecclesia initum, adire quoque, sive per se sive per procuratorem, ministrum acatholicum uti sacris addictum, ad matrimoniale consensum praestandum vel renovandum.

§2. Si parochus certe noverit sponso hanc legem violaturos esse vel iam violasse, eorum matrimonio ne assistat, nisi ex gravissimis causis, remoto scandalo et consulto prius Hierarcha.

§3. Non improbat tamen quod, lege civili iubente, coniuges se sistant etiam coram ministro acatholico, officialis civilis tantum munere fungente, idque ad actum civilem dumtaxat explendum, effectuum civilium gratia. English trans. in V.J. POSPISHIL, *The Law on Marriage: Interracial Marriage Law Problems*, Chicago, Universe Editions, 1962, p. 86.

Concerning the form of marriage, the importance of benediction from the priest is considered as a necessary part of the sacred rite. Canon 85 of *Crebrae allatae* reads as follows:

§1. Only those marriages are valid which are contracted with a sacred rite, either before the pastor or the local Hierarch or a priest who received from either of them the faculty to assist at the marriage, and before at least two witnesses; in conformity, however, with the prescriptions in cc. 89, 90.⁶⁶

This law affected the harmony between Catholic and Orthodox Churches, and hence, the ecumenical problems caused by it had to be addressed by the Second Vatican Council. This situation persisted until the promulgation of the conciliar decree *Orientalium Ecclesiarum*.

PART TWO

1.2— THE CONCILIAR AND THE POST-CONCILIAR DEVELOPMENTS

In the second half of the twentieth century, the legislation on mixed marriages was steadily simplified due to the mounting ecumenical concerns in the Catholic teachings. During the Second Vatican Council, the Church felt the need to relax its legislation on mixed marriages. Therefore, the Council and the subsequent follow-up became a real breakthrough in ecumenism.

In 1970, Pope Paul VI published *Matrimonia mixta* for the Latin Church and it became fully effective in 1972. This document explained the Church's position on mixed

⁶⁶ Canon 85, §1. Ea tantum matrimonia valida sunt quae contrahuntur ritu sacro, coram parochi vel loci Hierarcha, vel sacerdote cui ab alterutro facta sit facultas matrimonio assistendi et duobus saltem testibus; secundum tamen praescripta canonum qui sequuntur, et salvis exceptionibus de quibus in cc. 89, 90. English trans., in *ibid.*, p. 88.

marriage and laid out new legislation to meet the pastoral needs of all the parties involved in a mixed marriage.

This part of the chapter looks at a solid advancement of the Catholic Church's legislation on mixed marriage since the time of Second Vatican Council. We will analyze the law with particular attention to its ecumenical and pastoral impact.

1.2.1– The Second Vatican Council

Undoubtedly many factors have contributed to the increase of mixed marriages, but the impact of the Second Vatican Council cannot be minimized. Theologically as well as socially, there has been an interaction between different faith communities which has facilitated the process of ecumenical rapprochement.

As we already saw, the legislation of the *Crebrae allatae* had caused serious harm to the relationship between Eastern Catholic Churches and the Eastern Orthodox Churches prior to the Second Vatican Council.⁶⁷ The problem stemmed from the fact that the canonical form of marriage was obligatory for all Eastern Catholic Churches and for the Latin Church. In view of this legislation, all marriages of Catholics not contracted before a competent qualified witness of the Catholic Church were invalid. This situation gave rise to an increase in the number of invalid inter-ecclesial marriages. In effect, the legislation on mixed marriages seemed, at least implicitly, to deny the validity of

⁶⁷ For an historical treatment of the problem of mixed marriages in the Eastern Catholic Churches, see J. MAHFOUD, "Les mariages mixtes; étude historico-canonique," in *Apollinaris*, 38 (1965), pp. 84-95.

sacraments in Eastern Orthodox Churches.⁶⁸ However, the invalidity of such a marriage could be obviated by a dispensation granted by the patriarch⁶⁹ or local eparch in virtue of the dispensing faculty granted by the Holy See.⁷⁰

Because of the pastoral and canonical problems created by the canonical legislation on mixed marriages, the Church considered it necessary to revise the legislation. The pastoral phenomenon of mixed marriage was highlighted by Pope Paul VI after the Council when he said: "There are many difficulties inherent to a mixed marriage, since a certain division is introduced into a living cell of the Church, as the Christian family is rightly called [...]."⁷¹

The Second Vatican Council heralded a new attitude toward mixed marriages. Much of the change resulted from the principles of ecumenism and religious liberty affirmed during the Council sessions. The decree on ecumenism stated that the restoration of unity among all Christians was one of the chief concerns of the Council. It recognized that those who are baptized are reborn in Christ; for this reason, there is a real (though incomplete) communion among Catholics and other Christians. The decree on

⁶⁸ M. WOJNAR, "Decree on the Oriental Catholic Churches," in *The Jurist*, 25 (1965), p. 222.

⁶⁹ "Patriarcha, salva ampliore facultate quae ex privilegio vel jure particulari ei competit, praeter facultatem de qua in par.1, dispensare potest: n. 5. A forma celebrationis matrimonii in casu de quo in can. 90, par. 1, 2, gravissima tamen ex causa" (*Crebrae allatae*, c. 32, par. 2, n. 5).

⁷⁰ See WOJNAR, "Decree on the Oriental Catholic Churches," p. 222.

⁷¹ *MM*, in *AAS*, 62 (1970), p. 257; FLANNERY I, p. 457.

religious liberty⁷² affirmed that a person is bound in all activity to follow his/her conscience faithfully in order to come to God for Whom he was created. No one, therefore, is to be forced to act in a manner contrary to his conscience, especially in matters of religion. The recognition of the existence of the Church of Christ outside the Catholic Church and of various degrees of communion between the Catholic Church and other Christian Churches and ecclesial communities made it impossible to continue to treat baptized non-Catholics simply as heretics and schismatics.⁷³ Hence, the topic of mixed marriages occupied the attention of the Council from 19 to 20 November 1964.⁷⁴ Before this topic was discussed on the Council floor, a preparation for it had indirectly been made during the earlier discussion on other conciliar questions such as ecumenism, religious liberty and the new canonical form of marriage between Eastern Catholics and Orthodox Christians. There were two different opinions in this regard. Some bishops expressed their desire to retain the restrictions on mixed marriage,⁷⁵ while others wanted to modify or eliminate them. The second view was based on the different situations existing in mission countries where priests were few and the canonical form imposed

⁷² See SECOND VATICAN COUNCIL, Declaration on Religious Freedom *Dignitatis humanae*, 7 December 1965, in in *AAS*, 58 (1966), pp. 929-941; English translation in FLANNERY I, pp. 703-714.

⁷³ See BEAL, Commentary on cc. 1124-1129, in *CLSA Comm 2*, p. 1343.

⁷⁴ See H. VORGRIMLER (ed.), *Commentary on the Documents of Vatican II*, vol. I, New York, Herder and Herder, 1968, pp. 307-308.

⁷⁵ *Acta et documenta Concilio oecumenico Vaticano II apparando, Series I: Antepreparatoria*, vol. II: *Consilia et vota Episcoporum ac Praelatorum* (= *Acta et documenta...Antepreparatoria*, vol. II), Pars II, Romae, Typis polyglottis Vaticanis, 1960, p. 472; Pars V, p. 487 and Pars VII, p. 517.

undue hardship on the faithful.⁷⁶ On 24 October 1963, it was explained in a press conference that one of the principal goals of the Council was ecumenical, i.e., the reunion of the Churches. So whatever tended to stress division, such as mixed marriage impediments and the like, ought to be avoided.⁷⁷ However, when the Council began its discussion on ecumenism, it soon became evident that the subject of mixed marriages could not be avoided and, therefore, there was a suggestion from some bishops to modify the Church's law on mixed marriages as an aid to ecumenism.

The Preparatory Commission for the Discipline of the Sacraments drafted a document of six schemata dealing with the subject of marriage,⁷⁸ and one of these was entitled *De matrimoniis mixtis*. Later, all the schemata on marriage were surprisingly organized into one schema with the title *De matrimonii sacramento*. Chapter II of this schema was specifically on mixed marriages.

The text of *Schema decreti de matrimoniis mixtis* begins with a citation from *Casti connubii* of Pope Pius XI. The religious character of marriage, its sign of grace and union between Christ and the Church, clearly required that those who are about to marry should show a deep and holy reverence towards this sacrament and endeavour to make their marriage approach as nearly as possible the archetype of Christ and his Church. Those who rashly contract mixed marriages, against the wishes of the Church, fail in this

⁷⁶ *Acta et documenta...Antepreparatoria*, vol. II, Pars II, p. 361; Pars V, pp. 464-466 and Pars VII, pp. 661-662.

⁷⁷ See F. ANDERSON (ed.), *Council Daybook of Vatican II*, vol. 1, Washington, DC, National Catholic Welfare Conference, 1965, p. 213.

⁷⁸ *Quaestiones de disciplina Sacramentorum: Schema decreti de Matrimoniis mixtis propositum a Commissione de disciplina Sacramentorum* (= *Quaestiones de disciplina Sacramentorum*), Romae, Typis polyglottis Vaticanis, 1962.

respect, sometimes with danger to their eternal salvation.⁷⁹ Therefore, the law of the Code on mixed marriages, while remaining substantially the same, must be phrased more aptly so that pastors of souls may carry out their ministry more effectively without “giving offense to one.”⁸⁰ Hence the following principles on mixed marriages, quite similar to those in the Code, were proposed: that the Church most strictly prohibits mixed marriages between two baptized persons, one of whom is Catholic and the other ascribed to a non-Catholic religious community; that if there is danger of defection from the faith on the part of the Catholic party and of the children, the marriage is prohibited by the divine law itself.⁸¹ This proposal was taken verbatim from *CIC/17*, c. 1060, except that for ecumenical reasons the other party is referred to as “*communitati religiosae non Catholicae adscripta*” rather than as a heretic or schismatic.

In light of the principles of ecumenism expressed by the Second Vatican Council, some changes were made with respect to the canonical form for mixed marriages involving Orthodox Christians. The Council Fathers from the Eastern Catholic Churches, anxious to resolve the problems related to the canonical form of marriage in a more

⁷⁹ PIUS XI, Encyclical *Casti connubii*, 31 December 1930, in *AAS*, 22 (1930), pp. 570-571.

⁸⁰ See *Quaestiones de disciplina Sacramentorum*, p. 5.

⁸¹ “Severissime Ecclesia prohibet ne matrimonium ineatur inter duas personas baptizatas, quarum altera sit Catholica, altera vero communitati religiosae non Catholicae adscripta; quodsi periculum defectionis a fide conjugis Catholici et prolis, conjugium ipsa etiam lege divina vetatur” (*Quaestiones de disciplina Sacramentorum*), p. 6.

satisfactory manner, proposed several suggestions to this effect even before the discussion on *Orientalium Ecclesiarum* began.⁸²

It was argued that the Council should change the law of the *motu proprio Crebrae allatae* which had not only proved to be an obstacle to union but had also alienated many Catholics who could not understand its relevance.⁸³ To this end, it was suggested during the discussions that Catholics should be allowed to participate in Orthodox religious ceremonies and that the form of marriage no longer be required for validity in the case of Orthodox Christians.⁸⁴ It was also pointed out that the question was very important pastorally and ecumenically for Orthodox Christians.⁸⁵ Thus the Second Vatican Council essentially opened up a whole new perspective on mixed marriages based on the principles of ecumenism and religious liberty.

1.2.1.1– *Orientalium Ecclesiarum*

Among the preparatory commissions mandated by Pope John XXIII to prepare the preliminary schemata for the Second Vatican Council was the Commission for the

⁸² For example, Archbishop Naba'a (Melkites – Gibail, Lebanon) stated during the discussion on ecumenism that the problems arising from mixed marriages were among the most serious obstacles to the reunion of the Catholic and Orthodox Churches. Thus, during the first Council period he urged that marriages performed by Orthodox priests in which one partner is an Orthodox Christian and the other a Catholic should be recognized as valid. See ANDERSON (ed.), *Council Daybook of Vatican II*, vol. 1, p. 173.

⁸³ H. KÜNG, Y. CONGAR, and D. O'HANLON (eds.), *Council Speeches of Vatican II*, New Jersey, Paulist Press, 1964, pp. 226-227; *Sacrosanctum oecumenicum Concilium Vaticanum II: Congregationes generales (= Congregationes generales)*, Romae, Typis polyglottis Vaticanis, 1964, pp. 74-79.

⁸⁴ See *Congregationes generales*, p. 39.

⁸⁵ See *ibid.*, p. 31.

Eastern Churches. This was to consider the issues related to transfer of rites, *communicatio in sacris*, reconciliation with the Eastern Orthodox Churches and other important disciplinary matters.

Based on the discussions and the deliberations, Pope Paul VI promulgated the decree on the Eastern Catholic Churches *Orientalium Ecclesiarum*, with a *vacatio legis* of two months. The Patriarchs were granted the faculty to extend the *vacatio* if they judged this as necessary. Whatever the merit of the decree as a whole, one cannot ignore its importance. For *OE*, n. 18 stated:

In order to provide against invalid marriages, when Eastern Catholics marry baptized Eastern non-Catholics, and also in order to promote the permanence and sanctity of marriage as well as peace in the home, the holy council determines that the canonical form of celebration for these marriages is of obligation only for liceity. For their validity the presence of a sacred minister is sufficient, provided that the other prescriptions of canon law are observed.⁸⁶

The provision of this new form of marriage between an Eastern Catholic and an Orthodox Christian signified a major change in the attitude of the Church towards mixed marriages.

The decree relaxed the legislation on the validity of marriages between Eastern Catholics

⁸⁶ *OE* 18: "Ad praecavenda matrimonia invalida, quando catholici orientales cum acatholicis orientalibus baptizatis matrimonium ineunt, et ad consulendum nuptiarum firmitati et sanctitati nec non domesticae paci, Sancta Synodus statuit formam canonicam celebrationis pro his matrimoniis obligare tantum ad liceitatem; ad validitatem sufficere praesentiam ministri sacri, servatis aliis de iure servandis."

and Orthodox Christians. This relaxation was later extended to all, Latin as well as Eastern Catholics, through *Crescens matrimoniorum*.⁸⁷

1.2.2– Post Conciliar Law

The teaching and legislation of the Second Vatican Council were progressively implemented by retaining what is essential and by adapting what is accidental. Of note are the three documents which addressed these issues.

1.2.2.1– *Matrimonii sacramentum*

The Instruction *Matrimonii sacramentum*⁸⁸ was issued by the Congregation for the Doctrine of Faith on 18 March 1966. It became effective on 19 May 1966. Its purpose was to state the Church's teaching and principles which are to govern any disciplinary legislation on mixed marriage, and at the same time to restate with necessary

⁸⁷ CONGREGATION FOR THE ORIENTAL CHURCHES, Decree on Marriage Between Roman Catholic and Orthodox *Crescens matrimoniorum*, 22 February 1967, in *AAS*, 59 (1967), pp. 165-166; FLANNERY I, pp. 434-435. The decree states that Pope Paul VI, after mature reflection and diligent investigation, has resolved to agree to the petitions and desires addressed to him and as a means of preventing invalid marriages between the faithful of the Latin rite and the non-Catholic Christian faithful of the Oriental rites, of showing proper regard for the permanence and sanctity of marriages, and of promoting charity between the Catholic faithful and the non-Catholic Oriental faithful, has kindly granted that, when Catholics, whether Orientals or Latins, contract marriage with non-Catholic Oriental faithful, the canonical form for the celebration of these marriages obliges only for lawfulness; for validity the presence of a sacred minister suffices, as long as the other requirements of law are observed. See FLANNERY I, p. 434.

⁸⁸ CONGREGATION FOR THE DOCTRINE OF FAITH, Instruction on Mixed Marriage *Matrimonii sacramentum* (= *MS*), 18 March 1966, in *AAS*, 58 (1966), pp. 235-239; English trans. in FLANNERY I, pp. 427-431.

modifications the law applicable to mixed marriages. These laws were to be eventually included in the revision of the 1917 Code.⁸⁹

The fundamental principle stated in the Instruction is that Christian marriage is a sacred sign of the intimate union which exists between Christ and the Church. Its first part deals with the sacredness of marriage, which calls for the full and perfect accord of the spouses themselves. For this reason the Catholic Church prescribes that Catholics marry Catholics, and pastors should do their utmost to discourage Catholics from acting otherwise. But if this proves impossible in certain situations, the Church seeks to protect the faith of the Catholic party and of the children.⁹⁰

As a whole the document restates the consistent teaching of the Catholic Church with regard to mixed marriages. Before introducing the new regulations, the Instruction states definitely that the two matrimonial impediments of mixed religion and disparity of worship remain in force.⁹¹

However, considering the spirit of ecumenism fostered by the Second Vatican Council, the Instruction, with due respect for divine law, amended the Catholic discipline so as not to offend non-Catholics and to respect the good will of the non-Catholic party.

⁸⁹ See J. MADEN, "Mixed Marriages," in *Australasian Catholic Record*, vol. 43, n. 2, 1966, p. 153.

⁹⁰ This was expressed well in advance by Pope Pius XI, who maintained that differences of religion were usually the cause of breaking the bond of love between husband and wife or at least leading to the weakening of its force. See PIUS XI, Encyclical *Casti connubii*, in *AAS*, 22, 1930, pp. 539-542.

⁹¹ "It takes the two impediments to marriage: mixed religion and disparity of worship. The first of these forbids marriage between a Catholic and a baptized non-Catholic, while not taking from the validity of such marriage. The second renders invalid a marriage between a Catholic and non-baptized person" (FLANNERY I, p. 426).

The norms of the Instruction emphasize the danger to the faith of the Catholic party, and therefore, such a danger must be removed and appropriate provision made for the Catholic education of the children.

The local ordinary and the proper pastor are to remind the Catholic party of this obligation and ask him/her to expressly guarantee the same. The non-Catholic party must be informed of the unity and indissolubility of marriage as well as the obligation of the Catholic spouse to bring up the children as Catholics. The person should be invited to promise sincerely and openly to fulfill the obligation. Should the non-Catholic party feel that such a promise goes against his/her conscience, the matter must be referred to the Holy See by the local ordinary. In view of *Orientalium Ecclesiarum*, this Instruction did not apply to the Eastern Catholic Churches.⁹²

No change was made with regard to the canonical and the liturgical forms of mixed marriage by this Instruction.⁹³ The Instruction absolutely prohibited the celebration of a marriage before a Catholic priest and a non-Catholic minister, each of them performing his own rite within the same ceremony. At the same time the Instruction allowed non-Catholic ministers to address the couple and the members of his Church

⁹² See U. NAVARRETE, "Adnotationes ad Instructionem 'Matrimonii Sacramentum'," in *Periodica*, 55 (1966), pp. 758-759; F. TIMMERMANS, "Mixed Marriages: Instruction *Matrimonii sacramentum* of the Congregation for the Doctrine of Faith," in *The Clergy Monthly*, 30 (1966), p. 230.

⁹³ *MS*, III and IV: "The canonical form, prescribed in Canon 1094, must be observed in mixed marriages ... With regard to the liturgical form, setting Canon 1103, par. 2, and Canon 1109, par.3, to one side, local ordinaries may permit the celebration of mixed marriages with sacred rites and with the customary blessings and sermons" (FLANNERY I, p. 430).

during the ceremony or to give a blessing outside the actual nuptial rite. However, this is to be done only with the approval of the local ordinary.⁹⁴

The Instruction emphasizes the pastoral obligation of the local ordinary as well as of the pastor in ensuring the spiritual well being of the mixed marriage families, especially the Catholic spouses and the moral education of their children.⁹⁵

The excommunication of those who celebrate marriage before non-Catholic ministers is retroactively abrogated. This does not mean, however, that the marriage is thereby validated. The excommunication was linked to *communicatio in sacris* and only this provision was lifted. Therefore, the marriages still needed to be validated.⁹⁶

The Instruction concludes with an exhortation to all who teach Christian doctrine to explain the changed regulations given in order to accommodate the laws of the Church to modern conditions and to foster good relation with members of other ecclesial communities.⁹⁷

The Instruction was a synthesis of the old law and the new teaching of the Second Vatican Council. It reflected a natural development of legislative provisions on mixed marriages and not a complete break with the past.⁹⁸ Though the Instruction referred to the principles of ecumenism, it did not make any distinction between the two impediments but rather treated them as one. It reaffirmed the canonical form of marriage for validity,

⁹⁴ See *MS*, V.

⁹⁵ See *ibid.*, VI.

⁹⁶ See *ibid.*, VII.

⁹⁷ See *ibid.*, VII.

⁹⁸ See ÖRSY, "Mixed Marriages: The New Instruction," p. 358.

and the power to dispense from the canonical form of marriage was reserved to the Holy See.⁹⁹ Thus *Matrimonii sacramentum* modified significantly the law on mixed marriage contained in *CIC/17*. The other provisions of the Code remained in effect.

1.2.2.2– *Crescens matrimoniorum*

The decree *Crescens matrimoniorum*¹⁰⁰ said that when Catholics, whether Eastern or Latin, contract marriage with Eastern non-Catholics, the canonical form of marriage is required only for its lawfulness; for validity, the presence of a sacred minister suffices, as long as other requirements of law are observed. It also instructed that, under the guidance of the pastors, all care should be taken to carefully enter such marriages as soon as possible into the prescribed registers. The reservation of the faculty to dispense from the canonical form in a situation of mixed marriage remained unchanged. The decree thus reveals the willingness of the Catholic Church to follow up on the ecumenical breakthrough.

1.2.2.3– *Matrimonia mixta*

The *motu proprio Matrimonia mixta*, promulgated by pope Paul VI on 31 March 1970, contains important theological, ecumenical and pastoral principles of universal relevance, that is, for the Latin and Eastern Catholic Churches. This is particularly evident in the discussions that led to the promulgation of the norms contained in the *motu*

⁹⁹ See A.M. CARR, "Marriage of Catholic in a Protestant Church," in *The Homiletic and Pastoral Review* (= *HPR*), 70 (1969), pp. 485-486.

¹⁰⁰ CONGREGATION FOR THE ORIENTAL CHURCHES, Decree *Crescens matrimoniorum*, 22 February 1967, in *AAS*, 59 (1967), pp. 165-166; English trans. in FLANNERY I, pp. 434-435.

proprio. Although the *motu proprio* did not juridically bind the Eastern Catholics, it helps us to find the rationale of the canons on mixed marriage contained in the Code of Canons of the Eastern Churches.

One of the main themes of the First General Synod of Bishops, convoked by Pope Paul VI in 1967, was “mixed marriage.”¹⁰¹ On 30 September 1967, addressing the first session of the Synod, Pope Paul VI emphasized the ecumenical aspect of the assembly and noted that all Christian Churches would be watching this Synod with great interest in view of new possibilities for further progress in the ecumenical dialogue already underway.¹⁰²

The discussion on mixed marriage took place on 16-21 of October 1967. The first schema on mixed marriage had an introductory section followed by a list of eight questions dealing with the current canonical legislation on mixed marriages. The ecumenical mind of the Church was evident in the introduction. It acknowledged that many elements of sanctification and truth could be found outside the Catholic Church while affirming that the Catholic Church has the task of preaching the gospel to all human beings and safeguarding it by pastoral activity as well as with just and appropriate laws. By such laws, the family is nurtured and matrimony becomes the sign of Christ and his Church.¹⁰³ Thus, faith and the unity of faith are to be supported and encouraged in those who are to be married.

¹⁰¹ See “The Roman Synod,” in *Herder Correspondence*, 4 (1967), pp. 335-336; “How the Synod Will Work,” in *The Tablet*, 221 (1967), p. 1005.

¹⁰² PAUL VI, Allocution, 30 September 1967, in *AAS*, 59 (1967), pp. 973-974.

¹⁰³ See G. CAPRILE, *Il sinodo dei vescovi*, Roma, La Civiltà Cattolica, 1968, p. 331.

In the Synod, the bishops considered all possible questions concerning mixed marriages. Starting with the question of terminology, they discussed the questions pertaining to canonical form, impediments, promises, liturgical celebrations and pastoral care.

The first question addressed the problem of terminology then in use, "mixed marriage," an "impediment of mixed religion," and an "impediment of disparity of cult":¹⁰⁴ should this terminology be changed? One suggestion was to retain the terminology because everyone understood those words and there were no proportionately grave reasons to change them.¹⁰⁵ Another viewpoint called for change because, if the terms were taken literally, they would remain ambiguous and would not correspond to objective reality; the term "mixed marriage" did not sufficiently distinguish the different kinds of marriages with persons who are not Catholics; and the prohibition of mixed religion seemed to deny to Eastern Orthodox Churches the communion of faith which was explicitly recognized during Second Vatican Council.¹⁰⁶

The second question was: Would it be helpful if new terminology was introduced, for example, "inter-confessional marriage" or "dissimilar marriage?"¹⁰⁷ The reason favouring such change was that these terms would differentiate between a mixed marriage with a baptized person and one with a non-baptized person. The term

¹⁰⁴ See CAPRILE, *Il sinodo dei vescovi*, p. 332; U. NAVARRETE, "Matrimonia mixta in synodo episcoporum," in *Periodica*, 57 (1968), p. 658.

¹⁰⁵ See CAPRILE, *Il sinodo dei vescovi*, pp. 325-438.

¹⁰⁶ See *ibid.*, p. 660.

¹⁰⁷ See NAVARRETE, "Matrimonia mixta in synodo episcoporum," pp. 658-659.

“confession,” referring exclusively to a Christian denomination, would be more precise. The reason against introducing new terminology was that the term “inter-confessional marriage” was ambiguous and would only add to the confusion.¹⁰⁸ The Synodal fathers proposed such terms as, “impediment of mixed communion” or “impediment of mixed religion of diverse faith.”¹⁰⁹

The third question concerned the promises. To dispense from an impediment, is it sufficient for the competent authority to have moral certitude: (1) that the Catholic partner is in no danger of defecting from his/her own faith and is prepared to do all he/she can to have the children baptized and educated as Catholics; (2) that the non-Catholic partner knows the obligation in conscience of the Catholic partner of the Catholic baptism and education of the children?¹¹⁰ Against the proposition was the experience that it is good to demand more rather than less from both parties as a safeguard.¹¹¹ And what really matters is the substance of the promises.

The fourth question referred to the canonical or legal nature of the impediments of mixed marriage.¹¹² The argument to abolish the impediment was based on the tendency of modern society to stress more one’s personal responsibility and to exclude from the law whatever goes beyond strict necessity in ordering life. For Eastern Orthodox Churches, furthermore, close communion in matters of faith made the impediment

¹⁰⁸ See CAPRILE, *Il sinodo dei vescovi*, p. 658.

¹⁰⁹ *Ibid.*, pp. 660-661.

¹¹⁰ See NAVARRETE, “Matrimonia mixta in synodo episcoporum,” pp. 661-662.

¹¹¹ See *ibid.*, p. 662.

¹¹² See *ibid.*, p. 671.

unnecessary. Another reason for the abrogation of the impediment was the fact that many Christians were unaware of their moral obligations in these matters. The intervention of the competent ecclesiastical authority should provide for appropriate pastoral care and strengthen ecumenical relations between the Catholics and other Christian Churches.¹¹³

The fifth question sought to make the requirement of the canonical form necessary only for liceity in the case of a mixed marriage.¹¹⁴ This change was proposed because of the very high number of Catholics attempting marriage invalidly which created a serious pastoral and social problem. On the other hand, the opposing argument stressed the pastoral duty of the Church to secure the validity of marriages, and expressed the fear that the absence of a Church ceremony could encourage divorce. A relaxation in this matter could lead to demands in other related disciplinary matters which the Catholic Church would not be able to admit, and the change would be useless for the Eastern Churches which require a sacred rite for the validity of marriage.¹¹⁵

The sixth question was related to the faculty of dispensing from the canonical form. Should this faculty be given to the local ordinary?¹¹⁶ In favor of granting this faculty to the local ordinary was the fact that, in granting the dispensation, the Holy See usually relied on the judgment of the local ordinary. Against such a concession was the fear that local decisions could lead to many discrepancies in practice, with a consequent

¹¹³ See *ibid.*, pp. 671-672.

¹¹⁴ See *ibid.*, p. 676.

¹¹⁵ See *ibid.*

¹¹⁶ See *ibid.*, p. 681.

loss of unity within the local church. This argument was also supported by the view that normally the actions of the Holy See have greater authority than those of the local bishops whose judgments could easily lead to disputes and controversy.¹¹⁷

The seventh question dealt with the liturgical celebration of mixed marriages. Since a mixed marriage may be celebrated with the permission of the local ordinary within the Mass or with a special ceremony outside the Mass, should the pastor or his delegate be allowed to recommend one or the other liturgical form depending upon the spiritual state of the spouses?¹¹⁸ The reason for the recommendation from the pastor or duly delegated minister was to guide the consciences of those to be married. Some non-Catholics desire to have their marriage celebrated within the Mass, while others do not. On the other hand, the opposing view argued that the recommendation was superfluous. The law in force already provides for mixed marriages to be celebrated within the Mass if the local ordinary permitted.¹¹⁹

The final question concerned pastoral assistance. The discussions of this question centered on the special attention directed toward the preparation for mixed marriages of the couple and their families.¹²⁰ Continued pastoral care was considered necessary for the well-being of mixed marriage families. The cooperation of the Christian ministers in this regard could be ecumenically helpful. But it was also noted that pastoral concern in this

¹¹⁷ See *ibid.*, pp. 681-682.

¹¹⁸ See CAPRILE, *II sinodo dei vescovi*, pp. 429-430.

¹¹⁹ See *ibid.*, pp. 684-85.

¹²⁰ See *II sinodo dei vescovi*, p. 430.

regard might lead to the impression that the Catholic Church now favours mixed marriages.¹²¹

It was noted by one of the Synod Fathers at the end of the discussion on mixed marriages that this was a theologically, pastorally, juridically and ecumenically complex issue.¹²² The discussions of the Synod, which were reflected in later legislation, may be summed up as follows: (1) the impediment of mixed religion and probably the terminology would be retained; (2) the *cautiones* would be preserved without requiring formal promises; (3) though the canonical form would be necessary for validity, greater freedom in dispensing from it would be given to the local ordinary; (4) greater attention would be paid to the pastoral aspects in mixed marriages.

On 19 March 1968, Pope Paul VI appointed a commission to implement the recommendations of the Synod on mixed marriage legislation. This commission formulated the norms in light of the conciliar teaching and discussions of the General Synod of Bishops. On 31 March 1970, Pope Paul VI issued *motu proprio Matrimonia mixta* which determined the norms for mixed marriages.

The norms are introduced by outlining some general principles and facts concerning the entire subject. It explained the distinction between a Catholic marrying a baptized non-Catholic and a Catholic marrying an unbaptized person. First, mixed religion was retained only as an impedient impediment while disparity of cult remained as an invalidating impediment. The Church will dispense from these impediments for a

¹²¹ Ibid., p. 687.

¹²² Ibid., pp. 688-692; and pp. 431-433.

just cause. In order to obtain a dispensation from them, the Catholic party must declare that he/she would remove all dangers that might cause loss of faith as well as make a sincere promise to do all in his/her power to have all the children born of the marriage baptized and educated in the Catholic Church.¹²³

Second, a marriage between a Catholic and a baptized non-Catholic is a Sacrament, whereas the marriage between a Catholic and an unbaptized person is not. The Church provided legislation that accommodates both the natural right of a person to marry and the observance of the principle of divine law.¹²⁴

Third, the non-Catholic spouse is to be informed at an opportune time of the promises the Catholic party is obliged to make so that he/she may understand in advance the obligations of the Catholic spouse. Both parties are to be instructed about the ends and essential properties of the marriage to ensure that neither party would exclude these ends and essential properties.¹²⁵

Fourth, the episcopal conference is to determine the following with regard to promises and declarations to be made by respective spouses: (1) the manner in which the promises and declarations are to be made; (2) the proof of the declaration in the external

¹²³ See *MM* 1-4.

¹²⁴ The decree states: "The faithful therefore be taught that, although the Church somewhat relaxes ecclesiastical discipline in particular cases, she can never remove the obligation of the Catholic party, which, by divine law, namely by the plan of salvation instituted by Christ, is imposed according to the various situations" (FLANNERY I, p. 459).

¹²⁵ See *MM* 5-6.

forum; (3) the way in which the promises made by the Catholic party are to be conveyed to the non-Catholic party; and (4) other appropriate requirements.¹²⁶

Fifth, the observance of canonical form is necessary for the validity of a mixed marriage. If serious difficulties stand in the way of observing the canonical form, the local ordinary has the power to dispense from it. The episcopal conferences are to enact norms to preserve uniformity within its jurisdiction with the understanding that there will always be some public form of the marriage ceremony.

Sixth, a proper record of mixed marriages must be maintained in registering them. All validly contracted marriages are to be entered into the Church records. The episcopal conferences are to determine a uniform method for registering marriages which are contracted with a dispensation from the canonical form. Those who officially assist at marriages, particularly the parish priest, are to seek the cooperation of non-Catholic ministers in registering these marriages.

According to the Roman ritual, the liturgical form of the celebration of a mixed marriage must use the ceremonies provided in the *Rite of Celebration of Marriage*, whether it is a marriage between a Catholic and a baptized non-Catholic or one between a Catholic and an unbaptized person. If, however, the circumstances justify it, a marriage between a Catholic and a baptized non-Catholic may be celebrated, subject to the decision of the local ordinary, according to the rites for the celebration of marriage within Mass, while respecting the prescript regarding Eucharistic communion. Within their competence, the episcopal conferences shall inform the Apostolic See of all decisions

¹²⁶ See *MM* 7.

made by them concerning mixed marriages.¹²⁷ The law prohibits the celebration of marriage before a Catholic priest or deacon and a non-Catholic minister, performing their respective rites together, and also a simultaneous dual celebration. Furthermore, the decree forbids another marriage ceremony either before or after the Catholic celebration for the purpose of exchanging or renewing matrimonial consent.

The decree urges pastors to offer ongoing pastoral assistance to the couples. The local ordinaries and parish priests are to see to it that the Catholic husband or wife and the children born of a mixed marriage do not lack spiritual assistance in fulfilling their duties of conscience. They shall encourage the Catholic husband or wife to keep ever in mind the divine gift of the Catholic faith and to bear witness to it in gentleness and reverence, and with a clear conscience. They are to aid the married couple to foster the unity of their conjugal and family life, a unity which, in the case of Christians, is based on their baptism. To these ends, it is to be desired that pastors establish relationships of sincere openness and enlightened confidence with ministers of other religious communities.¹²⁸

The excommunication of c. 2319 of the 1917 Code in relation to mixed marriages was abrogated by the decree with retroactive effect. The local Ordinary is able to grant the rescript of *sanatio in radice* in case of an invalid mixed marriage, which was reserved to the Holy See by c. 1141 of the 1917 Code, when the conditions concerning the promises have been fulfilled, and provided that the requirements of the law are observed.

¹²⁷ *MM* 11-12.

¹²⁸ *Ibid.*, n. 14.

Such a concession must take into account the conditions stipulated in the decree. In case of a particular difficulty or doubt with regard to the application of these norms, recourse is to be made to the Holy See.¹²⁹ These norms took effect on 1 October 1970.

The decree *Matrimonia mixta*, in accord with the ecumenical spirit engendered by the Second Vatican Council, attempts to promote an ecumenical approach to mixed marriages by respecting the religious liberty and conscience of the non-Catholic party. It makes a clear distinction between a mixed marriage between a Catholic and a baptized non-Catholic and between a Catholic and an unbaptized person. The decree clearly acknowledges the sacramentality and the spiritual communion of a marriage between two baptized persons. The pastoral care of the spouses and of the family receives urgently needed attention on the part of the Church.

1.3— THE *CCEO* ON MIXED MARRIAGE

Through the Apostolic Constitution *Sacri canones*, Pope John Paul II promulgated the *Code of Canons of the Eastern Churches* on 18 October 1990 and it became effective on the first day of October 1991. This *Code* represents the common law of all Eastern Catholic Churches and it completes the *Corpus iuris canonici*.¹³⁰ The legislation of *CCEO* on mixed marriage is contained in Title XVI, “Divine Worship and Especially the Sacraments” (*De cultu divino et praesertim de sacramentis*), Chapter VII,

¹²⁹ See *MM* 16.

¹³⁰ This *Corpus* consists of: (1) *Codex iuris canonici* (1983), (2) *Pastor bonus* (1988), and (3) *Codex canonum Ecclesiarum orientalium* (1990).

Art. IV, cc. 813-816. Canons 834 and 839, which speak of the form of mixed marriage, are found in Art. VI: "The Form of Marriage."

1.3.1– General Prohibition

In a mixed marriage, considering the possible danger to the faith of the Catholic party and the children, the Catholic Church stipulates certain prohibitive norms, which could be dispensed if the dangers cease. Therefore, *CCEO* c. 813 states:

Marriage between two baptized persons, one of whom is Catholic and the other of whom is non-Catholic, is prohibited without the prior permission of the competent authority.¹³¹

As discussed above, the fundamental reason for prohibiting marriage with non-Catholics, whether baptized or not, has been the belief that such a union posed a serious threat to the continued practice of the faith by the Catholic party and to the baptism and Catholic upbringing of any children born of the union.¹³²

Much of the legislation governing the impediment of disparity of cult (*CCEO* c. 803; *CIC/83* c. 1086) applies also to mixed marriages.¹³³ The changes introduced in the new legislation on mixed marriages are evident in three major areas: (a) the nature of the prohibition against them; (b) the formulation of the required promises; and (c) the liturgical form.¹³⁴

¹³¹ *CCEO* c. 813: "Matrimonium inter duas personas baptizatas, quarum altera est catholica, altera vero acatholica, sine praevia auctoritatis competentis licentia prohibitum est."

¹³² See SCHENK, *The Matrimonial Impediments*, pp. xiii-xvi.

¹³³ J. ABBASS, "I matrimoni misti," in *Il Matrimonio nel Codice dei Canonici delle Chiese orientali*, Studi giuridici XXXII, Città del Vaticano, Libreria editrice Vaticana, 1994, pp. 187-205.

¹³⁴ See DOYLE, Commentary on cc. 1124-1129, in *CLSA Comm 1*, p. 801.

1.3.1.1– The Nature of the Prohibition Against Mixed Marriages

Until the Second Vatican Council, the Catholic Church considered both *mixed religion*, that is, a marriage between a Catholic and a baptized Christian belonging to a Christian Church or ecclesial community not in full communion with the Catholic Church, and *disparity of worship*, that is, a marriage between a Catholic and a non-baptized person, as *impediments*. The former was regarded as an “impedient” impediment and the latter an “invalidating” impediment. Both needed a dispensation from legitimate ecclesiastical authority for a licit or valid celebration of marriage. The present legislation, however, adopts a different approach to mixed marriages as illustrated above. The “mixed religion” is no longer regarded as an “impediment” but only as a “prohibition,” and hence a marriage in a situation of “mixed religion” needs only the “permission” of the competent ecclesiastical authority, while a marriage with “disparity of worship” impediment requires a “dispensation” from the competent ecclesiastical authority.

These two canonical institutes, namely “permission” and “dispensation,” are distinct in nature and, hence, involve distinct juridic acts with distinct juridic effect. Permission is the revocation of the prohibition in a specific case on the part of a competent authority. Depending on the requirement of law, permission may be necessary for the validity of a juridic act or only for its liceity. One will have to examine carefully the nature of a law in question and determine the effect of lack of permission on a particular juridic act. Dispensation, on the other hand, is a relaxation of a merely ecclesiastical law in a particular case.¹³⁵ A dispensation exonerates one from the

¹³⁵ CCEO c. 1536 § 1; CIC c. 85 §1.

obligation to observe the law. Again, depending on the nature of the law, a lack of dispensation may affect the validity of a juridic act.

The present legislation for both Latin and Eastern Catholic Churches stipulates that marriage between Catholics and members of Christian Churches and ecclesial communities not in full communion with the Catholic Church are prohibited without the permission of the local hierarch/ordinary.¹³⁶ The law does not expressly say that permission for mixed marriage is necessary for the validity of the marriage. Therefore, the permission is only for liceity (cf. *CCEO* c. 1495). The Catholic party must obtain the permission (*licentia*) of the local hierarch/ordinary, who may be the proper local hierarch/ordinary of the Catholic party, of the place where the Catholic party is a transient, or the place where marriage is to take place.¹³⁷

In general, the Latin and Eastern Catholic Churches' laws on mixed marriage are substantially the same. Most of the canons are structured in the same way and they use almost identical juridical terms which reflect the teaching of the Second Vatican Council on mixed marriages. However, one can note several differences between the two Codes. These differences represent the Eastern and Western theological and pastoral approaches to Christian marriage.

¹³⁶ *CCEO* c. 813; *CIC* c. 1124.

¹³⁷ See *CCEO* c. 789; *CIC* c. 1071.

One of the conspicuous differences between the Latin and the Eastern Codes in relation to mixed marriages is the status of a Catholic who has formally defected from the Catholic Church. Canon 1124 of the Latin Code states:

[...] a marriage is prohibited between two baptized persons of whom one is baptized in the Catholic Church or received into it after baptism and has not defected from it by a formal act and the other of whom is enrolled in a Church or ecclesial community not in full communion with the Catholic Church.¹³⁸

This canon repeats the prohibition of the 1917 Code *ad liceitatem* of the marriage between a person who is baptized or received into the Catholic Church, neither of whom has left it by a formal act, and a validly baptized member of a Church or ecclesial community not in full communion with the Catholic Church.

Canon 11 of the Latin Code stipulates:

Merely ecclesiastical laws bind those who have been baptized in the Catholic Church or received into it, possess the sufficient use of reason, and, unless the law expressly provides otherwise, have completed seven years of age.¹³⁹

According to this canon, any person is bound by ecclesiastical law who is baptized Catholic or is received into the full communion of the Catholic Church, has the use of reason, and is at least seven years of age (*CCEO* c. 1490).¹⁴⁰ However, besides c. 1124, the Code makes two exceptions with respect to merely ecclesiastical laws on marriage:

¹³⁸ *CIC* c. 1124: “Matrimonium inter duas personas baptizatas, quarum altera sit in Ecclesia catholica batizata vel in eandem post baptismum recepta, quæque nec ab ea actu formali defecerit, altera vero Ecclesiæ vel communitati ecclesiali plenam communionem cum Ecclesia catholica non habenti adscripta, sine expressa auctoritatis competentis licentia prohibitum est.”

¹³⁹ *CIC* c. 11: “Legibus mere ecclesiasticis tenentur baptizati in Ecclesia catholica vel in eandem recepti, quique sufficienti rationis usu gaudent et, nisi aliud iure expresse caveatur, septimum ætatis annum expleverunt.”

¹⁴⁰ “ ‘Merely ecclesiastical laws’ are human laws enacted by an ecclesiastical legislator. They must be distinguished from ecclesiastical laws which are also articulations of divine law” (L. Orsy, “Ecclesiastical Laws,” in *CLSA Comm 1*, p. 31).

canon 1086, §1¹⁴¹ on disparity of worship impediment and the canonical form of marriage. In these two instances a Catholic who has formally defected from the Catholic Church is not bound by the law on the canonical form of marriage. Then by what law would such a person be bound?

This is not the situation in the Eastern Code. Contrary to the Latin discipline, the Eastern Code in its definition of mixed marriage does not make any exception with respect to a Catholic who has formally defected from the Catholic Church.¹⁴² According to both Codes of Canon Law, the adage “Once a Catholic is always a Catholic” is valid in all aspects of one’s life, which includes also the merely ecclesiastical laws on the impediment of disparity of worship (*CCEO* c. 803 §1) and the canonical form of marriage.¹⁴³ A Catholic who has formally left the Catholic Church is bound to all other ecclesiastical laws.

This is established on the principle of an objective obligation to adhere to laws. No one is exempt from this obligation even when one has abandoned the faith or broken

¹⁴¹ *CIC* c. 1086 §1: “A marriage between two persons, one of whom has been baptized in the Catholic Church or received into it and has not defected from it by a formal act and the other of whom is not baptized, is invalid.”

¹⁴² “Formal act of defection from the Catholic Church is a juridic act which can be proven in the external forum and whose intended effect is to separate from the Church” (J.P. BEAL, Commentary on cc.1108-1123, in *CLSA Comm* 2, p. 1336). For a detailed description, see *ibid.*, pp. 1335-1336; J. DOYLE, “The Formal Act of Leaving the Catholic Church,” in *Canon Law Society of America Proceeding* (= *CLSAP*), 52 (1990), pp. 152-160. For the recent official declaration on the formal act of defection, see Pontifical Council for Legislative Texts, “Notification on *actus formalis defectionis ab Ecclesia catholica*,” in *Studies in Church Law*, Bangalore, Centre of Canon Law Studies, St. Peter’s Pontifical Institute, 2 (2006), pp.15-18.

¹⁴³ See J. PRADER, “Marriage,” in G. NEDUNGATT (ed.), *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches* (= *A Guide to the Eastern Code*), Rome, Pontificio Istituto Orientale, 2002, pp. 554 - 557.

the ecclesial communion.¹⁴⁴ One who publicly defects from the Catholic Church does not have all the rights (e.g. to holy communion) but does have all the obligations, including the obligation of returning to full communion with the Church.

From a theological point of view, the retention of the prescript binding those who have formally defected from the Catholic Church to merely ecclesiastical laws implies that the obligation arising from Catholic baptism or reception into the Catholic Church are perpetual; they persist, and although one may “leave” the Church, the Church does not declare such a person exempt from the obligations proper to his or her membership of the Church. In this context, on *CCEO* c. 813, Pospishil writes:

The Rules of these canons apply to marriage of Catholics with

1. baptized non-Catholic: Eastern non-Catholic (Orthodox) and Protestants, as well as all others;
2. unbaptized non-Catholics (cf. 813 §3);
3. unsuitable Catholics (c. 789, 6°), who have publicly rejected the Catholic faith, even without joining some non-Catholic religious denomination. A marriage with such a person may be permitted in accordance with the norm for interfaith marriage.¹⁴⁵

Pospishil categorizes the Catholics who have defected from the Catholic Church as “unsuitable Catholics.” This would imply that, although defected, they remain Catholics. According *CCEO* c. 789, 6° (*CIC/83* c. 1071, §2), unless permitted by the local hierarch, the priest is not to bless “the marriage of a person who has publicly rejected the Catholic faith, even if that person did not become a member of a non-Catholic Church or ecclesial

¹⁴⁴ See *Code of Canon Law Annotated*, p. 87.

¹⁴⁵ V.J. POSPISHIL, *Eastern Catholic Church Law*, New York, St. Maron Publications, 1996, p. 533.

communion; the local hierarch in this case will not grant permission unless the norms of can. 814 are observed, making any necessary adaptation.” For the local hierarch to allow a Catholic to marry a person who has publicly rejected the Catholic faith, the prenuptial conditions for mixed marriages must be followed (*CCEO* c. 789, 6°). In contrast to *CIC* c. 1124, although *CCEO* c. 813 does not place the marriage of those who have formally defected from the Catholic Church in the category of mixed marriage, canon 789, 6° of the same Code treats a marriage with an “unsuitable Catholic” in the same manner as a mixed marriage. For this reason, they are to fulfill all the conditions that are stipulated for a mixed marriage.

Canons 780 §2 and 781 of *CCEO* lay down specific norms concerning this matter. Thus *CCEO* c. 780 §2 states:

Marriage between a Catholic and a baptized non-Catholic is governed, with due regard for divine law, also by:

1° the law proper to the Church or ecclesial community to which the non-Catholic belongs, if that community has its own matrimonial law;

2° the law to which the non-Catholic is subject, if the ecclesial community to which the person belongs has no matrimonial law of its own.¹⁴⁶

This canon establishes a norm to govern the marriages of Catholics with baptized non-Catholics. The norm determines the *substantive law* by which a baptized non-Catholic is bound. While a Catholic is bound to the laws of the Catholic Church, the baptized non-Catholic party is bound by the laws of the Church or ecclesial community to

¹⁴⁶ *CCEO* c. 780 § 2: “Matrimonium inter partem catholicam et partem baptizatam acatholicam salvo iure divino regitur etiam:

1° iure proprio Ecclesiae vel Communitatis ecclesialis, ad quam pars acatholica pertinet, si haec Communitas ius matrimoniale proprium habet;

2° iure, quo pars acatholica tenetur, si Communitas ecclesialis, ad quam pertinet, iure matrimoniali proprio caret.”

which he/she belongs. Thus, for example, a member of an Eastern Catholic Church is bound by the laws on diriment impediments of marriage while an Eastern Orthodox Christian or a Protestant would be bound by the laws of his/her own Church or ecclesial community. A mixed marriage between an Eastern Catholic and an Orthodox Christian or Protestant is regulated by both sets of laws. Included in the category of Eastern Catholic is also a person who has publicly rejected the Catholic faith. Hence his/her marriage is subject to Eastern canon law. A similar norm has been introduced in *CCEO* also with respect to procedural law applicable to non-Catholics. This is stated in its c. 781, which reads:

If sometimes the Church must pronounce a judgment about the validity of a marriage between baptized non-Catholics:

1° regarding the law to which the parties were subject at the time of their wedding, can. 780 § 2 is to be observed.

2° regarding the form of the marriage celebration, the Church recognizes any form prescribed or admitted by the law to which the parties were subject at the time of their wedding, provided that the consent was expressed publicly and, if at least one of the parties is a baptized member of the Eastern non-Catholic Church, the marriage was celebrated with a sacred rite.¹⁴⁷

This canon expresses important principles of substantive law to be considered by an ecclesiastical court while judging a marriage nullity case. The substantive law includes impediments and the form to be observed. The first principle states that a marriage nullity case must be judged according to the substantive laws, e.g. diriment impediments, which

¹⁴⁷ *CCEO* c. 781: “Si quando Ecclesia iudicare debet de validitate matrimonii acatholicorum baptizatorum:

1° quod attinet ad ius, quo partes tempore celebrationis matrimonii tenebantur servetur can. 780, § 2;

2° quod attinet ad formam celebrationis matrimonii, Ecclesia agnoscit quamlibet formam iure praescriptam vel admissam, cui partes tempore celebrationis matrimonii subiectae erant, dummodo consensus expressus sit forma publica et, si una saltem pars est christifidelis alicuius Ecclesiae orientalis acatholicae, matrimonium ritu sacro celebratum sit.”

bind the baptized non-Catholic party. Similarly, the second principle stipulates that when judging the nullity of marriage of two baptized non-Catholics on the basis of defect or lack of form, the laws governing the form of the Church or ecclesial communities to which the parties belong must be considered. However, the exchange of the consent must be done publicly and, if at least one of the parties is a baptized member of the Eastern non-Catholic Church, the marriage is celebrated with a sacred rite.

The 1983 Code treats marriage between a Catholic and a Catholic who has formally defected from the Catholic Church as a mixed marriage. Therefore, there should be sufficient guarantee with respect to the faith of the Catholic party and the Catholic baptism and education of children. Moreover, it is important to note that Catholics who have formally defected from the Catholic Church “may have rejected the Church’s teachings on the ends and the essential properties of marriage. The pastor should carefully consider these matters with parties in order to determine that they are entering the union with proper intentions.”¹⁴⁸ The local ordinary can refuse the permission for such a marriage if the legal requirements of mixed marriage are not fulfilled. He can demand either oral or written assurance from the Catholic who has formally defected from the Catholic Church with regard to the conditions stipulated by law for the celebration of mixed marriage in the Church.¹⁴⁹

¹⁴⁸ See DOYLE, Commentary on cc. 1124-1129, in *CLSA Comm 1*, p. 755.

¹⁴⁹ See *ibid.*

1.3.2– The *Cautiones* of Mixed Marriage

The Church is aware that marriages between Catholics and non-Catholics are inevitable. Therefore, the Church has always tried to respond to such situations. The Church has always taught the faithful to safeguard their faith when they enter into a relationship with non-Catholics and has laid down conditions for permitting mixed marriages. The conditions or *cautiones* are provided in *CCEO* which we will analyze in a systematic way in this section. *CCEO* c. 814 states:

For a just cause the local hierarch can grant permission; however he is not to grant it unless the following conditions are fulfilled:

1° the Catholic party declares that he or she is prepared to remove dangers of falling away from the faith and makes a sincere promise to do all in his or her power to have all the children baptized and educated in the Catholic Church;

2° the other party is to be informed in good time of the promises that the catholic party has to make, so that it is clear that the other party is truly aware of the promise and obligation of the Catholic party;

3° both parties are to be instructed on the essential ends and properties of marriage, which are not to be excluded by either spouse.¹⁵⁰

The conditions regarding the mixed marriage established by the Catholic Church have a long history. Commenting on this J. Beal explains:

For the sake of the public good, the pope occasionally granted dispensation to allow Catholic monarchs and members of nobility to marry non-Catholics. Dispensation was granted only after the successful negotiation of treaty-like

¹⁵⁰ *CCEO* c. 814: “Licentiam iusta de causa concedere potest Hierarcha loci; eam vero ne concedat nisi impletis condicionibus, quae sequuntur.

1° pars catholica declaret se paratam esse pericula a fide deficiendi remove atque sinceram promissionem praestet se omnia pro facturam esse, ut omnes filii in Ecclesia catholica baptizentur et educantur,

2° de his promissionibus a parte catholica faciendis altera pars tempestive certior fiat ita, ut constet ipsam vere consciam esse promissionis et obligationis partis catholicae;

3° ambae partes edoceantur de finibus et proprietatibus essentialibus matrimonii a neutro sponso excludendis.”

compacts in which the freedom of the Catholic to worship and raise any children in Catholic faith was guaranteed. The form of these compacts, which gradually became the style of the Roman Curia, provided the model of cautions or "promises" that became essential condition for mixed marriages, when the Church began granting these dispensations for ordinary people in the late eighteenth century.¹⁵¹

In the sixteenth century the question of dispensation from the impediment became an important issue. While mixed religion was still considered as an impediment attached to mixed marriages, the Church began to grant a dispensation to allow Catholics to enter mixed marriages. The conditions usually attached to the granting of the dispensation were a grave cause, for example, non-Christians outnumbering Christians as available marriage partners, and assurance of the Catholic baptism and upbringing of children.¹⁵²

At first the power to grant dispensations was reserved to the pope. "By the end of the eighteenth century, bishops, especially those in mission territories, were receiving the faculties to dispense."¹⁵³

The norms of the 1966 Instruction discussed earlier on mixed marriage invited the non-Catholic party to promise not to interfere with the Catholic party's obligation to practice the Catholic faith and to ensure the Catholic baptism and upbringing of children. Whereas, *Matrimonia mixta* introduced a different approach to mixed marriages. It made it easier to dispense from the impediments of disparity of cult and mixed religion.

¹⁵¹ See BEAL, Commentary on cc. 1124-1129, in *CLSA Comm 2*, p. 1343.

¹⁵² In 1669, because marriages were prohibited at the time, Pope Clement IX granted to bishops and vicars apostolic of certain mission territories the faculty to dispense from the impediment of disparity of worship for serious reasons as long as the Catholic party was able to remain in marriage without offense to the Creator and to properly bring up the children to be born of such a union. See JOANNES PERRONE, *De matrimonio christiano*, vol. 2, chap. VII, Art. 2.

¹⁵³ See DOYLE, Commentary on cc. 1124-1129, in *CLSA Comm 1*, p. 800.

1.3.2.1– The Conditions and the Permission

The present legislation reflects a more cautious approach to granting permission for a mixed marriage even when assurance with respect to the conditions has been secured. The law gives the competent authority the discretion in determining whether such permission will be beneficial to the parties or will be detrimental to the faith of the Catholic party. The canon (*CCEO* c. 814; *CIC/83* c. 1125) states that the competent authority “can” grant permission (*concedere potest*), but he “is not to grant” (*eam ne concedat*) it unless the conditions are fulfilled.¹⁵⁴

The *first condition* involves the declaration and promise on the part of the Catholic party and this has two parts. The first part concerns the protection of the Catholic party’s faith. The Church has always sought to protect the faith of Catholics intending to enter into a mixed marriage and to work towards peace in the family. Therefore, the Church prohibits mixed marriage unless the Catholic party provides assurance concerning continued adherence to and nurturance of his/her Catholic faith. The Church’s cautious approach to this situation is not without foundation since recent studies indicate that a high percentage of Catholics who enter mixed marriages eventually cease practicing their faith.¹⁵⁵

The second part of this condition involves the baptism and the education of the children born of a mixed marriage in the Catholic faith. To which children does this

¹⁵⁴ See DOYLE, Commentary on cc. 1124-1129, in *CLSA Comm 1*, p. 802.

¹⁵⁵ S. BUTLER, “Interchurch Marriage: Problems and Prospects,” in *Chicago Studies*, 19 (1980), p. 209.

condition apply: those born of the mixed marriage in question, or other natural or legally adopted children?

The Holy Office declared in 1942 that this promise applies to all children to be *born* of the proposed union. It did not technically extend to children born of an individual prior to the mixed marriage.¹⁵⁶ According to Pospishil, all parents have a natural obligation to hand on their ecclesial bond to all their children, natural and adopted. “Nonetheless, for the purpose of obtaining the permission for an interfaith marriage, the prescription of the law refers strictly only to future children and not those already born.”¹⁵⁷ Similarly, the obligation of the promise would apply to children who are legally adopted by the couple after their marriage and not to those adopted before the marriage.

The principal objectives of this legislation are to protect the faith of the Catholic party, to foster a peaceful relationship among the members of the family, and to sustain the unity and permanence of marriage. These concerns continue to be the priority of the Church in the matter of mixed marriages. The Church, however, teaches that the Catholic spouse must have respect for the religious freedom and conscience of the other spouse

¹⁵⁶ HOLY OFFICE, 16 January 1942, in *AAS*, 34 (1942), p. 22.

¹⁵⁷ POSPISHIL, *Eastern Catholic Marriage Law*, p. 317.

and due regard for the unity and permanence of the marriage and for the maintenance of the communion of the family.¹⁵⁸

The promise also requires that after the baptism there is continuity in the nurturing of the children in the life of the Catholic Church. Baptizing the children in the Catholic Church and nurturing them in another Church or ecclesial community, or baptizing them in the Church or ecclesial community to which the non-Catholic parent belongs, or having them baptized in both Churches would be not only against the promise but also against the true spirit of ecumenism. While such an action might seem very ecumenical, it “not only perpetuates but deepens the already existing division.”¹⁵⁹

The Second Vatican Council was clear in its teaching on the religious liberty and freedom of conscience of every human being. This would naturally imply that the non-Catholic party has the right to practice his/her faith and to transmit it to the children born of the union. But as we have seen so far, the Church’s legislation acknowledges only the right and duty of the Catholic party with respect to the practice of his/her faith and the

¹⁵⁸ “If, notwithstanding the Catholic’s best efforts, the children are not baptized and brought up in the Catholic Church, the Catholic parent does not fall subject to the censure of canon law. At the same time, his/her obligation to share the Catholic faith with the children does not cease. It continues to make its demands, which could be met, for example, by playing an active part in contributing to the Christian atmosphere of the home; doing all that is possible by word and example to enable the other members of the family to appreciate the specific values of the Catholic tradition; taking whatever steps are necessary to be well informed about his/her own faith so as to be able to explain and discuss it with them; praying with the family for the grace of Christian unity as the Lord wills it” (PONTIFICAL COUNCIL FOR PROMOTING CHRISTIAN UNITY, “The 1993 Directory for Ecumenism”(= *Ecumenical Directory*), in *Origins*, 23 [1993-1994], p. 150).

¹⁵⁹ L. ÖRSY, “Religious Education of Children in Mixed Marriages,” in *Gregorianum*, 45 (1964), p. 742.

baptism and education of the children in the Catholic faith. Now, how can the Church justify the requirement of promises on the part of the Catholic party?

This issue has polarized the opinions of authors. While some agree that sincere promises are not necessary for the validity of the dispensation, others believe that they are.¹⁶⁰ The Roman Rota declared that, in the case of a marriage involving a dispensation from mixed religion, insincere promises did not cause invalidity of the dispensation.¹⁶¹ There are numerous instances in which the Church has shown leniency in regard to the sincerity of promises, but in all cases either formal or equivalent promises were required and the minister was to be morally certain of their fulfillment.¹⁶²

The obligation towards the baptism and education of children in the Catholic Church could be limited by the circumstances in which the Catholic party lives. A practical question, therefore, is: What should be done if the non-Catholic party opposes the promise? The law does not discuss this issue. In such a situation, can the permission be granted solely on the basis of the sincerity and active faith of the Catholic party?

¹⁶⁰ See J.C. HARRINGTON, "The Importance of the *Cautiones* in Disparity of Worship," in *The American Ecclesiastical Review*, 65 (1921), pp. 257, 261-262; W.H. O'NEILL, *Papal Rescripts of Favor*, Canon Law Studies 60, Washington, DC, The Catholic University of America, 1930, p. 115; L. NAU, *Manual of the Marriage Law*, New York, Frederick Pustet Co., 1933, p. 72; G. OESTERALE, "De cautionibus matrimonialibus," in *Ius Pontificium*, 14 (1934), pp. 270-276; 15 (1935), pp. 64-81, 191-195; J. PETROVITS, *The New Church Law in Matrimony*, 2nd ed., Philadelphia, McVey, 1921, n. 257; S. WOYWOD, *A Practical Commentary on the Code of Canon Law*, New York, Joseph F. Wagner, Inc., 1948, vol. 1, n. 1056, pp. 716-717. P. O'NEILL, "Disparity of Worship and Fictitious Guarantees," in *The Irish Ecclesiastical Record*, 41 (1933), pp. 630-635; R.J. WHITE, *Canonical Ante-Nuptial Promises and the Civil Law: An Historical Synopsis and Commentary*, Canon Law Studies 91, Washington, DC, CUA, 1934, p. 36.

¹⁶¹ See decision *c. F. Solieri*, in *RRT Dec.*, 13 (1921), p. 214; also published in *AAS*, 14 (1922), p. 516.

¹⁶² CONGREGATION OF THE HOLY OFFICE, 5 April 1919, 27 January 1949, February 1949, in *CLD*, 3, 408-410, 427-428; 4, 323-331.

Pospishil says: "If the pastor judges that the assurance of the Catholic partner, to do everything for keeping his/her promises, is sincere, he can consider the couple qualified to receive the permission for such a marriage despite the opposition voiced by the non-Catholic party."¹⁶³ In spite of the opposition of the non-Catholic party, if the Catholic party expresses his/her promise sincerely, the Catholic Church would respect such a promise rather than make its decision based solely on the opposition of the non-Catholic party.

If the civil law or custom of a region prohibits Catholic education, the local ordinary can still permit the mixed marriage, as long as the Catholic party expresses his or her intention to raise the children in the Catholic faith.¹⁶⁴

The *second condition* requires that the non-Catholic party be informed of the promises that are to be made by the Catholic party, because under the present legislation the non-Catholic party is to be aware of the obligations the Catholic party has in a mixed marriage. The notification of these laws must be made "before the Catholic party makes the promises"¹⁶⁵ which should be done during the marriage preparation. The present attitude of the Church towards the non-Catholic party is more pastoral in this respect.

The *third condition* demands that the preparation of the couple for marriage must include a thorough instruction on the essential ends and properties of marriage, which are fundamental to the Catholic understanding of the theology of marriage as an exclusive

¹⁶³ POSPISHIL, *Eastern Catholic Marriage Law*, p. 318.

¹⁶⁴ See CONGREGATION FOR THE DOCTRINE OF FAITH, *Instruction Matrimonii sacramentum*, 18 March 1966, FLANNERY I, p. 429.

¹⁶⁵ PRADER, "Marriage," in *A Guide to the Eastern Code*, p. 558.

and perpetual “covenantal relation,”¹⁶⁶ “because the opinion of non-Catholics on the ends and essential properties, in particular indissolubility, differ with Catholic doctrine.”¹⁶⁷ Accordingly, in order to admit the parties for marriage neither party shall exclude any of the essential elements or properties of the marriage. However, in the case of a mixed marriage the law is more open, because the obligation rests with the Catholic party and the non-Catholic party is need only to be informed of this (CCEO c. 814 °2).

The 1993 *Ecumenical Directory* stipulates:

The Catholic party be asked to affirm, in the form established by the particular law of the Eastern Catholic Churches or the episcopal conferences, that he or she is prepared to avoid the dangers of abandoning the faith and to promise sincerely to do all in his or her power to see that the children of the marriage be baptized and educated in the Catholic Church. The other partner is to be informed of these promises and responsibilities. At the same time it should be recognized that the non-Catholic partner may feel a like obligation because of his/her own Christian commitment. It is to be noted that no normal written or oral promise is required of this partner in canon law.¹⁶⁸

1.3.2.2– The Competence of the Catholic Church *sui iuris*

Considering the plurality and diverse cultural contexts of the universal Church, the common law makes provision for individual Churches to specify the manner in which the prenuptial promises are to be made. CCEO c. 815 says:

The particular law of each Church *sui iuris* is to specify the manner in which these declarations and promises, which are always required, are to be made, and

¹⁶⁶ See CCEO c. 776; CIC cc. 1055 and 1056.

¹⁶⁷ See PRADER, “Marriage,” in *A Guide to the Eastern Code*, p. 558.

¹⁶⁸ *Ecumenical Directory*, in *Origins*, 23 (1993-1994), p. 150.

to determine how they can be established in external forum and how the non-Catholic party is to be informed of them.¹⁶⁹

This canon empowers each Catholic Church *sui iuris* to enact its own particular law specifying the manner in which the declarations and promises in mixed marriage are to be made and determining how they can be established in the external forum. According to *CIC/83*, it is for the conference of bishops to determine by general decree the specific manner in which the declaration and promises are to be made.¹⁷⁰ The provision for particular law of each Catholic Church *sui iuris* (for the Eastern Catholic Churches) and of each episcopal conference (for the Latin Church) should enable them to have appropriate ecumenically sensitive norms on the different aspects of the declarations and promises to be made in a mixed marriage.

The phrase *quae semper requiruntur* is present in both the Codes. This implies that the declaration and promises are to be made, and therefore, it does not matter whether or not the Catholic party is able to fulfill the promise.

Since a large number of Eastern Catholics now live outside the proper territories of their respective Churches, it will be more practical if the norms for granting permission for mixed marriages be suitable to the circumstances of each country.¹⁷¹ It

¹⁶⁹ *CCEO* c. 815: "Iure particulari uniuscuiusque Ecclesiae sui iuris statuatur modus, quo hae declarationes et promissiones, quae semper requiruntur, faciendae sint, et modus determinetur, quo de eisdem et in foro externo constet et pars acatholica certior fiat."

¹⁷⁰ *CIC* c. 1126: "The conference of bishops is to establish the way in which these declarations and promises, which are always required, are to be made, what proof of them there should be in the external forum and how they are to be brought to the attention of the non-Catholic part."

¹⁷¹ See POSPISHIL, *Eastern Catholic Marriage Law*, p. 316.

will be appropriate if there is an assembly of Eastern Catholics bishops to decide upon such matters.

1.3.3 – The Form of the Celebration of Marriage

The form of the celebration of marriage has a very long history. The Byzantine emperors enacted laws on public celebration of marriage. Emperor Leo the Philosopher legislated religious ceremonies as a condition for a valid civil marriage of a free person. Emperor Alexius I stated that there was no lawful marriage without the Church's blessing.¹⁷² Later, different General Councils dealt with the subject. We see the configuration of marriage as a formal as well as consensual juridical act in the law of the Church in the Decree *Tametsi* of the Council of Trent in 1563. Canon 1094 of *CIC/17* and canon 85 §1 of *motu proprio Crebrae allatae* provided norms on the form of marriage. Canon 828 of *CCEO* reaffirms the previous developments by subjecting the validity of marriage to the canonical form. This canon stipulates as follows:

§1. Only those marriage are valid that are celebrated with sacred rite, in the presence of the local hierarch, local pastor, or a priest who has been given the faculty of blessing the marriage by either of them, and at least two witnesses, according, however to the prescripts of the following canons, without prejudice to the exceptions referred to in cann. 832 and 834.

§2. The very intervention of a priest who assists and blesses is regarded as a sacred rite for the present purpose.¹⁷³

¹⁷² G. H. JOYCE, *Christian Marriage*, London, Sheed and Ward, 1933, p. 197.

¹⁷³ *CCEO* c. 828: § 1. "Ea tantum matrimonia valida sunt, quae celebrantur ritu sacro coram Hierarcha loci vel parochi loci vel sacerdote, cui ab alterutro collata est facultas matrimonium benedicendi, et duobus saltem testibus secundum tamen praescripta canonum, qui sequuntur, et salvis exceptionibus, de quibus in cann. 832 et 834, § 2."

§ 2. "Sacer hic censetur ritus ipso interventu sacerdotis assistentis et benedicentis."

This canon explains the common form of marriage for Eastern Catholics.¹⁷⁴ According to c. 828, only those marriages are valid which are celebrated with a sacred rite in the presence of the local hierarch or the pastor of the place of marriage and at least two witnesses with due regard for the exception mentioned in *CCEO* cc. 832 and 834 §2. The local hierarch and the pastor can, if needed, delegate another priest to validly celebrate the marriage (*CCEO* c.830). The canon clearly states that for the validity of the marriage of an Eastern Catholic, besides the exchange of the consent by the parties in the manner prescribed by law, the blessing of a priest and the presence of at least two witnesses are required.

Canon 834 of *CCEO* contains the norm on the form for mixed marriages and it reads:

§1. The form for the celebration of marriage by law is to be observed if at least one of the parties celebrating the marriage was baptized in the Catholic Church or was received into it.

§2. If, however, a Catholic party ascribed to an Eastern Church celebrates marriage with one who belongs to an Eastern non-Catholic Church, the form of the celebration of the marriage prescribed by law is to be observed only for liceity; for validity, however, the blessing of a priest is required, while observing the other requirements of law.¹⁷⁵

¹⁷⁴ Other forms of marriage are: (1) extraordinary marriage form in case of danger of death or unavailability of the pastor (*CCEO* c. 832), (2) form for a Catholic marrying before an Eastern non-Catholic priest (*CCEO* c. 834), (3) the public form of marriage after having received a dispensation from the form of marriage (*CCEO* c. 835).

¹⁷⁵ *CCEO* c. 834: “§ 1. Forma celebrationis matrimonii iure praescripta servanda est, si saltem alterutra pars matrimonium celebrantium in Ecclesia catholica baptizata vel in eandem recepta est.

§ 2. Si vero pars catholica alicui Ecclesiae orientali sui iuris ascripta matrimonium celebrat cum parte, quae ad Ecclesiam orientalem acatholicam pertinet, forma celebrationis matrimonii iure praescripta servanda est tantum ad liceitatem; ad validitatem autem requiritur benedictio sacerdotis servatis aliis de iure servandis.”

The first paragraph of the canon states the traditional canonical norm which requires of a Catholic to celebrate marriage within the context of the canonical form. In other words, as a general principle even a mixed marriage is subject to this requirement. However, the second paragraph of the canon provides an exception when an Eastern Orthodox Christian is involved in a mixed marriage. According to this exception, if an Eastern Catholic marries another baptized Eastern non-Catholic, the form is required only for liceity.¹⁷⁶ If the marriage is between an Eastern Catholic and a Protestant, the canonical form, or a dispensation from it,¹⁷⁷ is required for the validity of the marriage.¹⁷⁸

According to the spirit of the present legislation for the Eastern Catholic Churches, the liturgical ceremony of mixed marriages are generally performed outside the Holy Mass (= *Qurbana*), but the patriarch or the local ordinary can permit such celebrations within the Holy Mass. *CCEO* c. 834 § 2 states that, while observing the other requirements of the law, the blessing of a priest is necessary for the validity of marriage.

The Eastern Code establishes the form of marriage in general, and requires a "sacred rite" for the validity of a marriage. A "sacred rite" is understood to be "the intervention of a priest who assists and blesses" (c. 828 §2). According to the Eastern theology, in the ordinary form of the sacrament of marriage, the sacramentality is

¹⁷⁶ *OE*, n. 18 had already legislated that Eastern Catholics marrying Eastern non-Catholics before the Eastern non-Catholic ministers were bound to canonical form only for liceity. This was extended to Latin Rite Catholics marrying Eastern non-Catholics through the Decree *Crescens matrimoniorum*. See *Nuntia*, 8 (1979), p. 12; J. PRADER, *Il matrimonio in Oriente e Occidente*, Kanonika 1, Romae, Pontificium Institutum Orientalium, 1992, pp. 135-137.

¹⁷⁷ See *CCEO* c. 835.

¹⁷⁸ See *Nuntia*, 10 (1980), p. 48.

manifested primarily in its celebration, that is, in the sacred rite. The sacred rite includes the very intervention of the priest which is an essential element of the common form of marriage. Spouses receive the sacramental grace through the blessing of the priest who, according to Eastern theology, is the minister of the sacrament of matrimony. The mutual matrimonial consent of the couple is regarded as the indispensable *precondition* for receiving the sacrament.¹⁷⁹ Based on the Eastern theology, *CCEO* c. 834 §2 implies that the minister of marriage can only be a priest who assists and blesses. According to D. Salachas:

The priest *assists* at the marriage by asking for the manifestation of the mutual consent of the spouses and by receiving it in the name of the Church; in fact the act that constitutes the marriage is the consent of the parties legitimately manifested; without the manifestation of the consent the sacrament cannot be effected. The priest *blesses* the marriage by invoking the Holy Spirit on the spouses to transform them into an image of the perfect union between Christ and his Church, calling down on them the sacramental grace, so that they will live their conjugal life as a reflection of the trinitarian life, and create the “domestic Church” of which St. Paul speaks (cf. Rom. 16, 5).¹⁸⁰

The Eastern tradition recognizes only bishops or priests as sacred ministers. The reason for this restriction is the fact that the sacramental act of the *epiclesis* is an act of the ministerial priesthood of bishop or priest.¹⁸¹ The exceptions to this canon are the

¹⁷⁹ P. EVIDOKIMOV, *The Sacrament of Love: The Nuptial Mystery in the Light of the Orthodox Tradition*, Crestwood, NY, St. Vladimir's Seminary Press, 1985, p. 146.

¹⁸⁰ “Il sacerdote *assiste* al matrimonio per chiedere la manifestazione del mutuo consenso degli sposi e riceverla in nome della Chiesa; infatti l'atto che costituisce il matrimonio è il consenso delle parti manifestato legittimamente; senza la manifestazione del consenso il sacramento non può essere attuato. Il sacerdote *benedice* il matrimonio per invocare lo Spirito Santo sugli sposi per trasformarli in icona dell'unione indefettibile tra Cristo e la sua Chiesa, effondendo su di loro la grazia sacramentale, affinché vivano la loro vita coniugale come riflesso della vita trinitaria, e creano la ‘Chiesa domestica’ di cui parla san Paolo (cf. Rm. 16, 5)” (D. SALACHAS, *Il sacramento del matrimonio nel nuovo diritto canonico delle Chiese orientali*, Roma, Dehoniane, 1994, p. 33).

¹⁸¹ See *ibid.*

dispensation from the form of marriage and the extraordinary form of marriage where the marriage is celebrated before two witnesses only (see *CCEO* cc. 796 §1 and 832 §1= *CIC* cc. 1079 §1 and 1116 §1). Even in such a situation the law strongly suggests to the couple to seek the blessing of a priest as soon as possible (*CCEO* c. 832 §3).¹⁸²

Canon 832 of *CCEO* (*CIC/83* c. 1116) provides for two extraordinary situations in which the marriage can be celebrated validly and lawfully in the presence of two witnesses alone. The two situations are: (1) “danger of death” on the part of one or both the parties, and (2) the priest, competent to assist at the marriage in accord with the norm of law, cannot be present or be approached without grave inconvenience,¹⁸³ and this situation is foreseen to last for at least a month.¹⁸⁴ The incapacity of the competent priest to bless the marriage may be either physical or moral.¹⁸⁵ So the extraordinary situation involves both subjective and objective conditions.

However, in such situations, “if another priest is at hand, he is to be called upon, if it is possible, to bless the marriage, without prejudice to the validity of marriage

¹⁸² For the genesis of this law, see *Nuntia*, 8 (1979), p. 26; 10 (1980), p. 52; 15 (1982), p. 85; 24-25 (1987), p. 150.

¹⁸³ The grave inconvenience refers both to the qualified witness and to the contracting parties. See PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, Reply, 3 May 1945, in *AAS*, 37 (1945), p. 583; *CLD*, 3 (1942-53), p. 454.

¹⁸⁴ The simple fact of the absence of the competent priest is not sufficient: the moral certainty, based on facts and sound reasoning that this absence will continue for a month is also necessary. Since this estimation is subjective, provided it has been made prudently, the marriage will be valid, even if the qualified witness is, in fact, available before a month has passed. PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, Reply, 10 November 1925, in *AAS*, 17 (1925), p. 583; *CLD*, 1 (1917-33), p. 542; *Code of Canon Law Annotated*, 2004, p. 872.

¹⁸⁵ PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, Reply, 25 July 1931, in *AAS*, 23 (1931), p. 388; *CLD*, 1 (1917-33), p. 542; *Code of Canon Law Annotated*, 2004, p. 872.

celebrated in the presence of only the witnesses; in such cases even a non-Catholic priest may be called” (CCEO c. 832 §2; CIC/83 c.1116 §2). This prescript implies that even in extraordinary situations, the priestly blessing has its significance in the celebration of marriage, since it is a sacrament. Hence, the Church encourages the couple, who celebrated their marriage in the presence of only two witnesses, to receive the nuptial blessing from a priest as soon as possible. Canon 832 §§2 and 3 re-emphasize the importance of the priestly blessing.

On 6 January 1996, in its *Instruction for Applying the Liturgical Prescriptions*, the Congregation for the Eastern Churches said the following with regard to the sacred rite:

It should be noted that the obligation of the sacred rite, and thus of the priestly blessing, for the validity of the Marriage is specific to Eastern law. In the Latin Church, simply the presence of the local Ordinary, or the parish priest, or a priest or deacon delegated by either of them is required. In the Eastern tradition, the priest, in addition to assisting, must bless the Marriage. To bless means to act as the true minister of the sacrament, in virtue of his priestly power to sanctify, so that the spouses may be united by God in the image of the flawless nuptial union of Christ with the Church and be consecrated to each other by sacramental grace.¹⁸⁶

Therefore, it seems clear that, according to the Eastern Law, while observing the other requirements, the blessing of a priest is required for the validity of a marriage. The present Latin Code does not speak of the requirement of the priestly blessing for the validity of a marriage. However, speaking of a mixed marriage celebration, the Latin legislation states that if a Catholic party contracts marriage with an Eastern non-Catholic,

¹⁸⁶ CONGREGATION FOR THE EASTERN CHURCHES, *Instruction for Applying the Liturgical Prescriptions of the Code of Canons of the Eastern Churches* (= *Instruction for Applying the Liturgical Prescriptions*), Libreria editrice Vaticana, 6 January 1996, n. 82.

for validity, "the presence of a sacred minister is required along with the observance of the other requirements of law."¹⁸⁷

In the Latin Church, in ordinary circumstances, the presence of a deacon along with other requirements of law is sufficient for the validity of marriage. In a mixed marriage, if one of the spouses belongs to the Eastern Church, the nuptial blessing by a bishop or a priest is necessary for its validity. Regarding the assistance at marriage by a deacon, J. Prader writes:

There is no doubt that a Latin deacon, delegated according to the norm of *CIC* c. 1111§1, can validly bless in his church a marriage of mixed rite. In the Eastern Churches, on the other hand, deacons are not delegated to bless marriages.¹⁸⁸

By saying "a Latin deacon, delegated according to the norm of *CIC* c. 1111 §1, can validly bless in his church [Latin] a marriage of mixed rite" [=involving a Latin Catholic and an Eastern Catholic], Prader seems to recognize the deacon as a sacred *minister*. Could one interpret this to mean that a lawfully delegated deacon can validly assist and bless a marriage of two Eastern Catholics, subjects of his Latin local ordinary? Prader answers this question in one of his later writings as follows:

However, we maintain that the Latin local ordinary, where a hierarch and a proper pastor of the Eastern faithful is lacking, can validly and licitly delegate a Latin deacon to bless the marriage of Eastern faithful, if they are subjects of the Latin ordinary in conformity with *CCEO* c. 916 §5.

¹⁸⁷ *CIC* c. 1127 § 1. "The prescriptions of the canon 1108 are to be observed concerning the form to be employed in a mixed marriage; if a Catholic party contracts marriage with a non-Catholic party of an Eastern rite the canonical form of celebration is to be observed only for liceity; for validity, however, the presence of a sacred minister is required along with the observance of the other requirements of law."

¹⁸⁸ "Non vi è dubbio invece che un diacono latino, delegato a norma del can. 1111 §1 *CIC*, possa benedire validamente nella sua chiesa un matrimonio di rito misto. Nelle Chiese orientali, invece, i diaconi non sono delegati per la benedizione di matrimoni" (PRADER, *Il matrimonio*, p. 38).

In any event, *CCEO* c. 828, which prescribes the blessing, must be observed. The Latin deacon has the faculty to impart both constitutive and invocatory blessings.¹⁸⁹

Prader's view here seems quite clear on the question of a Latin deacon assisting at marriages which involve Eastern Catholics who are legitimately subject to a Latin local ordinary. According to the statement above, a Latin hierarch "can validly and licitly delegate a Latin deacon to bless the marriages of Eastern faithful, if they are subjects of the Latin ordinary." However, commenting on the same issue he changes his view and later gives a totally different interpretation. He says:

In the Eastern tradition, Catholic and non-Catholic, the nuptial blessing, which is reserved to the priest, is required for the validity of the marriage. Hence it follows that the faculty of blessing the marriage cannot be conferred on a deacon. This is implied in c. 834 §2. The sacred rite renders the visible sacred character and the sacramental dignity of the marriage and serves to check the spreading trend to desacralize marriage.¹⁹⁰

This statement of Prader indicates that a Latin hierarch cannot confer the faculty of the blessing of a marriage on a deacon if at least one of the parties belongs to a Catholic or non-Catholic Eastern Church. He holds on to this view because he says: "In the tradition of the Catholic and non-Catholic Eastern Churches, the intervention of the priest and the nuptial blessing are always required for the validity of the marriage."¹⁹¹

What about a lawfully delegated lay person assisting at a marriage which involves

¹⁸⁹ See J. PRADER, *La legislazione matrimoniale latina e orientale: problemi interecclesiali, interconfessionali e interreligiosi*, Roma, Edizioni Dehoniane, 1993, p. 39.

¹⁹⁰ J. PRADER, "Marriage (cc. 776-866)," in G. NEDUNGATT (ed.), *A Guide to the Eastern Code*, Kanonika 10, Roma, Pontificio Istituto Orientale, 2002, pp. 569-570.

¹⁹¹ "Nella tradizione delle Chiese cattoliche e non cattoliche orientali l'intervento del sacerdote, e la benedizione nuziale, è sempre richiesta per la validità del matrimonio" (PRADER, *Il matrimonio in Oriente e Occidente*, Kanonika 1, Seconda ed., Riveduta e aggiornata, Roma, Pontificium Institutum Orientalium, 2003, p. 249).

Eastern Catholics? Prader's response is as follows:

The faculty to bless a marriage derives from sacred order. Therefore, the delegation of this faculty to a lay person, as provided in the Latin legislation (cf. *CIC* c. 1112), is not permitted in the Eastern law, because a lay person is not capable of executing the rite of blessing.¹⁹²

Prader is quite clear on this point. A lay person cannot be authorized to assist at and bless the marriages involving Eastern Catholics even if they are the subjects of a Latin local ordinary, because they are not competent to impart the blessing. He reiterates the same view while addressing specifically the competence of lay faithful in assisting at and blessing marriages of Eastern Catholics. He says:

In the Eastern Churches, a lay faithful cannot be delegated for the celebration of marriage, because the faculty to bless marriages is reserved to a priest. Therefore, a marriage between a Catholic of an Eastern Rite and a Catholic of the Latin Rite celebrated before a lay faithful legitimately delegated by the bishop for the celebration of marriages would be *invalid* for defect of form. Similarly, a marriage celebrated before a lay faithful between a Latin Catholic and a non-Catholic of an Eastern Church would also be *invalid* both in virtue of Catholic law and of the law of non-Catholic Churches of the Eastern Rite.¹⁹³

In this statement, Prader leaves no doubt that a lay person cannot validly assist at a marriage which involves members of Eastern Catholic Churches or even of Eastern Orthodox Churches. In other words, a lay person, lacking sacred orders, is *inhabilis* for

¹⁹² "La facoltà di benedire le nozze è collegata con l'ordine sacro, per cui la delega di un laico, come è prevista nella legislazione latina (can. 1112 *CIC*), non è ammissibile nel diritto orientale, non potendo un laico eseguire il rito della benedizione" (PRADER, *Il matrimonio*, p. 38; see PRADER, "Marriage (cc. 776-866)," p. 570).

¹⁹³ "Nelle Chiese orientali, un fedele laico non può essere delegato per la celebrazione di matrimoni, essendo la facoltà di benedire matrimoni riservata al sacerdote. Perciò sarebbe *invalido* per difetto di forma di matrimonio tra cattolico di Rito orientale e cattolico di Rito latino, celebrato davanti ad un fedele laico legittimamente delegato dal Vescovo per la celebrazione di matrimoni. Così pure sarebbe *invalido* sia per diritto cattolico che per diritto delle Chiese acattoliche di Rito orientale un matrimonio celebrato davanti ad un fedele laico latino fra cattolico latino e acattolico di una Chiesa orientale" (PRADER, *Il matrimonio*, p. 211; emphasis added).

delegation to assist at the marriages involving Eastern Catholics or Eastern non-Catholics.

V.J. Pospishil, however, offers a somewhat confusing, or even seemingly contradictory, opinion concerning the possibility of a Latin deacon or a lay person assisting at marriages involving Eastern Catholics. First he addresses a practical problem encountered not infrequently in North America. He says:

The question of the deacon blessing marriages has practical implications. Requests are being made to Eastern bishops in the United States to permit a permanent deacon of the same Church or of the Latin Church, perhaps a brother, a relative, close friend, of one of the marriage partners, to bless the marriage. As long as the United States Eastern Catholic bishops have not received again the faculty to dispense from the marriage form, they cannot permit a deacon to bless a marriage (c. 835). Neither can this permission be granted by a Latin ordinary to Eastern Catholics under his jurisdiction.¹⁹⁴

In this statement, Pospishil seems to be saying that a deacon cannot validly assist at the marriage of two Eastern Catholics, even if they are his subjects, without a lawful dispensation from the form which includes the *ritus sacer*, and this dispensation is reserved to the Holy See. Can a Latin bishop lawfully delegate a deacon to assist at and bless a “mixed rite” (Latin & Eastern couple) or “mixed” (Latin & Eastern non-Catholic couple) marriage? Contrary to what he has said above, Pospishil states:

Of course, if an Eastern Catholic marriage rite is *lawfully* performed by a Latin deacon, who is a *sacred minister* as demanded in *CIC* c. 1127 §1, the blessing of the deacon will be a valid marriage form, because the place rules the action (*locus regit actum*), i.e., when a juridical act is transferred lawfully elsewhere, the procedural norms of that place (or jurisdiction) rule the legal requirements. Such a contingency could occur in a case of Eastern Catholics subject to the Latin bishop and pastor. The Latin bishop has the faculty of granting a dispensation from the form in the case of marriages with non-Catholics (c. 1127 §2 *CIC*). He can, therefore, make it possible by dispensing from the form in order for a deacon and even a lay person (c. 1112 *83CIC* - only if the local bishops conference has sanctioned such a procedure) to assist validly at a mixed

¹⁹⁴ POSPISHIL, *Eastern Catholic Church Law*, p. 574.

marriage. However, such a permission may be given only where there is actually no priest (or deacon) available.¹⁹⁵

If we understand this statement of Pospishil correctly, what he seems to be essentially saying is that either a deacon, whom he acknowledges as a *sacred minister*, as does Prader, or a lay person *lawfully* delegated by his local ordinary would validly assist at marriages of Eastern Catholics as long as they are, or one of them is, subject to that ordinary. This could include different combinations: two Eastern Catholics, one Eastern Catholic and the other a Latin, one Latin and the other an Eastern non-Catholic, one Eastern Catholic and the other Eastern non-Catholic or an Eastern Catholic and the other a Protestant. As long as they are his subjects and he follows his law, the Latin bishop can lawfully delegate either a deacon or a lay person to assist those marriages. He anchors his position on the principle of *locus regit actum*. As one can see, this view certainly differs radically from those of other authors.

Addressing specifically the use of the principle of *locus regit actum* by Pospishil, J. Abbass argues that this principle is not applicable to the specific situation we are dealing with. He cites different authors in support of his argument.¹⁹⁶ For example, he quotes Prader, who says:

Therefore, one errs in stating that the Latin ordinary, in accordance with the principle '*locus regit actum*', can validly delegate a lay person to bless the marriage of Eastern Catholics or of a Catholic and Orthodox party subject to his jurisdiction. The form of the celebration of the marriage, in ecclesiastical legislation, is not regulated by the principle of '*locus regit actum*', that is, by the law of the place, as in civil regulations, but is regulated by personal law which obliges the faithful even outside the territory of their own Church *sui iuris* in

¹⁹⁵ POSPISHIL, *Eastern Catholic Church Law*, p. 574.

¹⁹⁶ J. ABBASS, "Marriage in the Codes of Canon Law," in *Apollinaris*, 68 (1995), pp. 529-530.

which they are enrolled.¹⁹⁷

Abbass maintains that, because Eastern legislation does not admit a lay person celebrating the sacred rite, cc. 1112-1114 of the Latin Code are to be applied solely to members of the Latin Church. Even when the Holy See permits a lay person to assist at marriages in the Latin Church in accord with c. 1112, §1, it cannot be extended to marriages involving the Eastern faithful. In other words, when Eastern Catholics are involved in a marriage, even if they are his subjects, a Latin ordinary must defer to the law governing them. According to Abbass, therefore, a Latin bishop cannot validly delegate a lay person to assist at mixed marriages involving Eastern Catholics even if these are his subjects.¹⁹⁸

D. Salachas expresses an opinion contrary to that of Prader and Pospishil on the possibility of a deacon and a lay person assisting at and blessing a marriage which involves Eastern Catholics. He says:

However, we maintain that the Latin deacon cannot bless the marriage, whether between a Latin and an Easterner, or between Easterners, because it is contrary to the theological and canonical tradition of the Eastern Churches. According to the *Apostolic Constitutions* (360-380), "to bishops we have attributed the functions of pontiff, to the priests those of priesthood, to deacons those of service of one or the other. The deacon is, therefore, not permitted to offer a sacrifice, to baptize, to give minor or major blessing, and the priest is not permitted to confer ordinations ..."¹⁹⁹

G. Gallaro expresses the following views on both these issues. With regard to a deacon assisting and blessing a marriage of Eastern Catholics, he says:

¹⁹⁷ See PRADER, *La legislazione matrimoniale*, pp. 40-41.

¹⁹⁸ See ABBASS, "Marriage in the Codes of Canon Law," pp. 529-531.

¹⁹⁹ See SALACHAS, *Il sacramento del matrimonio*, p. 43; translation as in ABBASS, "Marriage in the Codes of Canon Law," p. 533.

[...] The Latin norm (c. 1108, §1 of *CIC/83*) which allows for the delegation of a deacon to assist at marriages is not part of the Eastern discipline. Just as it was not foreseen in *Crebrae Allatae*, it became clear early in the codification process that the new Eastern norm would not attribute to a deacon the faculty to bless marriages.

Therefore, without dispensation (*CCEO* c. 835), a marriage of Eastern Catholics cannot be validly celebrated before a deacon because of defect of form (*CCEO* c. 828, §1). According to *CIC* c. 1108 §1, a deacon who has been duly delegated can validly assist at the marriage of Latin Catholics. A Latin local ordinary, however, cannot validly delegate a deacon to assist at a marriage involving Eastern Catholics, even his subjects, since Eastern canonical form requires the celebration of a sacred rite, which is explicitly defined as the intervention of a bishop or a presbyter [*sacerdos*] assisting and blessing. In keeping with the *Apostolic Constitutions* (360-380), ‘... the deacon is not permitted to offer sacrifice, to baptize, to give a minor or a major blessing, and the priest is not permitted to confer ordinations ...’ (III, ii, 1-1).²⁰⁰

According to Gallaro, therefore, a deacon cannot be delegated to bless a marriage of Eastern Catholics. Only a bishop or a priest can do it. A deacon, however, can do so only when there is a legitimate dispensation, which can be obtained either from the Holy See or from the patriarch. Gallaro does not make any distinction between a “mixed rite” marriage and one in which both parties are Eastern Catholics. What would be the status of a marriage between a Latin Catholic and an Eastern Catholic, either one or both subjects of the Latin ordinary, blessed by a deacon lawfully delegated either by his local Latin ordinary or his by parish priest? According to Prader, such a marriage would be valid, while Gallaro would consider it invalid.

As to a lay person legitimately delegated to assist at a “mixed rite” or “mixed” marriage, Gallaro states:

Since the celebration of the sacred rite is reserved to a bishop or a presbyter

²⁰⁰ G.D. GALLARO, “The Sacramental Mystery of Marriage,” in *Comparative Sacramental Discipline in the CCEO and CIC: A Handbook for the Pastoral Care of Members of Other Catholic Churches sui iuris*, ed. by F.J. MARINI, Washington, DC, Canon Law Society of America, 2003, p. 192.

[*sacerdos*], it is clear that a marriage between Eastern Catholics or between an Eastern Catholic and a Latin Catholic celebrated before a lay person delegated by a Latin ordinary would be invalid for defect of canonical form. In the Eastern Catholic Churches, a dispensation from this form is reserved to the Holy See of Rome or, in the case of a patriarchal Church, to the patriarch, who will grant it only for the most serious reason (c. 835).²⁰¹

Gallaro argues that the canons (1112-1114) of *CIC*, which make provision for a lay person's assisting at a marriage in accordance with the law, "would not extend to marriages involving the Eastern faithful." He cites Article 154 of the 1993 *Ecumenical Directory* in support of his interpretation. The cited Article reads: "The local Ordinary of the Catholic party, after having consulted the local Ordinary of the place where the marriage will be celebrated, may for serious reasons and *without prejudice to the law of the Eastern Churches*, dispense the Catholic party from the observance of the canonical form of marriage." In light of this statement, Gallaro concludes, "in a marriage between Eastern Catholics subject to a Latin ordinary (*CCEO* c. 916, §5) or in an interecclesial and interritual marriage celebrated in the Latin Church, the Latin ordinary cannot validly delegate a lay person to assist their marriage."²⁰² For Gallaro, neither a deacon nor a lay person can be authorized to celebrate a marriage which involves Eastern Catholics, whether such a marriage is between two Eastern Catholics, one Eastern and the other Latin, one Eastern and the other an Eastern non-Catholic, or one Latin and the other an Eastern non-Catholic.

After examining critically the genesis of c. 828 of *CCEO* and the opinion of Prader which favours the legitimacy of a Latin deacon assisting at and blessing marriages

²⁰¹ GALLARO, "The Sacramental Mystery of Marriage," p. 191.

²⁰² *Ibid.*

of Eastern Catholics, Abbass concludes:

In support of his statement that a deacon can impart the required blessing of an Eastern marriage, Prader cites an interpretation (13 November 1974) of the Pontifical Commission for the Interpretation of the Decrees of Vatican Council II. Responding to a *dubium* concerning a deacon's faculties to give blessings, the commission stated: "The deacon can impart only those blessings ... which are expressly granted to him by law" (*AAS*, 66 [1974], p. 667). However, *CCEO* c. 828, which Prader affirms must be observed, appears to be the very canon which expressly excludes the deacon from giving the blessing. The law expressly states that the sacred rite "is the intervention of a *priest* assisting and blessing."

Therefore, it is our view that, without a dispensation (*CCEO* c. 835), a marriage of Eastern Catholic cannot be validly celebrated before a deacon because of defect of form (*CCEO* c. 828, §1). According to *CIC* c. 1108 §1, a deacon, who has been duly delegated can validly assist at the marriage of Latin Catholics. However, a Latin local ordinary cannot validly delegate a deacon to assist at a marriage involving Eastern Catholics, even his subjects, since Eastern canonical form requires the celebration of a sacred rite, which is explicitly defined as the intervention of a priest assisting and blessing."²⁰³

The above analysis of the law and different views of authors yields to the following conclusion: Although there existed at one time among the canonists two diametrically opposed views with regard to the validity of a marriage involving Eastern Catholics assisted at and blessed by a Latin deacon, they now seem to have converged at the position that a deacon cannot be conferred the faculty of the blessing of a marriage if at least one of the parties is a member of the Eastern Catholic or non-Catholic Church. However, with regard to the validity of a marriage of Eastern Catholics in the presence of a lawfully delegated lay person, the opinion of authors is unanimous, that is to say, such a marriage is invalid.

²⁰³ ABBASS, "Marriage in the Codes of Canon Law," pp. 533-534.

1.3.3.1– Dispensation from the Form of Marriage

The Code of Canons of the Eastern Churches implies the right of the faithful to petition the competent authority for a dispensation from the canonical form of marriage.

For, *CCEO* c. 835 states:

Dispensation from the form for the celebration of marriage required by law is reserved to the Apostolic See or the patriarch, who will not grant it except for most grave cause.²⁰⁴

In the Eastern Catholic Churches the authority to dispense from the obligation of observing the canonical form or the sacred rite of marriage is reserved to the Apostolic See or Patriarch.²⁰⁵ The reservation is intended to safeguard this institution so characteristic of the East.²⁰⁶ In the Latin Church, this faculty is extended to the local ordinary.²⁰⁷

For granting a dispensation from the form of marriage there must be a grave reason that stands in the way of its observance of the same. The *Ecumenical Directory* identifies some grave reasons that may qualify for a dispensation from the canonical form of marriage:

Among these reasons for dispensation may be considered the maintaining of family harmony, obtaining parental consent to the marriage, the recognition of the particular religious commitment of the non-Catholic partner or his/her blood

²⁰⁴ Canon 835: “Dispensatio a forma celebrationis matrimonii iure praescripta reservatur Sedi Apostolicae vel Patriarchae, qui eam ne concedat nisi gravissima de causa.”

²⁰⁵ See *Nuntia*, 24-25 (1987), p 150.

²⁰⁶ See *Nuntia*, 28 (1989), p. 116-117.

²⁰⁷ *CIC* c. 1127 § 2: “If grave difficulties hinder the observance of the canonical form, the local ordinary of the Catholic party has the right of dispensing from the form in individual cases, after having consulted the ordinary of the place in which the marriage is celebrated and with some public form of celebration for validity.”

relationship with a minister of another Church or ecclesial Community. Episcopal Conferences are to issue norms by which such a dispensation may be granted in accordance with a common practice.²⁰⁸

When there is dispensation from the canonical form, a non-Catholic minister can validly officiate at the marriage according to the law by which the officiating person is bound. If a Catholic priest is present, he may participate in the ceremony, but he may not ask or receive the consent nor may he impart the official nuptial blessing.²⁰⁹

The above discussion naturally leads to the important general question whether or not a Latin local ordinary can dispense from the canonical form in a marriage involving Eastern Catholics legitimately subject to him. The common opinion of authors is that a Latin local ordinary cannot dispense from the canonical form in such an instance. Contrary to what he has said above, Pospishil says, "All Latin bishops enjoy this faculty [to dispense from the canonical form], but they cannot make use of it for the benefit of Eastern Catholics subject to their jurisdiction." With regard to a marriage between a Latin Catholic and an Eastern non-Catholic celebrated within the Latin jurisdiction, Pospishil adds, "[it] must for validity observe the non-Catholic's obligatory marriage form, i.e., (1) must be blessed by a 'sacred minister', (2) from which no dispensation can be granted by the Latin bishop, e.g., permitting a marriage before a lay person or even a deacon."²¹⁰ While stating that even Eastern Catholic bishops do not have this faculty to dispense, Pospishil adverts to the fact that on 21 September 1991 Pope John Paul II had granted to the papal representatives around the world the faculty to dispense from the

²⁰⁸ See *Ecumenical Directory*, n. 154.

²⁰⁹ DOYLE, Commentary on cc. 1124-1129, in *CLSA Comm I*, p. 805.

²¹⁰ POSPISHIL, *Eastern Catholic Church Law*, p. 541.

marriage form for Eastern Catholics “ ‘for a very grave reason, on condition for validity that the marriage is celebrated according to some public form’ (Apost. Nunciature U.S.A., No. 5895/7 Nov. 12, 1991).”²¹¹ Pospishil, therefore, maintains that a Latin local ordinary has no faculty to dispense from the canonical form even if an Eastern Catholic in a mixed marriage is his subject. The faculty must be obtained either from the Apostolic See or from the papal representative of the region.

J. Prader also offers a similar opinion in his commentary on c. 835 of *CCEO*. He states:

According to c. 835, for the marriage between an Eastern Catholic party and a baptized Western non-Catholic or a non-baptized party, dispensation from the form of celebration of marriage prescribed by law is reserved to the Apostolic See or to the patriarch, who will not grant it except for a most serious reason. According to *CIC* c. 1127, §2, the local ordinary of the Catholic party, (with due regard for the Eastern Churches mentioned in *CCEO* c. 835), has the right to dispense from the observance of canonical form in individual cases. If in certain regions, for example, in North America, where there is an Eastern Catholic minority and marriages with baptized non-Catholics or non-baptized persons are frequent, the Eastern hierarchs can ask the Apostolic See for a special faculty of dispensing.²¹²

By drawing attention to c. 835 of *CCEO* as an exception within the context of c. 1127 §2 of *CIC*, Prader seems to confirm the opinion of Pospishil that a Latin local ordinary does not have the faculty to dispense from the canonical form in a marriage case involving an Eastern Catholic even if he or she is subject to his jurisdiction.

Abbass adds a similar view to the discussion by providing a systematic analysis of the issue in question. He says:

²¹¹ POSPISHIL, *Eastern Catholic Church Law*, pp. 541-542.

²¹² PRADER, “Marriage,” in *A Guide to the Eastern Code*, p. 574. Here Prader refers to *Nuntia*, 28 (1989), pp. 116-117. He also cites the above mentioned faculty granted by Pope John Paul II to papal representatives to grant the dispensation from the canonical form.

As we have already mentioned, *CIC* c. 1127 §2 stipulates that a Latin local ordinary has the right to dispense from canonical form in individual cases if serious difficulties pose an obstacle to the observance of the form. In the Eastern Catholic Churches, this dispensation is reserved to the Roman See or the patriarch. *CCEO* c. 835 states the following: "Dispensation from the form for the celebration of marriage required by law is reserved to the Apostolic See or the patriarch, who will not grant it except for a most grave reason."²¹³

In support of his argument, Abbass goes through the deliberations of the Code Commission that was drafting the Eastern Code and emphasizes the point that the mind of the Commission was to restrict the dispensing power of hierarchs or ordinaries in order to protect the integrity of *ritus sacer*: "The faculty to dispense from the *ritus sacer* must remain reserved, in the common Code, to the Holy See in order to safeguard this institution so characteristic of the East."²¹⁴ Abbass also points out that even the faculty of the patriarch or major archbishop to dispense from the canonical form is restricted to their respective territories. He says, "Since the six patriarchs and two major archbishops (*CCEO* c. 152) of the Eastern Catholic Churches validly exercise their power only inside the territorial boundaries of their Churches (*CCEO* c. 78 §2), the dispensation for their faithful outside the territory is also reserved to the Holy See."²¹⁵

According to Abbass, while a Latin local ordinary has the faculty to dispense from the canonical form in virtue of c. 1127 §2 of *CIC*, an Eastern local hierarch, with the exception of the patriarch and the major archbishop, has no such faculty. Can the Latin

²¹³ ABBASS, "Marriage in the Codes of Canon Law," p. 562; also see J. ABBASS, *Two Codes in Comparison*, Second revised edition, Kanonica 7, Rome, Pontificio Istituto Orientale, 2007, pp. 128-129.

²¹⁴ See *Nuntia*, 28 (1989), pp. 116-117; also see ABBASS, "Marriage in the Codes of Canon Law," p. 563 and ABBASS, *Two Codes in Comparison*, p. 129.

²¹⁵ ABBASS, "Marriage in the Codes of Canon Law," p. 562, footnote 125; also see ABBASS, *Two Codes in Comparison*, p. 129, footnote 120.

local ordinary exercise his faculty in favour of his subjects, whether Latin or Eastern Catholics? In this regard, Abbass says:

It is apparent that the Supreme Legislator, in promulgating *CCEO* c. 835 for the Eastern Catholic Churches, has desired to highlight and safeguard the *ritus sacer* of the Eastern matrimonial discipline. In thirteen of the twenty-one Eastern Catholic Churches *sui iuris*, dispensations from canonical form can only be granted by the Holy See. In the other eight Patriarchal or Major Archiepiscopal Churches, the patriarch or major archbishop, acting within his territory, will only grant the dispensation for a most serious reason. From the *iter* of *CCEO* c. 835, it should also be evident why it has been argued that a Latin bishop cannot validly delegate a layperson or deacon to assist at a marriage involving Eastern Catholics subject to him. The *ritus sacer* is also to be so safeguarded that neither Eastern nor Latin bishops can validly dispense from canonical form in the case of a mixed marriage involving Eastern Catholics. Moreover, since the Eastern Churches not in full communion with the Roman See also require the *ritus sacer* for canonical form, the Latin bishop is, also, not to dispense from the sacred rite under *CIC* c. 1127 §2. What *CIC* c. 1127 §2 basically intends, therefore, is that a Latin local ordinary can dispense from canonical form in the case of a mixed marriage between a Latin Catholic and a baptized person belonging to a Protestant Church or other separated ecclesial community in the West.²¹⁶

As is evident from the above analysis, Abbass is of the opinion that a Latin local ordinary cannot lawfully delegate either a deacon or a lay person to assist at marriages that involve Eastern Catholics or Eastern non-Catholics, because these marriages require for validity the *ritus sacer* which a deacon and a lay person are not competent to give. In other words, a Latin local ordinary cannot dispense from the canonical form which includes the *ritus sacer*. Such a dispensation must be obtained from the Holy See or from the papal representative in the region. Abbass, as does Gallaro, tries to bolster his view by alluding to Article 154 the 1993 *Ecumenical Directory*, where an exception to the Latin local ordinary's power to dispense from the canonical form is explicitly stated, "without prejudice to the law of Eastern Churches." Canon 835 of *CCEO* is explicitly added in the footnote to this exceptive clause, presumably implying that, in a mixed

²¹⁶ ABBASS, *Two Codes in Comparison*, p. 130.

marriage case, a Latin local ordinary is not empowered to dispense an Eastern Catholic, even if subject to him, from the canonical form.

What are we to conclude from this discussion? The canonical form of marriage consists of the following elements: (1) sacred rite (*ritus sacer*); (2) presence of the local hierarch, local pastor, or a priest (*sacerdos*) lawfully delegated by either of them to bless the marriage; (3) at least two witnesses (*CCEO* c. 828, §1). The sacred rite (*ritus sacer*) is defined as the “very intervention of a priest (*sacerdos*) who assists and blesses” (*CCEO* c. 828, §2). There is no mention of a deacon or a lay person in this provision. Therefore, can a deacon or a lay person be lawfully authorized by a Latin local ordinary to assist at and bless the marriages which involve Eastern Catholics or Eastern non-Catholics? Although there was at one time a difference of opinion on this issue, at present the prevalent view among Eastern canonists seems to be unanimous that neither a deacon nor a lay person can be lawfully authorized to assist at and bless the marriages involving Eastern Catholics or Eastern non-Catholics even when the Eastern Catholics may be subject to the Latin local ordinary. According to this interpretation, a deacon and a lay person validly assist at and bless such marriages only with a dispensation obtained from the Holy See or from the competent authority. Despite a common front on the part of Eastern canonists, we feel that this matter must be referred to the Pontifical Council for Legislative Texts for an authentic interpretation in view of the concrete pastoral situations faced by the Church today.

As to the possibility of a lay person assisting at and blessing a marriage involving Eastern Catholics, the opinions and the mind of the legislator seems to be clear. A lay person cannot validly celebrate a marriage involving Eastern Catholics nor can the Latin

local ordinary validly dispense from the requirement of *ritus sacer*. Can a Latin ordinary dispense from the canonical form in favour of his Eastern Catholic subjects? The mind of the legislator and the present prevalent opinion on the matter seems to preclude such a possibility.

1.3.3.2– Prohibition of Double Ceremonies

Once a mixed marriage is celebrated in the Catholic Church according to the prescribed form, another religious ceremony of marriage for the exchange of consent or renewal of consent is strictly forbidden. Likewise, after a mixed marriage has been celebrated publicly with the dispensation from the canonical form, a Catholic ceremony is prohibited. However, the couple can seek a simple blessing from their pastor after the valid celebration of marriage. A second celebration can lead to a doubt concerning the validity of the original marriage celebration.²¹⁷ It is also prohibited to ask for and receive the marital consent by the ministers of both the Churches of the parties in the same religious ceremony.²¹⁸

The Holy See has permitted two religious ceremonies for a marriage between a Catholic and an Orthodox Christian as long as the consent was exchanged before a

²¹⁷ This prohibition does not apply to those countries where civil law requires civil ceremonies for the validity of marriage. In such cases the Church considers the couple to be truly married only after the marriage has been celebrated according to the canonical norm. So, generally a dispensation from the form of marriage is not granted for such civil ceremonies.

²¹⁸ See BEAL, Commentary on cc. 1124-1129, in *CLSA Comm 2*, p. 1351.

Catholic minister and the Orthodox priest conferred the nuptial blessing with no new exchange of consent.²¹⁹ In this regard Prader writes:

Various Orthodox Churches do not consider valid a mixed marriage celebrated according to the Catholic rite and require that, besides the celebration in the Catholic Church, the marriage be celebrated according to Orthodox rite. If so, a dispensation from the Catholic form (c.835) can be sought. However, it is not forbidden for the couple to go to the Orthodox priest to obtain a liturgical blessing, provided it is public knowledge that this is not a second wedding.²²⁰

The pastor of the parish who is responsible for preparing the couple for marriage is the one who determines the authenticity and sufficiency of the reason for allowing the mixed marriage as well as the assurance of the conditions.²²¹

The assessment of the sufficiency of the cause for mixed marriage should be done in conjunction with the determination of the conditions required for granting the dispensation. Therefore, the one who prepares the couple for marriage must take his responsibility seriously.²²² The couple should be given appropriate instruction regarding marriage and its essential elements and properties. After the marriage has been contracted, the ordinary and the pastor are to see to it that the parties honour the promises. Those assisting at such marriages are to observe the prescripts of law governing mixed marriages.²²³

²¹⁹ See CONGREGATION FOR THE DOCTRINE OF THE FAITH, Reply, 16 June 1966, in *CLD*, 6, pp. 22-23; see BEAL, Commentary on cc. 1124-1129, in *CLSA Comm 2*, p. 1351.

²²⁰ PRADER, "Marriage," in *A Guide to the Eastern Code*, p. 559.

²²¹ See DOYLE, Commentary on cc. 1124-1129, in *CLSA Comm 1*, p. 802.

²²² See *ibid.*

²²³ *Questiones De Disciplina Sacramentorum: schema decreti De matrimoniis mixtis propositum a Commissione de disciplina sacramentorum*, Romae, Typis polyglottis Vaticanis, 1962, pp. 6-7.

1.4 –ECUMENICAL IMPLICATIONS OF THE LEGISLATION

One of the chief concerns of the Second Vatican Council was the restoration of unity among all Christians.²²⁴ The council declared that those who are baptized are reborn in Christ and are, therefore, incorporated into the Church of Christ. For this reason, there is a real (though incomplete) communion among Catholics and other Christians. The council upheld the religious freedom and supremacy of one's conscience in worshipping God. Therefore, no one is to be forced to act in a manner contrary to his conscience, especially in matters of religious beliefs. In view of these principles, the Catholic Church revised its approach to mixed marriages.²²⁵

The legislation on mixed marriages underwent substantial changes in order to conform to the ecumenical principles declared by the Council. While safeguarding the rights and obligations of the Catholic party to keep his/her Catholic faith and to have the children born of the union baptized and brought up in the Catholic faith, the freedom of conscience of the non-Catholic party has been respected as far as possible.²²⁶

According to *CCEO* (cc. 780 §§ 1& 2 and 781), the Catholic Church does not claim exclusive competence in the case of mixed marriage.²²⁷ In spirit with the teaching

²²⁴ See *UR* 1.

²²⁵ See G. BAUM, "Mixed Marriage - An Ecumenical Issue," in *The Ecumenist*, 4 (1966), p. 75.

²²⁶ See D. SALACHAS, "The Ecumenical Significance of the New Code," English trns. by E. THOTTAN, in J. CHIRAMEL and K. BHARANIKULANGARA (eds.), *The Code of Canons of the Eastern Churches: A Study and Interpretation*, Alwaye, St. Thomas Academy of Research, 1992, pp. 272-275.

²²⁷ See *Nuntia*, 5 (1977) pp. 52-62; 8 (1979) pp. 3-29; 10 (1980) pp. 3-64; 29 (1987) pp. 60-61.

of the Second Vatican Council (*UR 16*), *CCEO* (c. 780 §2) recognizes the competence of the Orthodox Church Law for their governance in a mixed marriage between a Catholic and an Orthodox. In the case of other non-Christians, the same canon implicitly recognizes the civil law to which the party is subject. Here, the reason for recognizing Orthodox jurisdiction and “canonizing” civil laws is ecumenical.

The 1993 *Ecumenical Directory* contains a specific section (nn.143-160) on mixed marriages. The Directory reiterates the norms on mixed marriages that were given in the Codes of Canon Law (*CCEO* c. 813; *CIC/83* c.1124). In n. 143, the Directory says: “The term ‘mixed marriage’ refers to any marriage between a Catholic and a baptized Christian who is not in full communion with the Catholic Church.”

In order to safeguard the faith of Catholics, the Church recommends and encourages marriage between two Catholics. The Directory states that the primary concern of the Church in all marriages “is to uphold the strength and stability of the indissoluble marital union and the family life that flows from it” (n. 144). In this regard the Directory also makes a practical observation “that mixed marriages frequently present difficulties for the couples themselves, and for the children born to them, in maintaining their Christian faith and commitment and for the harmony of family life” (n. 144). However, the Church is also well aware of the growing number of mixed marriages and the need for their pastoral care (see n. 145).

The Directory (nn.146-149) makes a significant contribution to the preparation of prospective spouses for a mixed marriage and for the pastoral care of couples in mixed marriages. In preparing the couple, n. 148 of the Directory states:

[...] the priest or deacon, and those who assist him, should stress the positive aspects of what the couple share together as Christians in the life of grace, in faith, hope and love, along with the other interior gifts of the Holy Spirit.

The primary concern expressed here is the protection of the indissolubility of marriage and the family life that flows from it.²²⁸ In stressing this point, the Directory says: "When, for a just and reasonable cause, permission for a mixed marriage is requested, both parties are to be instructed on the essential ends and properties of marriage which are not to be excluded by either party" (n. 150).

In granting permission for a mixed marriage, the Directory instructs the local Ordinary to consider the special situation where a non-Catholic party may explicitly refuse the prenuptial promise of the Catholic party regarding the upbringing of their children in Catholic faith. It states: "In order to judge the existence or otherwise of a 'just and reasonable cause' with regard to granting permission for this mixed marriage, the local Ordinary will take account, among other things, of an explicit refusal on the part of the non-Catholic party" (n. 150). The decision in such a case is left to the discretion of the local Ordinary. However, such a decision should be based solely on the promise of the Catholic party that he/she will do his/her best to have their children baptized and brought up in the Catholic faith.²²⁹

²²⁸ See J. H. HUELS, "The 1993 Ecumenical Directory: Theological Values and Juridical Norms," in *The Jurist*, 56 (1996), p. 418.

²²⁹ "If, notwithstanding the Catholic's best efforts, the children are not baptized and brought up in the Catholic Church, the Catholic parent does not fall subject to the censure of Canon Law. At the same time, his/her obligation to share the Catholic faith with the children does not cease. It continues to make its demands, which could be met, for example, by playing an active part in contributing to the Christian atmosphere of the home; doing all that is possible by word and example to enable the other members of the family to appreciate the specific values of the Catholic tradition; taking whatever steps are necessary to be well informed about his/her own faith so as to be able to explain and discuss it with them; praying with the family for the grace of Christian unity as the Lord wills it" (*Ecumenical Directory*, n. 151).

Regarding the children of a mixed marriage between a Catholic and a member of an Eastern non-Catholic Church, the Directory could be read to imply that the children be baptized and raised in either faith. It says that the children be “spiritually nourished by the sacramental mysteries of Christ,” and formed “in authentic Christian doctrine and ways of Christian living” (see n. 152). We see the emphasis given here is on “Christian” rather than on “Catholic living.” In light of this nuance in terminology, J. Huels states the following on this point:

This is not a formal derogation from canon law, but it does have a bearing on how the law is interpreted and applied in the case of a mixed marriage involving a Catholic and an Eastern non-Catholic party. When the Catholic party is unwilling to make the promise to do all in his or her power to have the children baptized and raised in the Catholic faith, permission for a mixed marriage could still be granted provided the children will be baptized and raised in the Eastern Church.²³⁰

Regarding the celebration of a mixed marriage, the Directory provides for the possible participation of a Catholic minister at a non-Catholic ceremony celebrated in virtue of a dispensation from canonical form. If a Catholic minister is invited to participate in the celebration of the marriage, he may take part in it only after obtaining the permission from the local hierarch (see n. 157). In the same way, only with the permission of the local Ordinary, the non-Catholic minister may be invited to participate in the wedding celebrated in a Catholic church. The local ordinary grants this permission at the request of the couple (n. 158).

Concerning the non-Catholic party receiving Holy Communion, the Directory says:

²³⁰ HUELS, “The 1993 Ecumenical Directory,” p. 420.

[...] the decision as to whether the non-Catholic party of the marriage may be admitted to Eucharistic communion is to be made in keeping with the general norms existing in the matter both for Eastern Christians and for other Christians, taking into account the particular situation of the reception of the sacrament of Christian marriage by two baptized Christians.²³¹

As a whole, the *Ecumenical Directory* manifests the openness of the Catholic Church toward other Churches and ecclesial communities. The Directory follows both Codes of Canon Law and is applicable to both Eastern and Latin Churches.

CONCLUSION

The Second Vatican Council ushered in an era of change in the Catholic Church. As a result of the theological reflections that emerged in the Council, the Church adopted a fresh approach toward mixed marriages, especially with respect to the requirement of pre-nuptial promises. The conciliar decree on Ecumenism *Unitatis redintegratio*, called for a spirit of openness toward non-Catholics in view of the fact that all share a common Christian heritage.²³² This teaching was reiterated in the decree on Eastern Catholic Churches *Orientalium Ecclesiarum*, which provided the theological and juridic foundation for the legislation on mixed marriages now found in the Code of Canons of the Eastern Churches.

The Code of Canons of the Eastern Churches obliges the members of the Eastern Catholic Churches to preserve their tradition and Catholic faith, yet it offers positive pastoral support to those choosing to enter mixed marriages. Recognizing the reality of mixed marriages and reflecting the principles of ecumenism declared by the Second

²³¹ *Ecumenical Directory*, n. 59.

²³² See *UR*, 16.

Vatican Council, *CCEO* seeks to strike a balance between juridical requirements and pastoral care of the faithful. The Code attempts to foster closer ties between Catholics and non-Catholics, especially the Eastern Orthodox Christians. The Code even recognizes the competency of the Catholic *sui iuris* Churches to prescribe particular norms concerning the declarations and promises in accordance with the cultural context of each Church *sui iuris*.

While recognizing the competence of the civil authorities concerning the civil effects of marriage (*CCEO* c. 780 §1; *CIC* c. 1059), the Church, through appropriate laws, shows its responsibility of protecting the natural and divine institution of marriage from possible dangers to the faith of the Catholic spouse and the children. The present legislation on mixed marriage is pre-eminently pastoral and ecumenical in its approach. The 1993 *Ecumenical Directory* builds on this legislation.

In the following chapter we will examine the norms of mixed marriage in the particular law of the Syro-Malabar Church. This examination will include a brief historical overview of the Syro-Malabar Church *sui iuris* in order to situate its particular legislation to provide a proper historico-juridical context.

CHAPTER TWO

MIXED MARRIAGE IN THE PARTICULAR LAW OF THE SYRO-MALABAR MAJOR ARCHIEPISCOPAL CHURCH

INTRODUCTION

This chapter aims at a critical analysis of the legislation recently promulgated by the Syro-Malabar Church on mixed marriage. We begin with a short history and the juridical patrimony of the Syro-Malabar Church, which, we hope, will offer us a glimpse of the identity of this *sui iuris* Church, its ecclesiastical tradition, and the ordering of Christian life. For, the Decree *Orientalium Ecclesiarum* (= *OE*), in its introductory remark states:

The Catholic Church holds in high esteem the institutions of the Eastern Churches, their liturgical rites, ecclesiastical traditions, and Christian way of life. For, distinguished as they are by their venerable antiquity, they are bright with that tradition which was handed down from the apostles through the Fathers, and which forms part of the divinely revealed, undivided heritage of the universal Church.¹

Moreover, pointing out the dignity of every Catholic *sui iuris* Church as a portion of the universal Church, the Decree also states:

Such individual Churches, whether of the Eastern or of the Western, although they differ somewhat among themselves in what is called rites (that is, in liturgy, ecclesiastical discipline, and in spiritual heritage) are, nevertheless, equally

¹ "Orientalium Ecclesiarum instituta, ritus liturgicos, traditiones ecclesiasticas atque vitae christianae disciplinam Ecclesia catholica magni facit. In eis enim, utpote veneranda antiquitate praeclaris, elucet ea quae ab Apostolis per Patres est traditio, quaeque partem constituit divinitus revelati atque indivisi universae Ecclesiae patrimonii" (SECOND VATICAN COUNCIL, Decree on the Eastern Catholic Churches *Orientalium Ecclesiarum*, 21 November 1964, in *AAS*, 57 (1965), pp. 76-89; English trans. in FLANNERY I, pp. 398-407).

entrusted to the pastoral guidance of the Roman Pontiff, the divinely appointed successor of St. Peter in supreme governance over the universal Church.²

So, first of all we will briefly explore the rich patrimony of the Syro-Malabar *sui iuris* Church. Since the focus of our study is on the mixed marriage norms according to the present particular law of the Syro-Malabar Church, the primary sources of the juridical disciplines related to the history of the Syro-Malabar Church will not be analyzed in detail. A critical evaluation, however, of the particular norms of mixed marriage in light of the ecumenical principles envisaged in the norms of mixed marriage in the common Code of Canons of the Eastern Churches (CCEO) will be made.

2.1 — THE HISTORY OF THE SYRO-MALABAR CHURCH

The history of the Syro-Malabar Church³ begins with St. Thomas, one of the twelve apostles of Jesus Christ. It is believed that he came to India in 52 A.D. and landed

² “Huiusmodi particulares Ecclesiae, tum Orientis tum Occidentis, licet ritibus, ut aiunt, nempe liturgia, ecclesiastica disciplina et patrimonio spirituali partim inter se differant, aequali tamen modo concreduntur pastorali gubernio Romani Pontificis, qui Beato Petro in primatu super universam Ecclesiam divinitus succedit” (OE 3; English trans. in ABBOTT, *The Documents of Vatican II*, p. 374).

³ “The Syro-Malabar Church is that apostolic, Indian, Oriental Catholic Church which, according to strong and living tradition, was founded by the Apostle Thomas” (A. THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, Kottayam, Pontifical Oriental Institute of Religious Studies, 1987, p. 2); “By Syro-Malabar Church we refer to the community of Christians in India who trace back their origin in faith to St. Thomas the Apostle, and who were once hierarchically connected with the Chaldean Church of Mesopotamia and Persia” (T. PUTHIYAKUNNEL, *Syro-Malabar Clergy and the General Obligations: An Historico-Juridical Study in the Light of Canons 60-87 of the motu proprio “Cleri sanctitati,”* Pachalam, Vincentian Publication Bureau, 1964, p. 1); “The Church of Malabar, according to tradition, was founded by the Apostle St. Thomas. This tradition is lived by the St. Thomas Christians the majority of whom form the Malabar Church” (P. PODIPARA, *The Canonical Sources of the Syro-Malabar Church*, ed. by X. KOODAPUZHA, Kottayam, Pontifical Oriental Institute of Religious Studies, 1986, p. 49). The term ‘Syro-Malabar Church’ came to general use only by the middle of the 19th century. The usage was started to distinguish the community of Thomas Christians subject to the prelates

at Kodungallur on the Kerala⁴ coast. According to tradition, both literary and local, he preached the Gospel to the people of Kerala, many of whom received the faith. Hence, this Church has been called “The Church of St. Thomas.”⁵

2.1.1 - The Church Under Foreign Influence

The history of the Syro-Malabar Church reveals that the Thomas Christian Community was influenced by various cultures and religious customs of the land and by the foreign missionaries.

2.1.1.1 —The East Syrian Influence

The St. Thomas Christians in India established a connection with the East Syrian Church from very early times.⁶ The arrival of the Knanaya Community, which traces its origin from a group of Jewish-Christian immigrants from Southern Mesopotamia to

of the Latin jurisdiction from the followers of Roccas and Mellus. See P. PODIPARA, *The Hierarchy of the Syro-Malabar Church*, Alleppy, Prakasam Publications, 1976, p. 15.

⁴ Kerala is one of the twenty-nine states of India, situated at the southern most part of the peninsula. The Christian population of Kerala is 22% as against 2.5% of the Indian average. Among the Christians in Kerala, Catholics form the majority. There are three rites among the Kerala Catholics, namely the Latin rite, and the Oriental rites of Syro-Malabar and Syro-Malankara. The Eastern rites are commonly called St. Thomas Christians, the descendants of those converted by St. Thomas the Apostle, when he preached in India from 52 AD. See <http://www.ghg.net/knanaya/history/> - on 01 November 2005.

⁵ Although, the term ‘Syro-Malabar Church’ came to general use only by the middle of the 19th century, we see this term appearing for the first time in the writings of the missionaries in 1788. See ARCHIVUM SACRAE CONGREGATIONIS DE PROPAGANDA FIDE, *Scrittura originali riferite nelle Congregazioni Generali*, vol. 878, n. 104. See THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 2. In this thesis the terms, namely, ‘St. Thomas Christians’, ‘Thomas Christians’, ‘Thomas Christian Community’, ‘Malabar Church’, ‘Malabar Christians’ are used interchangeably as situation occurs.

⁶ For a detailed account visit, <http://www.smcim.org/about.htm>.

South India in 345 A.D.,⁷ infused a renewed spirit into the Church established by St. Thomas and ruled by East Syrian (Chaldean) bishops. Until the end of the 16th century, the Bishops for the St. Thomas Christians in India were sent from the East Syrian Church, appointed by the Patriarch of the East Syrian Church. Most historians are of the opinion that although the priests from India were not consecrated bishops, the St. Thomas Christians kept their identity as an individual Church, distinct from the East Syrian Church.⁸ This situation lasted for about eleven centuries. Under the East Syrian Bishops, however, the Knanaya Community had its own Churches and priests distinct from those of the non-Knanaya St. Thomas Christians.⁹

⁷ The word “Knanaya” is spelled differently by different authors. However, in this thesis we follow the spelling “Knanaya” as given in the official Web Site of the Kottayam Archeparchy. In the Syro-Malabar Church there is a small group of faithful called “Southists” or the “Knanaya Catholics.” It is an ethnic group, and an endogamous community, which has its own distinct traditions, customs and culture. They are spread throughout the world. This strong community is under the archbishop of Kottayam, who enjoys personal jurisdiction over all Knanaya Catholics, who long preserved their unique traditions and customs. Even now they are keen on preserving them for the generations to come. See <http://www.ghg.net/knanaya/history/> - on 01 November 2005. The original community consisted of about 400 persons belonging to 72 families headed by Thomas of Kynai. A bishop by name Uraha Mar Yousef, four priests and several deacons were among them.

⁸ “The Church of the Thomas Christians was neither an integral part nor an output of the Church in Mesopotamia (Chaldea) and that the relation of the former with the latter were for practical, and not for doctrinal purposes” (P. PODIPARA, “Hindu in Culture, Christian in Religion, Oriental in Worship,” in *Ostkirchliche Studien*, 8 [1959], pp. 94).

⁹ This practice continued also under the Latin Rite European bishops, who governed the St. Thomas Christians. On 29 August 1911 Pope Pius X constituted a Vicariate Apostolic exclusively for the Knanaya Community by the Apostolic letter *In universi christiani*. Later on 21 December 1923 Pope Pius XI raised the Vicariate Apostolic of Kottayam to an Eparchy. When the territorial limits of the Syro-Malabar Church were extended in 1955, the jurisdiction of the Eparchy of Kottayam also was made co-extensive with the then extended territory of the Syro-Malabar Church.

2.1.1.2 -The Latin Influence

With the arrival of the Portuguese in 1498 and their missionary work from the very beginning of the 16th century, a Latin connection began to take shape.¹⁰ The Portuguese were happy to discover the St. Thomas Christians on the west coast of India, who had a hierarchical relation with the East Syrian Church and was enjoying an autonomous status with its individuality distinct from that of all other individual churches.¹¹

Because of the Portuguese colonization of parts of India in the early 16th century and the subsequent ecclesiastical arrangements, in 1599 the Metropolitan See (Angamaly) of St. Thomas Christians was reduced to a bishopric under Goa and from 1600 to 1896 European Bishops from the Latin Church were appointed to govern the St. Thomas Christians.

During the period from 1653 to 1887 many divisions took place among the St. Thomas Christians mainly in an attempt to rid themselves of the rule of Latin Bishops who often saw little value in the ancient system of administration and the St. Thomas

¹⁰ "In 1558 Cochin was made a Portuguese bishopric suffragan to Goa which was raised to a metropolis the same year... Both Goa and Cochin were under Padroado (Patronage) of the Portuguese crown. Before the erection of the bishopric of Goa, the Portuguese ecclesiastical jurisdiction in India was exercised successively by the Prelates of Tomar and Funchal" (PODIPARA, *The Canonical Sources of the Syro-Malabar Church*, p. 57).

¹¹ T. PALLIPURATHKUNNEL, *A Double Regime in the Malabar Church (1663-1716)*, Alwaye, Pontifical Institute of Theology and Philosophy, 1982, p. 2.

Christian heritage.¹² Pointing out some expressions in their liturgical texts, the Portuguese argued that St. Thomas Christians believed in the Nestorian heresy.¹³

2.1.1.2.1 —Synod of Diamper (Udayamperoor)

When the last Bishop appointed by the East Syrian Patriarch died in 1597, the Portuguese tightened their hold on the St. Thomas Christians and never permitted any more East Syrian Bishops to enter Malabar. In 1599 the Latin Archbishop Alexis de Menezes of Goa convened a synod at Udayamperoor (Synod of Diamper) in the present Kerala.¹⁴ The Synod not only prohibited the practice of some of the existing customs but

¹² The missionaries seemed to have had the impression that the St. Thomas Christians were not Catholics but Nestorians since they accepted Bishops from the East Syrian Church which had officially adopted Nestorianism. As those missionaries were living at a time soon after the council of Trent in which the decision was made to be tough with heretics. For a brief history of the Syro-Malabar Church visit: www.smalabar/churhist.htm.

¹³ This was certainly untrue. The Syro-Malabar Christians had never accepted Nestorianism even though they had contact with the East Syrians and they were not at all involved in any of the Christological controversies. On the contrary, whenever they got a chance they reiterated their allegiance to the Pope and their communion with the Church of Rome. About the Catholic communion of St. Thomas Christians, Pope John Paul II stated: "It is to the glory of this Church that it has not ever been severed from the communion with the Church of Rome, in a continuity that the enormous geographic distance has never been able to break" (*Insegnamenti di Giovanni Paolo II*, III/2, Città del Vaticano, Libreria editrice Vaticana, 1980, p. 513).

¹⁴ A detailed account of this Synod is available in J.F. RAULIN, *Historia Ecclesiae Malabaricae cum Diamperitana Synodo*, Franbrough, Hants, Gregg International Publishers, 1969; M. GEDDES, *The History of the Church of Malabar... together with the Synod of Diamper Celebrated in the Year of the Lord, 1599*, London, W. Reeves, 1694; J. THALIATH, *The Synod of Diamper*, *Orientalia Christiana Analecta* 152, Roma, Pontifical Institute of Oriental Studies, 1958; THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, pp. 133-144; G. NEDUNGATT (ed.), *The Synod of Diamper Revisited*, *Kanonika* 9, Roma, Pontificio Istituto orientale, 2001.

also made the people accept many customs with which they were not familiar.¹⁵ We will discuss in this chapter some of the Synodal decisions.

2.1.1.2.2 —The Coonan Cross Oath

The Synod of Diamper severed the connection between the St. Thomas Christians and the East Syrian Church. The St. Thomas Christian Church thus became a colony Church of the Portuguese Patronage (Padroado).¹⁶

¹⁵ A good number of the customs were still followed by the Christians, many of which owe their origin to social requirements. Such customs are to be regarded as part of the discipline of the Malabar Church. They are very old customs traceable to a time when Christianity was introduced in Malabar and accepted spontaneously and without changing the indigenous character of the inhabitants. See L.K. ANANTHAKRISHNAN IYER, *Anthropology of the Syrian Christians*, Ernakulam, Prakasam Publications, 1926; P. PODIPARA, "The Social and Socio-Ecclesiastical Customs of the Syrian Christians of India," in *Eastern Church Quarterly*, 7 (1947), pp. 222-236. "Whatever were the local customs or regulations made by the Catholicosate of Seleucia, the Portuguese did not lose time in trying to persuade the Christians of St. Thomas to conform to the discipline of the Latin communities. To allow Christians living in their midst to follow 'strange' usages was not acceptable to the Portuguese, especially to their clergy. Although the missionaries of those days were not wanting in zeal, they lacked the knowledge and personal appreciation of the Eastern Christians in General and of the Syro-Malabar Christians in particular" (TISSERANT, *Eastern Christianity in India*, p. 165).

¹⁶ The term 'Padroado' stands for "the royal protection of the king of Portugal over the churches in the territories occupied by the Portuguese." See PALLIPURATHKUNNEL, *A Double Regime in the Malabar Church*, p. 3. The kings of Portugal received the power from Pope Nicholas V (1447-1455) to conquer the kingdoms of pagans and to spread the kingdom of God. See *Bullarium patronatus Portugallae Regum in Ecclesiis Africae, Asiae atque Oceaniae, bullas, brevia, epistolas, decreta, actaque Sanctae Sedis ab Alexandro III ad hoc usque tempus amplectens*, Tomus 1 (1171-1600), 1868, pp. 22-24. In 1455 this power was reconfirmed by Pope Calixtus III (1455-1458) by his bull *Inter caetera*. See *Bullarium patronatus Portugallae Regum*, pp. 36-37. "The Papal bull *Aequum reputamus* of Paul III (1543-1549) of 3 November 1534, erecting the diocese of Goa, became the source and foundation of the royal patronage of Portugal in India. The king had the right to present candidates for a benefice or ecclesiastical dignity. He had the duty to erect the churches and the monasteries and to keep them in good order. He should provide the churches with vestments, furniture etc. He should also send missionaries from Europe to lands beyond the seas and supply sufficient number of priests for the churches and monasteries and maintain them" (PALLIPURATHKUNNEL, *A Double Regime in the Malabar Church*, p. 4).

However, a group of the St. Thomas Christians never accepted rule by the Latin Bishops; their protest climaxed in what is known historically as the Coonan Cross Oath. The leadership of the St. Thomas Christian community pledged in this oath no longer to accept the rule of the Jesuit missionaries from among whom the bishops were appointed.¹⁷

2.1.1.2.3 —The Malabar Vicariate Apostolic

Because of the confusion that prevailed at the time of Portuguese missionaries, Rome intervened and sent Carmelite missionaries to care for the St. Thomas Christians. A separate Malabar Apostolic Vicariate was established without suppressing the Padroado jurisdiction so that the St. Thomas Christians might not be left without a bishop and thus were placed under dual jurisdiction of the Padroado and Propaganda.

¹⁷ The Coonan Cross Oath in 1653 at the Church of Our Lady of Life at Mattanchery was the culmination of several years of latinization by the Portuguese, and the crowd gathered there took an oath that they would not be subject to the Portuguese Archbishop of Goa, Francis Garcia. This revolt eventually split the Church into two: one group continued to recognize the prelates appointed by Rome and the other broke away from Rome and joined the West Syrian Jacobite Church of Antioch. The Jacobite Patriarch of Antioch resides outside of Damascus, Syria. This group came to be known as the Jacobites (Puthankootukar) or Syrian Orthodox Church of India. The Marthomites separated from the Jacobites in the 19th century due to Anglican Church influence. The Jacobites were further divided into two groups: Methran Kakshi or the Bishop's group (Orthodox Syrian Church of India) whose Catholicos or supreme head resides at Devalokam, Kottayam, and the Bhava Kakshi or the Patriarch's Group (Jacobite Syrian Orthodox Church of India) whose head is the Antiochene Jacobite Patriarch. At the time of the Coonan Cross Oath many of the Knanaya parishes also had accepted the "pseudo bishop" ordained by the twelve priests. In the course of time they too accepted the Antiochean way of worship and customs. When the reestablishment of communion came about in 1930 some of the Knanaya parishes also followed the same. However, instead of joining the Syro-Malankara Church, they joined the eparchy of Kottayam in the Syro-Malabar Church even though they follow the Antiochean liturgy. They have separate parishes and parish priests within the eparchy of Kottayam. See A.M. MUNDADAN, *History of Christianity in India*, vol. 1, Bangalore, Theological Publications of India, 1984.

The rule of the foreign missionaries ended in 1896 when indigenous Bishops from among the St. Thomas Christians were appointed to their own Church. By that time, the ancient name "Church of St. Thomas Christians" had given way to the present name "Syro-Malabar Church."¹⁸

After the Coonan Cross Oath, a group of believers refrained from embracing the Latin jurisdiction; they instead chose to follow Archdeacon Thomas who was proclaimed archbishop by twelve priests through the imposition of hands¹⁹ and joined the West Syrian Jacobite Church of Antioch. This group came to be known as the Jacobites (*Puthankootukar*) or Syrian Orthodox Church of India. Those who remained in communion with the Pope after the Coonan Cross Oath later became known as the Syro-Malabar Christians.²⁰

2.2 — THE CANONICAL DISCIPLINES OF THE ST. THOMAS CHRISTIANS

History reveals four phases of juridical disciplines in the heritage of the Syro-Malabar Church. At first the St. Thomas Christian community responded to the faith

¹⁸ St. Thomas Christians were known by different names as *Marthoma Nazarani*, *Nazarani* Catholics and Syrian Catholics. Their liturgical language was Syriac. The special feature of the St. Thomas Christians is that they followed the liturgy of the Syrian Churches of Eastern rites and at the same time they maintained the ultimate linkage with the Holy See. They had hierarchical relationship with the East Syrian Church and kept up their own administrative system. A local priest leader called the Archdeacon was the head of the community. He had wide-ranging powers.

¹⁹ PALLIPURATHKUNNEL, *A Double Regime in the Malabar Church*, p. 3.

²⁰ This name was given by the Roman authorities to refer to the Catholic St. Thomas Christians. The term Syro-Malabar was chosen apparently to avoid confusion with the Malabar rite which existed as part of the Latin Church in the Coromandel coast of India. The present Syro-Malabar Church is only a fraction of the ancient Indian Church of the St. Thomas Christians.

preached to them in their own particular socio-cultural environment and expressed it through many local customs and practices. As A. Thazhath puts it: "This gave rise to their particular customs, traditions, privileges and norms-their particular law, which in the course of time was named the 'Law of Thomas'."²¹ The St. Thomas Christians regarded the law of the Latin Church as the 'Law of Peter' and their own as the 'Law of Thomas'. The Portuguese missionaries in the Synod of Diamper (1599) condemned this usage as a heresy and schism.²² Of course anyone, especially those who were alien to the culture of the land, could easily misunderstand the concept of the 'Law of Thomas' as Thazhath explains it. He writes:

We may suppose that the law of Thomas, as its ancient stage had traits of this cosmopolitan culture - a mixture of Dravidic, Buddhist, Jainist, Jewish, Persian and Hindu influences... The Law of Thomas, therefore,

²¹ THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 7. The 'Law of Thomas' is: "[...] the customs, privileges and the liturgical and disciplinary norms of the Indian Christians of St. Thomas, conveyed through tradition since the time of their Apostle Thomas. These as *consuetudines* had received legal force in the community. Although mostly unwritten, they can be compared to the *Nomocanons* of the East Syrians (Chaldeans) and of the West Syrians (Jacobites)," (ibid., p. 11). The writings of the missionaries prove that when the Portuguese came, the terms like 'Christians of St. Thomas', 'See of Thomas', and 'Law of Thomas' were commonly in use in Malabar. See M. MUNDADAN, *Traditions of St. Thomas Christians*, Bangalore, Dharmaram Publications, 1970; M. MUNDADAN, *The Arrival of the Portuguese in India and Thomas Christians Under Mar Jacob, 1498-1552*, Bangalore, Dharmaram Publications, 1967; J. KOLLAPARAMBIL, *The Archdeacon of All-India: A Historico-Juridical Study*, Roma, Pontificia Universitas Lateranensis, 1972. The Latin bishop of the St. Thomas Christians, Francis Rose quotes Mar Abraham (the Chaldean metropolitan of the St. Thomas Christians [+1597]) saying, "The Thomas Christians are acquainted with the Law of Thomas and it will be a dishonour for them to accept another law abandoning the law in which they have lived" (ARCHIVIUM ROMANUM SOCIETATIS IESU, *Goa-Malabar*, vol. 32, n. 531; as in THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 10).

²² SYNOD OF DIAMPER, Session III, Decree vii. See RAULIN, *Historia Ecclesiae Malabaricae cum Diamperitana Synodo*, p. 88; GEDDES, *The History of the Church of Malabar*, pp. 142-143.

at the apostolic stage was Indian, which in itself was a mixture of different influences.²³

The individuality of the Malabar Church as expressed in its autonomy, followed the East Syriac Liturgy (Chaldean) and the Christianised Hindu customs, which were all part of the Law of Thomas for the St. Thomas Christians. This Law of Thomas made the Malabar Church fully at home on Indian soil, both from religious and cultural points of view.²⁴

The ecclesiastical organization, generally called *yōgam* (= assembly),²⁵ under the leadership of *Jāthikkukartavyan* (who was known as “Archdeacon of All India”),²⁶ looked after the administrative matters of the Church. This Christian unity and growth as well as political force formed a kind of ‘Christian Republic’.²⁷ The lack of written source materials of the Law of Thomas sets a limit to the scope of research into its details on a

²³ THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 13.

²⁴ P. PODIPARA, *The Individuality of the Malabar Church* (Malayalam), Alleppy, Prakasam Publication, 1972, p. 3.

²⁵ “The administration of the Church was carried on by the assembly of Thomas Christians called *yōgam*. There were three kinds of *yōgam*: the Parish Assembly (*Eṭṭaka Yōgam*), Regional Assembly (*Dēśīya Yōgam*) and General Assembly (*Mahā Yōgam* or *Potu Yōgam* or *Malabar/Malankara Church Yōgam*)” (THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 41). The general assembly managed the temporal administration of the Church. There was no higher ecclesiastical authority to question their decision. The regional assembly was formed for the administration of justice.

²⁶ This figure had great influence in the society and local kings considered him to be a prince. See PODIPARA, “Hindu in Culture,” p. 108.

²⁷ See MUNDADAN, *Traditions of St. Thomas Christians*, pp. 124-125; THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 24.

particular topic like marriage, precisely on mixed marriage, the theme of our study.²⁸

The knowledge of the Law we have today has passed on to us mainly through oral traditions, folklore²⁹ and a few written documents.³⁰

From the fourth century onwards the Syrian colonization, which began to shape the Christianity of South India, had great influence on the ecclesiastical life of the St. Thomas Christians. Before the arrival of the Portuguese, prelates who came from

²⁸ The oral tradition and the ancient songs speak of the ceremonies of liturgical, matrimonial and funeral practices of the St. Thomas Christians, but we do not find any rule as such that governed these practices. Some of the *Margam Kali Pattu* describe the marriage customs of the St. Thomas Christians. An account of this is found in *The Marriage Customs and Songs of the Christians of Malabar* (Malayalam), by P.J. THOMAS, Madras, Prakasam Publications, 1936. Since our main concern in this chapter is the present Particular Law of the Syro-Malabar Church, the scope of research into the ancient practices of St. Thomas Christians in this thesis is limited.

²⁹ See S. GIAMIL, *Genuina relationes inter Sedem apostolicam et Assyriorum orientalium seu Chaldaeorum Ecclesiam*, Roma, E. Loescher, 1902, pp. 1-12; MUNDADAN, *Traditions of St. Thomas Christians*; BERNARD OF ST. THOMAS, *The St. Thomas Christians*, (Malayalam), vol. 1, Palai, 1916; *Kraistava Vijjnana Kosam*, (Malayalam), Alleppy, Prakasam, 1975; G. MENACHERRY (ed.), *The St. Thomas Christian Encyclopaedia of India*, 2 vols., Trichur, 1973 and 1982. Folklore: P.U. LUKAS, *Puratanapattukal (Ancient Songs)*, (Malayalam), 5th ed., Kottayam, Jyothi Book House, 1980. A critical study on this work is done by C. CHOONDAL, *Christian Folk Songs*, Trichur, 1983; *Kerala Folk Literature*, Trichur, 1980. Other References are: H. HOSTEN, *The Songs of Thomas Ramban*, Cochin, 1931; F.X. ROCCA, "La leggenda di S. Tommaso Apotolo," in *Orientalia christiana*, 32 (1933), pp. 168-179; P.J. THOMAS, *Christian Literature of Kerala*, (Malayalam), Mannanam, 1935. The *Ramban Pattu* (= the Song of Ramban) is claimed to have been originally composed by a disciple of St. Thomas. The present text is asserted to be a redaction of this in modern language by Thomas Maliekal, the 48th priestly succession in his family. See THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p.18.

³⁰ For much of the specific details we depend on the writings of the missionaries of the later period. Some of the sources and references of information about the customs and traditions of St. Thomas Christians are: *Acts of Thomas*, *The Testimonies of Eusebius and St. Jerome* (*Eusebii historia ecclesiastica*). For more details, see 'Particular Sources' in Bibliography.

Mesopotamia determined the official ecclesiastical discipline.³¹ For many centuries, the St. Thomas Christians were under Chaldean jurisdiction. Since the Chaldean bishops were governing the Church in Malabar, one may say that the canon law of the East Syrian Church was in use also in the Syro-Malabar Church. This canon law was consistent with the decrees of both the East and West Synods; decisions of Patriarchs and bishops were rooted in the decisions of the Fathers of the Church and the Statutes of the Emperors.³² Although we understand that the Chaldean prelates brought to India many Chaldean law-

³¹ This has been attested to by Tisserant as follows: "The list of Syriac works condemned at Diamper bears out this assertion. The description of the volume, the title of which reads *De Synodis* (Session III, decree 14), allows us to identify it with the treaties of Abdisho of Nisibis, or *Collectio Canonum Synodicorum*. In the course of history it had replaced the previous collection of synods, or *Synodicon Orientale*, and constituted the best juridical collection of the East Syrians" (TISSERANT, *Eastern Christianity in India*, p. 163). Also see CHABOT, "L'autodafé des livres Syriac in Malabar," p. 616.

³² The disciplinary sources until the sixteenth century are classified into three categories: (i) The Early Antiochean sources: "Doctrine of the Twelve Apostles," "Didascalia of the Apostles," "Ecclesiastical Canons of the Holy Apostles," "Constitution of the Apostles," "Canons of the Apostles," Testament of Our Lord Jesus Christ, Synod of Ancyre (314), Synod of Neo-Caesarea (315), Council of Nice (325), Ecumenical Synod or Arabic Canons of Nice, Synod of Gangra (329), Synod of Antioch (340), Synod of Laodice (367), Synod of Constantinople (381); (ii) The Canons passed or accepted by: Synod of Mar Isaac (410), Synod of Mar Jabbalaha (420), Synod of Mar Dadjesus (424), Synod of Acacius (486), Synod of Mar Babai (497), Synod of Mar Aba (544), Synod of Mar Joseph (554), Synod of Mar Ezechiel (576), Synod of Jesuyahb (585), Synod of Mar Sabarjesus (596), Synod of Mar Gregory I (605), Synod of Mar George I (676), Synods of Mar Hannanjesus II (775) and Timothy (790 and 805). See J.B. CHABOT, *Synodicon orientale, ou, Recueil de Synodes Nestoriens publié, traduit et annoté par J.B. Chabot d'après le Manuscrit Syriaque n. 332 de la Bibliothèque nationale et le ms. K. VI, du Musée Borgias à Rome*, Paris, 1902, pp. 611-662. Also see PODIPARA, *The Canonical Sources of the Syro-Malabar Church*, p. 44; PUTHIAKUNNEL, *Syro-Malabar Clergy and Their General Obligations*, p. 16; (iii) Synods of Iso'bar Non (823-827), John (884-892), Elias (1028-1049) and Timothy II (1318-1332). A description of the canonical collections of this period can be found in A. NEANDER, *General History of the Christian Religion and Church*, from the trans. from German of the 2nd and improved ed. by J. Torrey, Edinburgh, T. & T. Clark, 1854; PODIPARA, *The Canonical Sources of the Syro-Malabar Church*, pp. 45-48.

codes³³ in disciplinary matters, "often local customs, traditions and privileges prevailed."³⁴ Unfortunately no sources, either primary or secondary, are available today to determine the extent of the Chaldean canon law while the Chaldean prelates were exercising their ministry in India.³⁵

There are a good number of manuscripts,³⁶ editions and studies of the rich East Syrian patrimony which the Syro-Malabar Church also shared. The most important juridical source of the Chaldean Church is the *Synodicon*.³⁷

³³ The decree 14 of the session III of the Synod of Diamper refers to many Syriac books then existing in Malabar. See RAULIN, *Historia Ecclesiae Malabaricae*, pp. 97-98; TISSERANT, "Syro-Malabar (Église)," in *Dictionnaire de droit canonique*, Paris, Letouzey et Ané, 14 (1941), cols. 3089-3093. Many of such works are lost to the Syro-Malabar Church after the synod of Diamper. See CHABOT, "L'autodafé des livres Syriaque in Malabar," pp. 613-623.

³⁴ See THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 64. Tisserant observes: "But the Malabar Christians, who were living in a land of ancient civilization with strongly rooted customs, obviously did not follow the same pattern of life as their co-religionists of Mesopotamia. Moreover, since social and religious life in the East are closely interdependent, it was not surprising that popular customs, religious practices, prescriptions of Canon law, and local, private laws were interrelated with one another" (TISSERANT, *Eastern Christianity in India*, p. 163).

³⁵ The first Latin Bishop of the Thomas Christians in Malabar, Francis Roz testifies that he saw 50 canons of the council of Nice in Malabar in a Syriac book written by Mar Ebedjesus. BARTHOLOMEO, *India orientalis christiana*, p. 64; FERROLI, *Jesuits in Malabar*, vol. 1, p. 169. Moreover, session three, decree 14 of the Synod of Diamper, lists the name of books which the Synod, under the pain of excommunication prohibited to be read, translated or kept. The list includes the Book of the Fathers (*Liber Patrum*) and the Book of Synods (*Liber synodorum*). See RAULIN, *Historia Ecclesiae Malabaricae*, p. 94. A copy of this collection transcribed by Mar Joseph (1557), bishop of Malabar, is now kept in the Vatican Library.

³⁶ For a description of the manuscripts, see J. DAUVILLIER, "Chaldéen (Droit)," in *Dictionnaire de droit canonique*, cols. 292-388; W. SELB, *Orientalisches Kirchenrecht*, Band I, *Die Geschichte des Kirchenrechts der Nestorianer*, Wien, Verlag der Osterreichischen Akademie der Wissenschaften, 1981, pp. 64-81.

³⁷ "It is the collection of most of the canonical works which the Chaldean Church received or enacted until the 11th century. These works can be classified as: (i) the canons of the Western Synod and the apocryphal works conveyed to the Chaldean Church through the

The sixteenth century was a decisive period in the history of the St. Thomas Christians. By the arrival of the Portuguese, the disciplinary law of St. Thomas Christians took a different shape. They began to exercise their power in certain parts of Malabar. The Western missionaries, unaware of the local culture and customs, thought that the St. Thomas Christians were superstitious because of their local customs³⁸ and heretical because of the Chaldean discipline. Latin norms were introduced, suppressing most of the local customs and disciplines then in practice. On 20 December 1566, Pope Clement VIII reduced the Metropolitan See of Angamaly to the status of a suffragan See of the Archdiocese of Goa with Francis Roz (Ros) as the first Latin bishop overseeing the St. Thomas Christians.³⁹ On 4 August 1600, the Padroado jurisdiction was extended to the See of Angamaly.⁴⁰ Regarding the sources of this period Thazhath writes:

The juridical sources of this period have the following threefold dimension: (i) the proper customs and traditions of this Apostolic Indian Church – the law of Thomas; (ii) the Chaldean canonical norms which were given to these Christians by their Chaldean prelates; and (iii) the Latin canonical norms which were imposed on them by the Portuguese missionaries.⁴¹

Antiochian Corpus canonum, (ii) the practical synod of the East, and (iii) some canonical works by Chaldean authors” (THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 75).

³⁸ “Was it just a pagan custom that Indians washed frequently? We would doubtless think this an excellent idea in a warm country where water was plentiful. The synod, unaware of the condition of the land, once more concluded that in India ablution often had a religious character, and hence such baths were condemned twice (session VIII, decree 13; session IX, decree 1)” (TISSERANT, *Eastern Christianity in India*, p. 164).

³⁹ BELTRAMI, “*La Chiesa Caldea nel secolo dell’Unione*,” p. 104; *Bullarium patronatus Portugalliae Regum*, pp. 260-261.

⁴⁰ *Bullarium patronatus Portugalliae Regum*, pp. 260-261; BELTRAMI, *La Chiesa Caldea nel secolo dell’Unione*, pp. 133-134.

⁴¹ THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p.108.

The important sources of the sixteenth century are: (1) The synod of Angamaly under Mar Abraham in 1583,⁴² and (2) The council of Goa in 1585.⁴³ The most important juridical source of this period derives from the Synod of Diamper⁴⁴ at which “the Portuguese gradually imposed their politico-religious power over the St. Thomas Christians in favor of a Latin jurisdiction over an Oriental Church.”⁴⁵ Aiming at complete power over the Malabar Church and in tune with the council of Trent, the Synod of Diamper dealt with faith, liturgy, sacraments, reformation of morals, and creation of parishes.⁴⁶

The chief concern of the Synod of Diamper was the rites of the sacraments.⁴⁷ Session VII, *De sacramento matrimonii*, decrees 1-16 speak of the sacrament of

⁴² This synod corrected books, arranged Liturgy, introduced clerical celibacy, accepted the canons of Florence. See PODIPARA, *The Canonical Sources of the Syro-Malabar Church*, p. 68.

⁴³ The council set norms for the maintenance of clergy, the age of ordination, clerical celibacy, formation of clergy according to the norms of Trent, and the Portuguese jurisdiction over Malabar Christians. See *Bullarium paronatus Portugalliae Regum*, pp. 73-76. Cf. PODIPARA, *The Canonical Sources of the Syro-Malabar Church*, pp. 68-69.

⁴⁴ A detailed account of the Synod is available in RAULIN, *Historia Ecclesiae Malabaricae cum Diamperitana Synodo*; GEDDES, *The History of the Church of Malabar... together with the Synod of Diamper Celebrated in the Year of the Lord, 1599*; THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, pp. 133-144. For a critical study of the validity of the Synod, see THALIATH, *The Synod of Diamper*.

⁴⁵ THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 147.

⁴⁶ See RAULIN, *Historia Ecclesiae Malabaricae*, pp. 511-513; PODIPARA, *The Canonical Sources of the Syro-Malabar Church*, p. 62.

⁴⁷ Latin forms of the sacraments of Confirmation and Extreme Unction, which were not a practice among the Malabar Christians, were introduced. The missionaries, it seems, were unaware that according to the Eastern tradition, Confirmation was considered as one of the sacraments of initiation and it was not reserved to the bishop, but each priest probably administered it at the time of baptism.

marriage. The marriage discipline was the same as that determined by the Council of Trent. Major excommunication was enacted against priests who tried to fix auspicious or inauspicious days for marriage (session VII, *De sacramento ordinis*, decree 10). Any layperson who sought auspicious or inauspicious days was also excommunicated for one year (session VII, *De sacramento matrimonii*, decree 14).⁴⁸ A year of suspension was imposed on any priest who blessed a marriage without witnesses, or without being properly deputed by the priest concerned (session VII, *De sacramento matrimonii*, decree 1); a suspension of six months was imposed on any priest who blessed the marriage of persons below the prescribed age of fourteen and twelve (session VII, *De sacramento matrimonii*, decree 10). Anathema was imposed on the married people who would separate without the intervention of the ecclesiastical authority (session VII, *De sacramento matrimonii*, decree 11).

A major excommunication was established for all clerics who married after receiving Holy Orders and a *ferendae sententiae* excommunication for any priest who refused to leave his wife if he had married a widow or a prostitute before the Ordination (session VII, *De sacramento ordinis*, decree 16).

The Synod of Diamper was a remarkable turning point in the history of the ecclesiastical discipline of the Syro-Malabar Church. It was the first time that a purely ecclesiastical disciplinary law with a definite form was enacted for the Syro-Malabar

⁴⁸ Determining auspicious or inauspicious day for marriage or for any important event in the life of a person by an astrologer was a Hindu custom (It is prevalent among the Hindus even today). For the Thomas Christians the priest used to take the role of an astrologer in determining the auspicious day.

Church and “It effectively removed some of the abuses arising out of the ignorance of the people, and clarified the Catholic doctrine leaving no room for ambiguity.”⁴⁹ But the discipline was “so similar to that of the Latins, that little care seemed to have been taken to draw up special laws for them.”⁵⁰ Thus the juridical developments of 16th century brought notable changes to the existing ‘Law of Thomas’.⁵¹

The 17th and the 18th centuries, thus, are marked by the revolt of St. Thomas Christians against the Padroado and the Propaganda jurisdictions. During this period, the St. Thomas Christians had to struggle hard to retain their proper customs, traditions and the Law of Thomas,⁵² and this struggle caused internal as well as external divisions. “The

⁴⁹ THALIATH, *The Synod of Diamper*, p. 173.

⁵⁰ TISSERANT, *Eastern Christianity in India*, p. 171. Thaliath observes: “But the subjection of the St. Thomas Christians to the Latin jurisdiction, and the pursuance of the policy of Latinization to extremes, never left the Church in real peace. The first and terrible consequence of this was the oath of 1653, which was, in the beginning, only a protest against the method adopted by the missionaries, but which finally paved the way for the Jacobite schism” (THALIATH, *The Synod of Diamper*, p. 173-174).

⁵¹ The canonical validity of the decrees of the Synod of Diamper is still an undecided matter. In his research on the Synod of Diamper, Thaliath, concluded that the Synod was invalid because: (1) it was illegitimately convoked, (2) it was conducted unlawfully and (3) it was not approved by the Holy See. He writes: “So, unless and until one is able to produce a document showing the formal approbation of the Holy See redeeming (i) the lack of authority in the one who convoked it, (ii) the absence of intention in the one who conducted it, (iii) the lack of form in the manner of conducting it, and (iv) the lack of integrity in the text promulgated, the invalidity of the Synod stands proved” (THALIATH, *The Synod of Diamper*, p. 172).

⁵² This fact can be drawn from the writings of the missionaries: F. BARRETO, *Relazioni delle missioni e christianità che appartengono alla Prouincia di Malavar della Compagnia di Giesu*, Roma, 1645; G.M. SEBASTIANI, *Prima spedizione all’Indie orientali del padre Giuseppe di S. Maria, Delegato Apostolico nei Regni di Malavari, ordinanta da Nostro Signor Alessandro Settimo*, Roma, 1666; *Seconda spedizione all’Indie orientali di Monsignor Sebastiani Fr. Giuseppe di S. Maria, Primo Vescovo di hierapoli, Hoggi di Bisignano e barone di S. Soffia, ordinanta da Alessandro VII, di gloriosa memoria*, Roma, 1672. (These sources are reported in THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 192).

St. Thomas Christians, who were divided among the Padroado and Propaganda jurisdictions, were always trying to achieve unity and autonomy.⁵³ The most important juridical source of this period is the 'Statutes of Roz'.⁵⁴ Chapters 5-8 of the third book of the Statutes speak of the purpose of marriage, the matter and form of marriage and the need of betrothal and the proclamation of banns. There are no clear directions concerning the impediments to marriage. Special instructions are given, however, for

⁵³ THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 193.

⁵⁴ Fransis Roz, a Spanish missionary, reached Malabar in 1585. He had a good knowledge of Malayalam, the local language, and Syriac as well. He had an important role in the Synod of Diamper. He was appointed the bishop of the metropolitan See of Angamaly on 20 December 1599. See BELTRAMI, *La Chiesa Caldea*, pp. 132, 256-257; PODIPARA, *The Hierarchy of the Syro-Malabar Church*, p. 116; THALIATH, *The Synod of Diamper*, p. 34. In 1603 Fransis Roz became an archbishop. See BELTRAMI, *La Chiesa Caldea*, pp. 135. In 1608, the archbishop convoked an eparchial Synod of Angamaly. The Acts of this Synod are still unknown to us. However, *Fondo Borgiano Indiano*, in the Vatican Library, is a copy of the *Statutes* of Roz. The statutes are written in Malayalam with Syriac title as: *Tūkāsa d'Mar'Īla Tōmayta d'Hendo* (Ordinance for the Thomite Church) with the Malayalam translation, *Nammute Malankare Mār Tōma Sliāte Etavakēte Kalpanakal*. As valid legislation for the archeparchy of Cranganore, it is a very important juridical source. The statutes are divided into books and subdivided into chapters with a preface and an index.

The first book is on matters of faith having six chapters: (i) faith, (ii) original sin, (iii) the creation in the beginning and devotion to angels and saints, (iv) Roman primacy, inspired books, (v) true religion against some superstitions against the Hindus, and about Mary, Mother of God and Angels, (vi) profession of faith (Creed and the seven sacraments). This is very much the teaching of the council of the Trent, sessions IV, V and VI.

The second book with 16 chapters deals with the sacraments of baptism, confirmation, confession and holy Eucharist (*Fondo Borgiano Indiano*, n. 18, pp. 18-68).

The third book with nine chapters discusses the rest of the sacraments. The first chapter speaks of the sacrament of the sick [extreme unction]. See *Fondo Borgiano Indiano*, n. 18, pp. 68-71. Chapters three and four are dedicated to the Holy Orders. See *Fondo Borgiano Indiano*, n. 18, pp. 71-79. Chapters 5 to 8 (four chapters) deal with the sacrament of matrimony. See *Fondo Borgiano Indiano*, n. 18, pp. 79-91. The last chapter is about the meaning and use of Holy Chrism. See *Fondo Borgiano Indiano*, n. 18, pp. 91-95.

The fourth book, consisting of 15 chapters, deals with the matters of clergy. See *Fondo Borgiano Indiano*, n. 18, ff. 95-125.

those who bless the marriage, and regulations are laid down regarding the marriage of slaves and pagan converts and the system of dowry.⁵⁵

Although there is a wide range of criticism regarding 'latinisation', the statutes "established order and discipline in the administration of the Church, took strong steps to improve the spiritual life of the clergy and helped recognize and improve the rights of the low castes."⁵⁶

The revolt of St. Thomas Christians against the so-called latinisation led to the establishment of two independent Syro-Malabar Vicariates Apostolic (Kottayam and Trissur) on 20 May 1887 (LEO XIII, *Quod jampridem*). A third Vicariate Apostolic (Ernakulam) was created on 28 July 1896 (LEO XIII, *Quae rei sacrae*).⁵⁷ The most important canonical work of this period was the *Decrees and Statutes of Verapoly* promulgated by Archbishop Mellano on 15 March 1879.⁵⁸

⁵⁵ THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 161.

⁵⁶ *Ibid.*, p. 162.

⁵⁷ Tisserant reports: "From the time the Syrians received their own prelates, their discipline was given more attention and made a little more precise in some respects. Such were the episcopal regulations published in 1891 by Mgr. Lavigne for apostolic vicariate of Kottayam. For Changanacherry Mar Matthew Makil did the same in 1903. The regulations of Mar Louis Pareparambil and of the late Archbishop of Ernakulam, Mar Augustine Kandathil, have been promulgated in the official paper of the eparchy, *Ernakulam Missam*" (TISSERANT, *Eastern Christianity in India*, p. 173).

⁵⁸ L. MELLANO, *Statutes and Decrees of the Apostolic Vicariate of Verapoly*, (Malayalam), Kunammavu, 1879. Reference to the statutes can be found in J. PANTHANAM, *The Canonical Reforms of Msgr. Leonard Mellano OCD in Malabar*, JCD diss., Rome, Pontificia Universitas Gregoriana, 1976; E. ARACKATHOTTAM, *The Juridical State of the Malabar Church in the XIX-XX Centuries*, Roma, Pontificia Universitas Lateranensis, 1968. The statutes contain the enactments of Archbishop Mellano along with the reorganized canonical works of his predecessors. The 262 decrees of the statutes are divided into different sections. No strict order is followed in the division of the topics. Leonardo Mellano, an Italian Carmelite (OCD), came to Malabar in 1851. He served as the rector of the Seminary at Puthenpally from 1853 to 1863 and

2.2.1 — The Marriage Rites of St. Thomas Christians

The marriage ceremonies of the St. Thomas Christians were very distinguishable in society through the display of privileges and noble status.⁵⁹ Mostly, the practices were a Christianised version of customs and practices of high caste Hindu society. Some of these practices are preserved even today among the 'Northists' and most are still very much alive among the 'Southists'. There is no reference to any impediments or prohibitive degree of marriages. So, according to the local custom, marriages between first cousins were celebrated also among Thomas Christians without any ecclesiastical restriction.⁶⁰ Child marriages were also rather common during this period. Divorces were unheard of and widow marriages were very rare. Those widows who wished to remarry had to wait at least for one year after the death of their husbands.⁶¹

2.2.1.1 — Pre-Marital Preparation

The Thomas Christians generally had their marriages arranged by the parents and close relatives, among whom the maternal uncle had a prominent role. The marriage

was consecrated a bishop on 5 July 1868. He received the appointment as the co-adjutor of Archbishop Baccinelli. In 1886 he was appointed the first Archbishop of Verapoly. See A. AMBROSIUS, *Hierarchia carmelitana, seu series illustrium praesulum ecclesiasticorum ex Ordine Carmelitarum discalceatorum*, IV, Roma, 1939, pp. 345-355.

⁵⁹ See THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 54.

⁶⁰ See MUNDADAN, *Traditions of St. Thomas Christians*, p. 175.

⁶¹ See J. HILARION, "The Sacraments of the Malabar Church Before 1400 A. D.," in *The Thōmāpēdia*, edited by G. MENACHERY, Thiruvananthapuram, St. Joseph's Press, 2000, pp. 114 - 117. For marriage customs of St. Thomas Christians, see D. FERROLI, "Malabar Christian Customs and Manners," in *The Thōmāpēdia*, p. 127.

customs were like those of the Brahmins.⁶² Once the agreement was made between the people involved, the bride and the bridegroom manifested their consent (engagement) in the church before the priest. Proclamation of banns, as done today, became common only with the influence of the Portuguese missionaries.

2.2.1.2 — The Celebration of Marriage

Although the customary celebration of marriage lasted for about four days,⁶³ the actual marriage ceremony took place in the church on a Sunday. Since the consent was already manifested at the time of engagement, “the most important function of marriage was the tying of the *tāli* or *minnu*, blessed by the priest, by the bride groom round the neck of the bride.”⁶⁴

2.3 — THE SYRO-MALABAR MAJOR ARCHIEPISCOPAL *SUI IURIS* CHURCH

In 1887 the St. Thomas Christians were assigned two separate ecclesiastical circumscriptions called Apostolic Vicariates, namely, Trichur and Kottayam. In 1896 these

⁶² On the day of engagement the party of the bride gave dowry to the bridegroom, ten percentage of which went to the parish as *pasāram* (= tithe).

⁶³ Thazhath explains: “The relatives and friends used to come on the eve [...] The ceremonial hair dressing (*Antam cārtal*) of the bridegroom, anointing the feet of the bride [...] ceremonial bath, feeding the bride and the groom with sweet (*Madhuram Kotukkal*), etc., had to be gone through” (THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 55).

⁶⁴ *Tāli* is a small medallion with a cross of 21 minute beads. It is tied with a thread taken from the bridal veil, called *manthrakodi*, signifying the marriage bond. See HILARION, “The Sacraments of the Malabar Church Before 1400 A. D.,” p. 116; THAZHATH, *The Juridical Sources of the Syro-Malabar Church*, p. 56.

were reorganized into Vicariates of Trichur, Ernakulam and Changanacherry.⁶⁵ A new Vicariate at Kottayam was established in 1911 for the Knanaya Catholic Community. On 21 December 1923, through his Apostolic Constitution *Romani Pontifices*, Pope Pius XI established the Syro-Malabar Hierarchy. Thus the Apostolic Vicariates were raised to the status of dioceses and Ernakulam was transformed into an Archdiocese. Changanacherry also was declared an Archdiocese in 1957. Since that time the authorities concerned have been trying to revive the Syro-Malabar Church taking into account its apostolic, Indian and Eastern patrimony as well as the present situation.⁶⁶

⁶⁵ For the first time the Syro-Malabar priests were ordained bishops and put in charge of these three units. These indigenous bishops were John Menacherry (Trichur), Louis Pazheparampil (Ernakulam) and Mathew Makeil (Changanacherry).

⁶⁶ After the Coonan Cross Oath, Rome began to take an active interest in the Kerala Christians. Several Carmelite monks were sent to Kerala and Carmelite Vicar Apostolics were residing at Varapuzha. At the same time, the Portuguese nominated administrators or archbishops for Malabar who were stationed at Kodungallur. This dual jurisdiction also was a cause for complaints to Rome. In 1787, Representatives from 84 Churches assembled in Angamaly and drew up a document called *Angamaly Padiyola* which presented to Rome a strong demand for native bishops, citing the sins of omission and commission of the foreign missionaries. In 1861, the arrival of a Chaldean Catholic bishop, Thomas Rokkos sent by the Chaldean patriarch created more problems. The Vicar Apostolic of Varapuzha excommunicated him on his arrival, and a schism followed. Another Chaldean bishop, Elias Melus arrived in 1874 and he too met the same fate. The Syrian Christians, popularly known as the Surais, in and around Thrissur, who owe allegiance to the Syrian Nestorian patriarch, are the followers of the schism Melus created (see <http://www.smcim.org/history.htm>).

Canon Law foresees only four categories of Catholic *sui iuris* Churches, as stated in *CCEO* c. 174,⁶⁷ and the Syro-Malabar Church did not fall into any of them;⁶⁸ it was recognized as a Major Archiepiscopal *sui iuris* Church by Pope John Paul II through the constitution *Quae maiori* dated 16 December 1992. Cardinal Antony Padiyara was

⁶⁷ The four categories of *sui iuris* Churches in *CCEO* are: Patriarchal Church (cc. 55-150), Major Archiepiscopal Church (cc. 151-154), Metropolitan Church (cc. 155-173) and other Churches (cc. 174-176). Unlike the other three, the fourth type of *sui iuris* Churches is not given a specific name, but it is called *Ceterae Ecclesiae sui iuris*. The Catholic Church, with the Pope as Supreme Pontiff is a communion of 23 autonomous (*sui iuris*) Churches. These Churches are given different juridical status according to the laws of the Church. The highest juridical status recognized by Vatican Council II and determined by the Eastern Canon law (*CCEO* c. 27) is Patriarchal. The decree of Vatican II on Eastern Catholic Churches says: "This sacred and ecumenical council earnestly desires that where needed new patriarchates be erected" (*OE*, 11). The ancient Churches of Apostolic origin like Rome, Antioch, Constantinople, Alexandria, Seleucia-Ctesiphon and Armenia have Patriarchal structure. See PIUS XII, *Motu proprio, Postquam apostolicis litteris*, c. 303 §1, n. 1; *LG*, 23; *OE*, 2-3, *UR*, 16. See G. NEDUNGATT, "The Syro-Malabar Church Under the New Oriental Code," in J. CHIRAMEL AND K. BHARANIKULANGARA (eds.), *The Code of Canons of the Eastern Churches, A Study and Interpretation*, Alwaye, St. Thomas Academy for Research, 1992, pp. 276-300 (see <http://www.smcim.org/history.htm>).

⁶⁸ Having two archbishops with no common head is not customary in the Eastern Churches. So this new provision created an anomalous juridical situation in the Syro-Malabar Church. As the new Eastern Canon Law was promulgated in 1990 this situation could not be continued.

appointed as the Major Archbishop and Ernakulam-Angamaly was named the see of the Major Archbishop.⁶⁹

According to Eastern Canon Law, the Major Archbishop is the head of the Syro-Malabar Church immediately under the jurisdiction of Pope.⁷⁰ His authority, however, is limited to the dioceses that are the suffragans of the archdioceses of Ernakulam, Changanacherry, Trichur and Tellicherry. The Syro-Malabar dioceses in other parts of India and abroad are directly under the jurisdiction of the Pope. Even though, according to Eastern Canon Law, the Synod of this Church has the right to appoint new bishops, this right was reserved to the Pope until recently. On 3 January 2004 the Pope restored this right to the Synod of Bishops. Currently there are 26 eparchies in the Syro-Malabar Church. Fifteen eparchies fall within the proper territory of the Syro-Malabar Major

⁶⁹ “Had such a step not been taken it would have been very difficult for the Syro-Malabar Church to function. Taking into consideration the particular situation of the Syro-Malabar Church and the poor state of health of Cardinal Antony Padiyara, the Pope appointed a delegate to discharge the duties of the Major Archbishop. He was Archbishop Abraham Kattumana, who had been a Vatican Ambassador in several African countries. Archbishop Kattumana died unexpectedly during his visit to Rome in April 1995. Since the post was a temporary one, no one else was appointed to take his place. In November 1996 Cardinal Padiyara resigned from his office as Major Archbishop. In his place instead of allowing the synod to elect a new Major Archbishop, the Pope appointed an Administrator in the person of Archbishop Varkey Vithayathil, C.Ss.R. He was a priest belonging to the Redemptorist Congregation. In December 1998, Pope John Paul II appointed him Major Archbishop. In February 2001, Archbishop Vithayathil was created a Cardinal by the same Pope” (www.smcim.org/history.htm).

⁷⁰ “The Major Archbishop of the Syro-Malabar Church is also automatically the archbishop of Ernakulam-Angamaly archeparchy because it is so determined by the Holy See. Therefore, whoever is elected as Major Archbishop or whoever exercises his authority (unless decided otherwise by the Holy See) will have two offices. As Archbishop of Ernakulam-Angamaly he has his office at Ernakulam and as Major Archbishop his office is at Mount St. Thomas” (www.smcim.org/history.htm).

Archbishop;⁷¹ eleven eparchies are outside the proper territory and they are directly under the Pope.⁷²

2.3.1 —The Governance of the Syro-Malabar Church

The St. Thomas Christian Community had a unique way of administering Church matters until they came under the rule of the Latin prelates. Thazhath observes:

In the past the “Thomas Christians” had formed a kind of ‘Christian Republic’ and had developed the system of *yogam* or assembly for the governance of their community. At the parish level, it was called *palliyogam*; it was the assembly of the heads of the important families under the presidency of the senior priest of the parish. The *yogam* judged all cases, settled all differences and even meted out the punishment of excommunication. In serious cases, a regional *yogam* called *desia yogam* with representatives of different churches or parishes was often constituted for the administration of justice. The Church General Assembly which was also called *Maha yogam*, *Sabha yogam*, *Pothu yogam*, *Samudaya yogam*, or *Malankara Edavak yogam*, with representatives of all the

⁷¹ They are Belthangady, Changanacherry, Ernakulam-Angamaly, Irinjalakuda, Kanjirapally, Kothamangalam, Idukki, Kottayam, Mananthavady, Palai, Palghat, Tellicherry, Thamarassery, Thuckalay and Trichur. He has full authority only over these 15 eparchies. Out of these 15 eparchies five are archdioceses. They are Ernakulam-Angamaly, Changanacherry, Trichur, Tellicherry and Kottayam. Every eparchy within the proper territory is a suffragan of one of these archeparchies. The archdiocesan wise distribution is as follows: Ernakulam-Angamaly: Kothamangalam, and Idukki; Changanacherry: Palai, Kanjirapally and Thuckalay; Trichur: Irinjalakuda and Palghat; Tellicherry: Mananthavady, Thamarassery and Belthangady. The Archdiocese of Kottayam is without a suffragan eparchy.

⁷² Over them the Major Archbishop has only very limited authority. At the same time their bishops are members of the Syro-Malabar Bishops’ Synod. These eparchies are not suffragans of any of the Syro-Malabar archeparchies but of the nearby Latin archdioceses. The eleven eparchies outside the proper territory are: Adilabad, Bijnor, Chanda, Gorakhpur, Jagdalpur, Kalyan, Rajkot, Sagar, Satna, Ujjain and St. Thomas Eparchy in Chicago. In the archdioceses and eparchies within the proper territory and in the eparchies of Kalyan and St. Thomas in Chicago, the authority of the respective bishops is over the Syro-Malabar Catholics only. There are places where Syro-Malabar Catholics are under Latin bishops. For example, the Syro-Malabar faithful even though they have many parishes in Bangalore are under the Latin archdiocese of Bangalore. See <http://www.thesyromalabarchurch.org/dioceses.htm> (as on 14 March 2006).

parishes under the leadership of the head of the community called the "archdeacon" decided on matters common to the Church.⁷³

Although Thazath speaks mainly of the administration of justice, the same *yogams* also discussed and settled matters of common importance according to the competence of each *yogam*.⁷⁴ Today, the Syro-Malabar Church has an administrative system developed according to the norms of *CCEO* and the needs of the particular situation of the Church. In the administration of the Syro-Malabar Church, the major archbishop enjoys all powers of a patriarch as specified in *CCEO* unless common law provides otherwise or it is evident from the nature of the matter (c. 152), but he is not equivalent to a patriarch in dignity.⁷⁵ The synod of bishops⁷⁶ with the patriarch is the

⁷³ A. THAZHATH, "Administration of Justice in the Syro-Malabar Church," in *Syro-Malabar Church Since the Eastern Code*, edited by F. ELUVATHINGAL, Trichur, Marymatha Publication, 2003, p. 62.

⁷⁴ See X. KOODAPUZHA, "The History of the Church in Kerala in the Pre-Portuguese Period," in *Syro-Malabar Church Since the Eastern Code*, p. 32. See also the footnotes 28-30.

⁷⁵ The major archbishop is elected in the same manner as the patriarch (*CCEO* cc. 63-74), but before the proclamation of the election and the enthronement of the elected, a confirmation must be obtained from the Roman pontiff. See *CCEO* c. 153.

⁷⁶ *CCEO* cc. 102-113. The major archbishop with his synod is the highest authority for all businesses of the autonomous Church. "The Patriarchs with their Synod are the highest authority for all business of the Patriarchate, not excepting the right of setting up new eparchies and appointing bishops of their rite within the patriarchal territory, without prejudice to the inalienable right of the Roman Pontiff to intervene in any particular case" (*OE*, n. 9). According to canon 133 of *CCEO*, the synod should be governed by the statutes approved by the Synod of Bishops. Therefore, statutes on this matter were approved by the Synod in 1993. See *Synodal News*, 2 (February) 1994. The statutes, in 23 articles, explain the nature, membership, competence, objectives, election of the major archbishop, convocation of the Synod, legislative and judicial role of the Synod, election of bishops, erection of provinces and eparchies, transfer of bishops, Permanent Synod, the eparchial bishops outside the territory, the pastoral care of the emigrants, evangelization, ecumenism and dialogue, the secretary of the Synod, the preparatory commissions, amendments, interpretations and repeal and savings. Most of these statutory norms are verbatim from the Common Law (*CCEO*).

supreme legislator and administrator of the Syro-Malabar Church,⁷⁷ which “is exclusively competent to make laws for the entire particular church.”⁷⁸

All bishops⁷⁹ of the Syro-Malabar Church are its members with voting rights. Although the Synod can enact laws for the entire Syro-Malabar Church, only the liturgical laws enacted by it are strictly applicable to all the Syro-Malabar eparchies, whereas the disciplinary laws enacted by the same Synod bind only the eparchies within the proper territory of the Syro-Malabar Church. The major archbishop⁸⁰ “wields in his person the *executive power*, while the *legislative* and *judicial* powers he shares with the synod of bishops.”⁸¹ The major archbishop fulfills his executive function with the assistance of his officials (These officials include his chancellors and finance officer), various

⁷⁷ See OE 9; P. PALLATH, *The Synod of Bishops of Catholic Oriental Churches*, Roma, Marthoma Yogam Publications, 1994.

⁷⁸ POSPISHIL, *Eastern Catholic Church Law*, p. 170.

⁷⁹ This includes eparchial, coadjutor, auxiliary, curial and retired bishops in and outside the proper territory of the Syro-Malabar Church. See POSPISHIL, *Eastern Catholic Church Law*, p. 168. Other hierarchs (who are not bishops), such as exarchs and religious superiors are invited for their advice. See CCEO cc. 102 § 3. However, bishops who are punished by canonical penalties (see CCEO cc. 1433 & 1434) and those unqualified to vote [such as persons incapable of human act, lacking active voice and publicly defected from the Catholic faith or the Church (see CCEO c. 953, §1) are excluded from the Synod. See CCEO cc. 102 §1.

⁸⁰ Although, the Syro-Malabar major archbishop presides over the entire Syro-Malabar Church, he is the bishop of the See of Ernakulam-Angamaly which is not distinguished with the major archbishop's title. See CCEO c. 151. Of the three parts of the power of governance, the major archbishop exercises in his person the executive power, while the legislative and judicial powers he shares with the synod of bishops. See POSPISHIL, *Eastern Catholic Church Law*, p. 176.

⁸¹ POSPISHIL, *Eastern Catholic Church Law*, p. 169. See also FARIS, *Eastern Churches*, pp. 295-297.

commissions and committees,⁸² the permanent synod⁸³ and the major archiepiscopal assembly.⁸⁴

In his first allocution to the Roman Rota, Pope John Paul II said that the very judicial life as well as the judicial activity of the Church in itself and by its nature is

⁸² Various commissions are appointed by the Major Archbishop for dealing with such matters as liturgy, pastoral care of the migrant Syro-Malabar faithful and so on. The members of the commissions are ordinarily bishops (*CCEO* c.124).

⁸³ The Permanent Synod is part of the major archiepiscopal curia that helps the major archbishop in matters of ordinary administration or in expediting urgent matters. Besides the major archbishop, there are four members in the Permanent Synod. See *CCEO* c. 115 §§1-2. Three of them are elected by the Synod and the fourth one is nominated by the major archbishop. Among the three elected, at least two must be bishops who govern eparchies. See *CCEO* cc. 115-122. "The permanent synod can be seen as the executive organ of the synod of bishops" (POSPISHIL, *Eastern Catholic Church Law*, p. 172). The Permanent Synod is convoked and presided over by the major archbishop (*CCEO* c. 116 §1), and if the major archbishop is impeded, the role is taken by the bishop who is senior by episcopal ordination. See *CCEO* c. 116 §2. The permanent synod does not have the power to enact laws or the power to render judgment. It is an advisory council of bishops to help the major archbishop in fulfilling his function, especially in certain executive matters for which the patriarch needs the advice or the consent of the permanent synod. J.D. Faris lists at least forty-two such instances as he sees required by the *CCEO*. See FARIS, *Eastern Churches*, pp. 309-311. The major archbishop has to convoke the permanent synod at least twice a year, and whenever the major archbishop considers it opportune, as well as whenever decisions are to be made about matters for which common law requires the consent or counsel of the same synod (*CCEO* c. 120) or as frequently as the norm of the Particular Law calls for it. See POSPISHIL, *Eastern Catholic Church Law*, p. 175.

⁸⁴ The Major Archiepiscopal Assembly is a meeting of the representatives of the various sections of the faithful of the Syro-Malabar Church. It is to meet at least once in five years. If necessary, the major archbishop can convene it as often as needed (*CCEO* cc. 140-145). The first Major Archiepiscopal Assembly of the Syro-Malabar Church was held from 9 to 12 November 1998 at Mount St. Thomas.

pastoral.⁸⁵ As we have already discussed, the St. Thomas Christians did maintain a system of the administration of justice, unlike the present system.⁸⁶

In the Syro-Malabar Church, for judicial activities, besides the eparchial, inter-eparchial,⁸⁷ and metropolitan⁸⁸ tribunals, there are the Superior Tribunal⁸⁹ and the Major

⁸⁵ JOHN PAUL II, Allocution to the Roman Rota, 17 February 1979, in *AAS*, 71 (1979), pp. 422-423.

⁸⁶ Although we do not know the details, down through the centuries the Syro-Malabar Church had its own system of administration of justice. The administration of justice among St. Thomas Christians was carried out by the local kings, bishops, *jathikkukarthavian* (= archdeacon, head of the St. Thomas Christian Community), *cathenars* (= priests) and *yogam* (= assembly or the administrative council). In this respect Mundadan writes: "The Christians had certain privileges in the administration of justice even in civil matters. The sources do not give many details as to the actual manner of exercising this jurisdictional power. Dionysio gives us the following information as far as punishments are concerned. Crimes against the state were punished by the king of each region; crimes against the commandments of the Church, if they were grave, were punished by the Bishop, if not, by the *cathenar* and the parish council composed of the principal Christians of the place. The punishment usually consisted in paying some money as a fine to the church, and when the culprit refused to pay it, they excluded him from the church, and if he still refused, was excommunicated, and other Christians were asked not to communicate with him. When the offender is a *cathenar*, he was refused the *casuri* (wishing of peace at the Church's official prayers) in the church; if the *cathenar*, did not amend even after this he was denied incense at the liturgy at the time of purification with the thurible, and if he still refused to correct his conduct, he was excommunicated" (MUNDADAN, *History of Christianity in India*, p. 191). We also find some details in THALIATH, *The Synod of Diamper*, p. 42; THAZHATH, "Administration of Justice in the Syro-Malabar Church," pp. 57-85. This is a revised version of the article by the same author, "The Superior and Ordinary Tribunals of a *Sui iuris* Eastern Catholic Church," in *Stc*, 29 (1995), pp. 375-396.

⁸⁷ Although there are no inter eparchial tribunals within the proper territory of the Syro-Malabar Church, the Syro-Malabar eparchies outside the territory have the same power in collaboration with Latin dioceses of the region.

⁸⁸ "The Syro-Malabar Church has at present four Metropolitan Sees, namely Ernakulam, Changanacherry, Trichur and Tellicherry. The Tribunals of these Sees are the appeal Tribunals of the suffragan eparchies. The appeals for the cases judged in first and second instances by these Metropolitan tribunals are sent to the Syro-Malabar Major Archiepiscopal tribunal as per the provision of the *CCEO* c. 1063 §3" (THAZHATH, "Administration of Justice in the Syro-Malabar Church," p. 80).

⁸⁹ The Synod of Bishops of the Syro-Malabar Church constitutes the Superior Tribunal within the proper territory of the Church. See *CCEO* cc. 110 §2 and 1062 §1. It is subject to the

Archiepiscopal Ordinary Tribunal.⁹⁰ The Eastern Code contains provisions for tribunals of institutes of consecrated life.⁹¹ The Synod of bishops itself is the Superior Tribunal,⁹² because, besides the legislative and executive powers, it enjoys judicial power as well. The Superior Tribunal has a double role: (i) as a college of three elected members of the Synod of Bishops, it deals with certain cases in first instance,⁹³ and (ii) sits in full session

vigilance of the Supreme Tribunal of the Apostolic Signatura, Rome. The statutes of the Superior Tribunal are published in *Synodal News*, 4 (February 1995). Its competence is only within the proper territory of the Church (*CCEO* c. 1062 §1) to judge contentious cases either of the eparchies or of bishops, even titular bishops (*CCEO* c. 1062 §3). For a detailed study, see THAZHATH, "Administration of Justice in the Syro-Malabar Church," pp. 70-76.

⁹⁰ The Major Archiepiscopal Ordinary Tribunal is a collegiate Tribunal, which is distinct from the tribunal of the eparchy of the major archbishop. See *CCEO* c. 1063 §1. "This Tribunal serves especially as Tribunal of appeals from Metropolitan Tribunals. It is also competent to adjudicate cases in the first instance according to the norms of the law" (J. THALACHALLOR, "Particular Law of the Syro-Malabar Church," in F. ELUVATHINGAL [ed.], *Syro-Malabar Church Since the Eastern Code*, Trichur, Marymatha Publications, 2003, p. 109. The statutes of the Tribunal are published in *Synodal News*, 4 (February 1995), pp. 40-52. For more information, see THAZHATH, "Administration of Justice in the Syro-Malabar Church," pp. 76-79.

⁹¹ "Controversies between physical or juridical persons of the same institute of consecrated life, in which superiors are endowed with the power of governance, except secular institutes, are to be decided before the judge or the tribunal determined in the typicon or statutes of the institute" (*CCEO* c. 1069 §1). So far no such tribunal has been constituted in the Syro-Malabar Church.

⁹² "Synodus Episcoporum Ecclesiae patriarchalis, salva competentia Sedis Apostolicae, est superius tribunal intra fines territorii eiusdem Ecclesiae" (*CCEO* c. 1062 §1).

⁹³ The superior tribunal "exercises its judicial function either (a) in full session or (b) ordinarily and in the first instance, through an elected portion of the same Synod constituted as a Tribunal which represents the Synod and actualises its judicial function" (THAZHATH, "Administration of Justice in the Syro-Malabar Church," p. 69). The Synodal Tribunal is composed of three judges (bishops elected by the Synod of Bishops as well as auditors, a promoter of justice and a notary who are appointed for a term of five years. See *Synodal News*, 4 (February 1995) arts. 6 and 7, p. 31. For more information on the constitution, composition, competence and functioning of this tribunal, see THAZHATH, "Administration of Justice in the Syro-Malabar Church," pp. 70-76.

(*videntibus omnibus*) to deal with cases in the second instance.⁹⁴ Ordinarily, the Superior Tribunal exercises its function through three bishops elected from among the members of the synod, one of whom is nominated as its Moderator. Although *CCEO* does not specifically name it as a tribunal, the Statutes⁹⁵ of the Superior Tribunal of the Syro-Malabar Church call it "The Synodal Tribunal."⁹⁶ The Major Archiepiscopal Ordinary Tribunal has its own personnel who need not necessarily be bishops. The head of the Ordinary Tribunal is known as its president. Thus today the Syro-Malabar Church has a coherent and complete judicial system.

2.4 — MIXED MARRIAGE IN THE PARTICULAR LAW OF THE SYRO-MALABAR CHURCH

While promulgating the *CCEO* the Supreme Pontiff, John Paul II, expressed his mind regarding all that the Code entrusts to particular law. He stated:

Besides, in this matter, let it be noted well that this Code leaves to the Particular Law of each *sui iuris* Church, those things which are considered not necessary for the common good of all Oriental Churches. On this matter, our mind is that those who are endowed with legislative power in each *sui iuris* Church take counsel as quickly as possible by issuing particular norms, keeping in mind the traditions of their own rite as well as the teaching of Second Vatican Council.⁹⁷

⁹⁴ "The Guidelines for the Revision of the Code of Oriental Canon Law," in *Nuntia*, 3 (1976/2), 23, n. 4. See THAZHATH, "Administration of Justice in the Syro-Malabar Church," p. 70.

⁹⁵ See *Synodal News*, 4 (1995), pp.30-39.

⁹⁶ See THAZHATH, "Administration of Justice in the Syro-Malabar Church," p. 69.

⁹⁷ "Praeterea hac in provincia bene animadveratur hunc quidem Codicem iuri particulari singularum Ecclesiarum sui iuris ea omnia committere, quae ad commune omnium Ecclesiarum orientalium bonum non necessaria considerantur. Quibus de rebus mens Nostra est, ut qui legislativa potestate in singulis Ecclesiis *sui iuris* gaudent, peculiaribus normis, proprii ritus traditionibus prae oculis habitis necnon Concilii Vaticani II praeceptis, qua, celerrime consulant" (in *AAS*, 83, II, [1990], p. 1037-1038).

The Eastern Code defines *ius particulare* as “all laws, legitimate customs, statutes and other norms of law which are not common to the universal Church or to all the Eastern Churches.”⁹⁸ Bearing in mind the provision in *CCEO* and heeding the words of the Supreme Legislator, “the Syro-Malabar Bishops’ Conference held on 30 November 1990 agreed on the need for formulating particular law including the Synodal Statutes for the Syro-Malabar Church.”⁹⁹ Thus, a Bishops’ Commission was formed which, with the help of many canon law experts, worked on its realization. As a result, in the course of time, many laws¹⁰⁰ and different statutes¹⁰¹ were formulated for discussion and approved by the Synod. These were promulgated in the *Synodal News*, the official newsletter of the Syro-Malabar Church.

⁹⁸ *CCEO* c. 1493 §2: “Nomine vero iuris particularis veniunt omnes leges, legitimae consuetudines, statuata aliaeque iuris normae quae nec universae Ecclesiae nec omnibus Ecclesiis orientalibus communes sunt.”

⁹⁹ THALACHALLOR, “Particular Law of the Syro-Malabar Church,” p. 104. A bishops’ committee was formed in view of facilitating the task of drafting Particular Law. Later this committee was reconstituted and was named as bishops’ commission.

¹⁰⁰ The laws on Marriage (see *Synodal News*, 10 [August 1997], pp. 43-59); Palliyogam (see *Synodal News*, 11 [March 1998], p. 44); Clerics (see *Synodal News*, 12 [December 1998], pp. 53-59); Divine Worship and especially Sacraments (see *Synodal News*, 7 [December 1999], pp. 100-103); Acquisition and Administration of Temporal Goods of the Church (see *ibid.*, pp. 104-106). Laws on Major Archbishop, Metropolitans, Bishops, Exarchs and the Organs assisting the Eparchial Bishop in the Governance of the Eparchy; Monks, Other Religious as well as Members of other Institutes of Consecrated Life; Secular Institutes; Societies of Apostolic life; Evangelization of Nations; Divine Worship, especially the Sacraments; Feasts and Penance; Hierarchical Recourse; Baptized non-Catholic coming to full communion in the Church, Custom and Administration Acts; and Law on Trail (see *Synodal News*, 9 [December 2001], pp. 93-109).

¹⁰¹ The Statutes are: Synodal Statues (see *Synodal News* 2 [February 1994] pp. 53-67); Statues of the Permanent Synod (see *Synodal News*, 4 [February 1995], pp. 22-29); Superior Tribunal (see *ibid.*, pp. 30-39); Major Archiepiscopal Tribunal (*ibid.*, pp. 40-52); St. Thomas Apostolic Seminary, Kottayam (see *ibid.*, pp. 53-85); Paurastya Vidyapitham (see *Synodal News*, 3 [May 1994] pp. 100-156); Syro-Malabar Liturgical Research Centre (see *Synodal News*, 7 [December 1999], pp. 80-90); Kunnoth Seminary (see *Synodal News*, 9 [December 2001], p. 53); Syro-Malabar Religious Conference (see *ibid.*, pp. 49-50).

The first draft of the laws governing the marriage of members of the Syro-Malabar Church was published in 1994.¹⁰² At the conference held from 28 October to 15 November 1996, the Synod of Bishops approved the proposed regulations making some changes based on their discussions. The particular law of the Syro-Malabar Church on marriage was promulgated¹⁰³ in 1997 and it came into force on 1 January 1998.¹⁰⁴

The particular law of Syro-Malabar Church repeats canon 813 of *CCEO* on mixed marriage:

Marriage between two baptized persons, one of whom is Catholic and the other non-Catholic, is prohibited without prior permission of the competent authority.¹⁰⁵

The particular law, adapting *CCEO* c. 814,¹⁰⁶ says: "For a just and reasonable cause the local hierarch can grant permission for a mixed marriage" (*Particular Law of the Syro-Malabar Church* [= *PLSMC*], Art. 182 §2). To obtain this permission, the parties must submit a written petition to the local hierarch. The petition requires the endorsement by the parish priest of the Catholic party. A written declaration by the

¹⁰² See *Synodal News*, 3 (May 1994), pp. 83-99. The first draft was open to changes based on the valid discussions in various recognized bodies of the Church. Thus, the final draft incorporated many relevant observations from the eparchies and other recognized bodies in the Church.

¹⁰³ The Synod in its session held on 9-12 June 1997 decided that the marriage law be promulgated by the major archiepiscopal authority (Apostolic Administrator), so it become effective on 1 January 1998. Therefore, the law was promulgated by Mar Varkey Vithayathil, the Apostolic Administrator.

¹⁰⁴ "Particular Law Concerning Marriage in the Syro-Malabar Church," in *Synodal News*, 10 (August 1997), pp. 44 -59.

¹⁰⁵ *PLSMC*, Art. 182

¹⁰⁶ "Licentiam iusta de causa concedere potest Hierarcha loci; eam vero ne concedat nisi impletis condicionibus, quae sequuntur" (*CCEO* c. 814).

Catholic party regarding the promises and obligations to safeguard his/her Catholic faith and the upbringing of children in the Catholic faith is also needed.

The particular law further says: “In granting this permission mentioned in §2, the agreements, if any, made between the Catholic Church and a non-Catholic Church are to be followed” (*PLSMC* Art. 182 §3). This is not expressed in Common Law. Basically this is to respect the Common Declaration made by Pope John Paul II and Mar Ignatius Zakka I Iwas in 1984.¹⁰⁷ For this reason the particular law demands that the local hierarch, in granting the permission, has to take into account the pastoral guidelines agreed upon by the Catholic Church and the Malankara Syrian Orthodox Church.¹⁰⁸

2.4.1 — The Pre-Nuptial Conditions for Mixed Marriage

Article 183 of the particular law of the Syro-Malabar Church repeats what is stated in the Common Law. *PLSMC* Art. 183 states:

§1. The Catholic party declares that he/she is prepared to remove dangers of falling away from the faith and makes a sincere promise to do all in his or her power to have all the offspring baptized and educated in the Catholic Church.

¹⁰⁷ “Joint Declaration of Pope John Paul II and Syrian Orthodox Patriarch of Antioch” (= Joint Declaration), 23 June 1984, in *L’ Ossevatore romano*, 2 July 1984, p. 7. The agreement between the Catholic Church and the Malankara Syrian Orthodox Church on inter-Church marriages has been prepared taking into account the elements of the Common Declaration of Pope John Paul II and the Syrian Orthodox Patriarch Zakka I Iwas of Antioch, dated 23 June 1984. See G. PUNNAKOTTIL, *Kothamangalm Rupatha Niyamasamgraham* [= *The Statutes of the Eparchy of Kothamangalam*], Kothamangalam, Eparchial Curia, 2005, p. 246).

¹⁰⁸ “With due regard for the cases mentioned in canons 23 §2 and 32, the local hierarch shall not grant permission for mixed marriage, unless the following conditions are fulfilled (*CCEO* c. 814)” [*PLSMC* Art. 24]. *PLSMC* Art. 191 speaks of the pastoral guidelines for the celebration of marriages as agreed by the Catholic Church and the Malankara Syrian Orthodox Church. Details of the agreements will be discussed later in this chapter.

§2. The other party is to be informed at an appropriate time of these promises which the Catholic party has to make, so that it is clear that the other party is truly aware of the promise and obligation of the Catholic party.

§3. Both parties are to be instructed on the essential ends and properties of marriage, which are not to be excluded by either spouse (c. 814 §3).¹⁰⁹

According to the Common Law, it is for the particular law of the each Catholic Church *sui iuris* to determine the specific manner in which the declaration and promise are to be made. It also clearly mentions that they are always required and may not be optional.¹¹⁰ Since permission for a mixed marriage always requires the declaration and promise by the Catholic party and the notification of the non-Catholic party, a written documentation as proof is necessary. This requirement is specifically indicated by *PLSMC*.¹¹¹ In regard to the endorsements of the parish priest, the particular law states:

Before endorsing the petition for permission for mixed marriage, the parish priest of the Catholic party shall inform the non-Catholic partner about the above said declaration of the Catholic party and notify the matter in the petition. If the non-Catholic party has no objection, he or she may be invited to counter-sign the

¹⁰⁹ *CCEO* c. 814: *Licentiam iusta de causa concedere potest Hierarcha loci; eam vero ne concedat nisi impletis condicionibus, quae sequuntur:*

1° “*pars catholica declaret se paratam esse pericula a fide deficiendi remove atque sinceram promissionem praestet se omnia pro viribus facturam esse, ut omnes filii in Ecclesia catholica baptizentur et educantur;*

2° *de his promissionibus a parte catholica faciendis altera pars tempestive certior fiat ita, ut constet ipsam vere consciam esse promissionis et obligationis partis catholicae;*

3° *ambae partes edoceantur de finibus et proprietatibus essentialibus matrimonii a neutro sponso excludendis.”*

¹¹⁰ *CCEO* c. 815 (*CIC* c. 1126): “The Particular Law of each Church *sui iuris* is to specify the manner in which these declarations and promises, which are always required, are to be made, and to determine how they can be established in the external forum and how the non-Catholic party is to be informed.”

¹¹¹ *PLSMC* Art. 185 §2: “... the parties shall submit a written petition together with the endorsements of the parish priest of the Catholic party to the local hierarch requesting permission for mixed marriage.”

declaration of the Catholic party to the effect that he or she is aware of the promises of the Catholic party.¹¹²

Prior to the marriage celebration, the parish priest is obligated not only to notify the non-Catholic party regarding the promise of the Catholic party and to attest to it, but also to give both parties sufficient pastoral guidance regarding the promises, especially the Catholic baptism and education of the children. The law goes on to state:

The parties should, in the course of the contacts that are made in this connection, be invited and encouraged to discuss the Catholic baptism and education of the children they will have, and when possible come to a decision on this question before marriage.¹¹³

By the notification, endorsement, and discussion by the parish priest with the parties, the promises are established in the external forum. Such endorsement and discussions regarding the prenuptial agreement help avoid future confusions regarding the faith practice of the Catholic party and their children.

Although the particular law speaks of these conditions, it makes provision for the use of pastoral prudence, especially in view of the ecumenical agreements. According to the agreement between the Catholic Church and the Syrian Orthodox Church, the Pastoral Guidelines given by the eparchy of Kothamangalam stipulate:

Our two Churches desire to foster marriages within the same ecclesial communion and consider this the norm. However, we have to accept the pastoral reality that inter-Church marriages do take place. When such occasions arise, both Churches should facilitate the celebration of the sacrament of matrimony in either Church, allowing the bride/bridegroom the right and freedom to retain her/his own ecclesial communion, by providing necessary information and documents.¹¹⁴

¹¹² *PLSMC* Art. 185 §3.

¹¹³ *PLSMC* Art. 185 §4.

¹¹⁴ PUNNAKOTTIL, G., *Kothamangalm Rupatha Niyamasamgraham*, p. 248.

For mixed marriages in general, the particular law demands the observance of the prenuptial conditions. However, for a marriage between a Catholic and a Syrian Orthodox is in question, the particular law is silent about the conditions especially with regard to the baptism and the Catholic education of the children. It does not mean that the particular law of the Syro-Malabar Church considers that the offspring of such marriage be treated differently from that of other mixed marriages. Conversely, the particular law says the following with regard to the pastoral care of such families: “The Catholic partner is to be reminded that he or she has to commit himself/herself to imparting to their children proper Catholic formation, to the extent possible and in agreement with his/her partner. Such a formation should be fully in harmony with the Catholic tradition to which he or she belongs.”¹¹⁵ On the basis of our discussions with some of the pastors of the Syro-Malabar Church, we understand that this matter is left to the local practice and the tradition of the Eastern Churches whereby the children are generally baptized and brought up in the faith of the father (Catholic/Syrian Orthodox), unless both parents decide otherwise.

2.4.1.1 — The Pre-Nuptial Investigation

As part of the conditions for the marriage, the particular law also demands that, prior to the betrothal, the Catholic party complete the prenuptial enquiry form before his/her parish priest. This is done in order to make sure that the person enters into the marriage covenant with due preparation, knowledge and consent. The examination

¹¹⁵ *PLSMC* Art. 191 §4, i.

consists not simply in filling out a form but also a fruitful discussion with the pastor on concerned matters. In preparing for marriage, the Syro-Malabar Church highly recommends that everyone attend a counseling session or a marriage preparation course.¹¹⁶ This is a course on Christian marriage and family life, arranged by each eparchy. The classes are concerned with the couple's awareness of the ecclesial dimension of marriage as well as their willingness to follow the Church's teaching. At the end of the course, all who attended are awarded a certificate which is submitted to the parish priest along with their pre-nuptial enquiry form.

The form requires detailed personal information and seeks answers to all possible questions that might canonically impede the celebration of the betrothal or the marriage. Besides the canonical questions, the form also places a question which reflects the social custom: "Do your parents know and agree to this marriage proposal?" In most cases the marriage proposals are advanced with the consent or at least with the knowledge of the family members of the parties. In cases where the party is pursuing marriage without the consent or knowledge of his/her family, the pastor in his pastoral prudence has to try his best to defuse the conflict between the party and the family. Nevertheless, the consent of the family is not a requirement for the celebration of betrothal or marriage, if other canonical and civil requirements are fulfilled.

¹¹⁶ *PLSMC* Art. 184.

2.4.1.2 — The Free-State Certificate

PLSMC Art. 163 §1 says: “Those who have lived for more than one year outside the eparchy after reaching marriageable age, have to produce a free state certificate.”¹¹⁷ This enables the parish priest to ensure the present status of the party. Generally, the parish priest of the place where he/she last lived issues such a certificate. However, the Law states: “Though the certificate of the parish priest is normally required for this purpose, the certificates of the civil authorities or other persons beyond suspicion may be accepted in case of the non-availability of the former.”¹¹⁸ The certificate is required only if he/she has lived outside the eparchy for more than one year since attaining marriageable age. Exemption from this norm “may be granted only by the local hierarch of the party on any appropriate arrangement decided by him.”¹¹⁹ The second paragraph of *PLSMC* Art. 163 §2 reads:

If one has lived in different places after reaching the marriageable age, he/she has to produce a free state certificate at least from the parish priest of that place where he/she lived for the last one year. The person also has to make an affidavit regarding his/her free state covering the period of his/her stay in other places.

The aforementioned conditions set by the particular law are not explicitly stated in the Common Law. By placing such conditions as a necessary requirement for the marriage, the particular law tries to protect the unity of the marriage. Such legislation is

¹¹⁷ According to the Indian civil law, the marriageable age for men is twenty-one years and for women eighteen years. If the marriage is to be celebrated in India, the Indian civil law is to be followed as regards the age of marriage. *PLSMC* Art. 181: “Civil law must be followed as regards the marriageable age without prejudice to c. 800 §1. Accordingly in India men must have completed 21 years and woman 18 years (c. 800 §2).”

¹¹⁸ *PLSMC* Art. 163 § 3.

¹¹⁹ *PLSMC* Art. 163 §4.

aimed at assuring that the parties will not enter a relationship that would legally be detrimental to themselves, their children, or to the community. If these requirements are sincerely fulfilled, it will protect not only the unity but also the indissolubility of the sacrament of marriage.

2.4.2 — Betrothal and Publication of Banns

Respecting the ancient tradition of the Eastern Churches, the Common Law allows the particular law of each Church *sui iuris* to enact norms concerning betrothal.¹²⁰

PLSMC Art. 164 states:

The celebration of marriage shall be preceded by betrothal which is to be celebrated sufficiently in advance in order to give time for the publication of marriage banns.

Betrothal is a bilateral promise of the parties, whereby both parties bind themselves to marry each other. In order to be canonically legitimate, the betrothal must have been contracted according to the juridical form established by the particular law.

According to the Instruction for Applying the Liturgical prescription:

The specific meaning of the rite of engagement is to express the consent of the future spouses, while that of the crowns has more directly the scope of introducing them into the fullness of matrimonial life. The rite of Engagement does not consist of simple promises but rather of a definitive pledge. Therefore, it is not appropriate for the Engagements to be celebrated superficially or at the beginning of plans for matrimony. Specific liturgical rites for the first steps of realizing these projects – less solemn and less definitive - exist in various Churches and are a part of the tradition, currently not practiced, of others. A better understanding and eventual restoration of these rites could contribute to the sanctification of the different moments in the journey of Christian couples up through its full completion.¹²¹

¹²⁰ “Sponsalia, quae laudabiliter matrimonio praemittuntur ex antiquissima Ecclesiarum orientalium traditione, reguntur iure particulari propriae Ecclesiae sui iuris” (*CCEO* c. 782 §1).

¹²¹ *Instruction for Applying the Liturgical Prescriptions*, n. 85.

The particular law demands that the betrothal celebration happen at least three weeks before the celebration of the marriage. This is to ensure that there be sufficient time for the publication of banns, which is normally done following the betrothal celebration, “on three Sundays or the days of obligation during the Sacred Liturgy.”¹²²

As per law, the promise made or the consent expressed at the time of betrothal or engagement does not give rise to an obligation to marry. That is to say, the betrothal does not legally bind the parties to pursue the intended marriage; they are free to break the engagement if they do not wish to marry each other. However, “if a party does not want to proceed to marriage after betrothal, he/she shall obtain permission from the local hierarch in order to enter marriage with another person.”¹²³

Although many Churches do not consider the religious rite of betrothal important,¹²⁴ the Syro-Malabar Church has prescribed a common liturgical form for this celebration. Moreover, the particular law insists upon maintaining proper documents, including the registration of the celebration of betrothal.¹²⁵

In mixed marriages, the requirement of betrothal is left to the discretion of the local hierarch who grants permission for the celebration of marriage. The law states:

¹²² *PLSMC* Art. 174.

¹²³ *PLSMC* Art. 172; *CCEO* c. 784 §2. The Syro-Malabar church has a long tradition with regard to the celebration of betrothal. It is celebrated with great solemnity.

¹²⁴ See POSPISHIL, *Eastern Catholic Church Law*, pp. 484-485.

¹²⁵ “The celebration of marriage shall be preceded by betrothal which is to be celebrated sufficiently in advance in order to give time for the publication of marriage banns” (*PLSMC* Art. 164).

Betrothal and publication of banns may be allowed in these cases at the discretion of the local hierarch after duly considering the nature and circumstances of the petition; if these are allowed their form also shall be stipulated in the same script.¹²⁶

In most cases, especially if the non-Catholic party is a member of an Eastern Church, the local hierarch will grant permission for the betrothal celebration, unless the party explicitly mentions his/her intention in the application not to celebrate the betrothal. Nonetheless, betrothal is a common practice in the Syro-Malabar Church as a step towards the celebration of marriage and its absence may be regarded as unacceptable to the faithful.

2.4.2.1 — The Celebration of Betrothal

Particular law gives a detailed description regarding the proper person, places and form of the celebration of betrothal.

Betrothal is to be celebrated before the local hierarch or the parish priest of either of the parties or a delegated priest or deacon, in the presence of two witnesses in the parish church or with the permission of the parish priest at another church convenient to the party. However, in places other than churches, it cannot be celebrated without the permission of the local hierarch.¹²⁷

According to this provision of the particular law, the proper place of celebration of the betrothal is the proper parish of either of the parties. For a just reason, however, if the parties decide to have the celebration in a parish church different from their own, they should obtain the permission of their own respective pastors. If the parties decide to have the celebration of the betrothal in places other than churches, they have to obtain

¹²⁶ *PLSMC* Art. 186.

¹²⁷ *PLSMC* Art. 165.

permission from the local hierarch. The proper persons to preside over the celebration are the local hierarch or the parish priest of the church where the betrothal is celebrated. Another priest or deacon can be delegated for this purpose. The presence of two witnesses is necessary for the celebration.

For the celebration of the betrothal, the particular law stipulates: “The betrothal may be conducted only on obtaining the form A or a corresponding document.”¹²⁸ Form ‘A’, namely, *manasammathakkuri* (= form for the betrothal) is issued by the parish priest of the party/parties to the parish priest of the church where the celebration of betrothal will take place. It contains the following information: registration number (according to the registry of the issuing parish), place and name of the issuing parish, the date of issue, full name of the person, baptismal name (which is usually different from the given name), date of birth, date and place of baptism, name of the parents, the proposed date for the

¹²⁸ *PLSMC* Art. 166 §1. The Particular Law speaks of five different *Kuries* (= Forms) with respect to a marriage celebration and its appropriate documentation. *PLSMC* Art. 161 §§1-6 reads: “In connection with the celebration of the marriage, the following *Kuries* (Forms) must be exchanged between the concerned parish priests.

Form A - For Betrothal.

Form B - Information regarding the Betrothal conducted and the proposed dates of the publication of banns and celebration of marriage.

Form C - *Desa Kuri* or *Kettu Kuri*, that is, no objection certificate for the licit celebration of marriage.

Form D - Certificate for entry of the celebration of the marriage in the marriage register of the parishes where the baptism of the couple took place.

Form E - Notification to be sent back to the parish priest of the place of celebration of marriage regarding the entry of Form D in the baptismal and marriage registers of the concerned parishes of the spouses.” See *CCEO* c. 841 §§1-2.

celebration of the betrothal, and special permission or prohibition, if any.¹²⁹ Finally, the signature of the parish priest and the seal of the parish complete the form.

In order to conduct the betrothal, the priest concerned should obtain the form 'A' or a corresponding document. However, receiving the form or the document does not obligate the priest to conduct the betrothal celebration, for the particular law clearly uses the terms 'may be' in regard to the conducting of the betrothal. Here, the particular law respects the freedom and responsibility of the parish priest, who is to conduct the celebration. He, therefore, for a just reason, has the right to deny the celebration even after obtaining the form.

The parish priest is obliged to maintain proper documentation of the events. Once the betrothal is celebrated, it "should be entered in the register maintained for the purpose and be signed by the parties, witnesses and the officiating priest or deacon."¹³⁰ He must also inform the parish/parishes of the parties through the appropriate form/document. "After the celebration of betrothal the parish priest of the other party should be intimated through Form B."¹³¹ Once the betrothal is legitimately celebrated, the parish priest hands form 'B' to the parties. This form is to be submitted to the respective parishes of the parties (if the celebration took place in a church other than the church of either of the parties) or the parish of the other party. Form 'B' contains the name of the clergy who conducted the celebration of betrothal, the proposed dates of the announcements of

¹²⁹ "In Forms A and B date of birth and date of baptism shall be entered" (*PLSMC* Art. 169).

¹³⁰ *PLSMC* Art. 167.

¹³¹ *PLSMC* Art. 168.

banns, and the celebration of marriage. Each eparchy has its own printed forms for this purpose, but all are substantially the same.

The Syro-Malabar Church also has a liturgical ritual for the celebration of betrothal, and “the betrothal has to be solemnized according to the liturgical text.”¹³² The local hierarch can grant dispensation from this ritual form “for just and sufficient reasons on written application of both parties.”¹³³ The particular law states:

In case of need, the local hierarchs may grant permission to have betrothal in writing by the parties separately regarding their willingness for the proposed marriage before their proper parish priest in the presence of two witnesses. The parish priests shall communicate the matter to each other.¹³⁴

The custom of the Syro-Malabar Christians is to celebrate the betrothal with due solemnity, unless it is dispensed/prohibited by the ecclesiastical authorities. However, if the parties are not able to come together for the celebration of the betrothal, the particular law allows the parties to do it separately before their proper parish priest. In such cases, each party must obtain permission from his/her local hierarchs and their willingness for the proposed marriage is to be expressed in writing in the presence of two witnesses. The information regarding the expressed willingness should be communicated to each other by the parish priests through the form ‘B’.

The particular law neither defines the nature of the “need” to have the betrothal separately by the parties nor does it explain the condition involved for the local hierarch to grant permission for the same. It is also not clear if a liturgical form of celebration is

¹³² *PLSMC* Art. 170.

¹³³ *PLSMC* Art. 171, §1.

¹³⁴ *PLSMC* Art. 171, §2.

necessary in such a situation. However, with no exception, the particular law states: "The betrothal has to be solemnized according to the liturgical text."¹³⁵ But, so far the Syro-Malabar Church has not published any official liturgical text in this respect.

The particular law leaves the decision regarding the form of the celebration of betrothal in mixed marriage to each eparchial bishop. According to the particular law, the local hierarch, after duly considering the nature and circumstances of each case, has to stipulate it in the same rescript of the permission for the betrothal.¹³⁶ Unless specifically mentioned, the general liturgical form of the betrothal is also followed in the case of mixed marriage.¹³⁷

2.4.2.2 — Publication of Banns

Marriage is not a private contract between the two parties but a social institution, a matter of public interest. The ecclesial society, therefore, has traditionally enacted legislation concerning the basic requirements for marriage. The Church legislation in this regard has always provided for some form of pre-nuptial investigation, which reflects a genuine concern for marriage, for the welfare of the parties, family life, and the community.¹³⁸ Therefore, *PLSMC* Art. 174 states:

Banns are to be published on three Sundays or days of obligation during the Sacred Liturgy in the parish churches and if needed also in the filial churches of

¹³⁵ *PLSMC* Art. 170.

¹³⁶ See *PLSMC* Art. 186.

¹³⁷ So far the Syro-Malabar Church has not issued a specific liturgical text for the celebration of mixed marriage.

¹³⁸ See T. FULTON, *The prenuptial investigation: A Historical Synopsis and Commentary*, Washington, DC, Catholic University of America, Canon Law Studies 274, 1948, pp. 1-50.

the parties concerned. Alternatively they may be announced once and published on the notice board of the church for a period covering two more days of obligation.

Marriage banns are announced, prior to the celebration of the marriage, in the parish churches of the parties on three consecutive Sundays or days of obligation during the Holy Mass. In some cases instead of being announced in the Church, the banns are published in the church bulletin or placed on the notice board of the church. This is left to the discretion of the parish priest or the custom and practice of each church, unless there is a common policy for the entire eparchy on this matter. The parish priests may note that the banns must be announced at least once before they are published in the bulletin or placed on the notice board. The sole intention of the publication of banns is to provide a realistic avenue for people to present to the proper authorities serious objections to the marriage or important information about the parties. The particular law states:

Marriage banns are published in order to bring to the notice of the parish community about the proposed marriage and to give the community an opportunity to bring to the attention of the parish priests impediments, if any, which would impede the celebration of the said marriage.¹³⁹

The proclamation of the banns is a useful practice in informing the members of a parish community about the forthcoming marriage of its members. It enables the community to bring to the attention of the parish priest anything that might impede the valid celebration of the proposed marriage.

¹³⁹ *PLSMC* Art. 173 §1.

2.4.2.2.1 —Discovery of Impediments During the Publication of Banns

Any “impediment is a legal disqualification of a person to enter a marriage.”¹⁴⁰

Therefore, in accordance with the Common Law, the *PLSMC* states:

During the course of the publication of the banns, if the existence of a public impediment comes to light, the publication of banns has to be stopped. If however the impediment is occult and dispensation is possible the publication of the banns is to be continued and completed. The parish priest shall proceed to the celebration of the marriage only after the dispensation has been duly obtained.¹⁴¹

When the existence of an impediment comes to light, the pastor should investigate the matter more thoroughly by questioning the concerned people. If possible, this should be done in the presence of two trustworthy witnesses. However, the pastor should act prudently during his investigation to avoid causing any damage to the public life of the parties. If necessary, the pastor should discuss the matter with the parties themselves. In case of doubt regarding the existence of any impediment, the pastor shall continue or complete the marriage banns only after consulting the local hierarch.¹⁴²

2.4.2.2.2 —Exception in Publication of Banns

The publication of banns is done following the celebration of the betrothal. However, the particular law provides for an exception saying: “Permission may be granted by the local hierarch of either of the parties for the publication of banns even before betrothal on written application of both the parties.”¹⁴³ The particular law

¹⁴⁰ POSPISHIL, *Eastern Catholic Church Law*, p. 499.

¹⁴¹ *PLSMC* Art. 177.

¹⁴² See *CA* c. 21 §1.

¹⁴³ *PLSMC* Art. 173 § 2.

empowers the local hierarch in granting permission for the publication of banns even before the betrothal celebration. This requires a written request from both parties citing a valid reason for the same. The mind of the legislator behind this norm, we understand, is to maintain the significance of the publication of banns three times.¹⁴⁴

2.4.2.2.3 —Dispensation from Banns

The law also makes provision for dispensations from the publication of banns.

This dispensation is granted under certain circumstances. *PLSMC* Art. 175 states:

§1. For just and sufficient reasons, the publication of banns could be dispensed.

§2. The parish priest can dispense from one of the banns and the Protospesbyter from two. Dispensation from all the three banns may be granted only by the local hierarch.

§3. If banns are published only once, the marriage cannot be celebrated on the same day without the permission of the local hierarch.

§4. In case of dispensation from banns as per §§2&3, either of the parties has to submit a petition, stating the reasons, to the competent authority of the place where the marriage is celebrated.

§5. If dispensation from banns is to be obtained, it has to be entered in the register for betrothal and in Form B. if dispensation is received, the matter shall be communicated to the concerned parish priests.

A question that could be raised here is: In accordance with *PLSMC* Art. 175 §4, can a local hierarch, in whose eparchy the marriage will be celebrated, dispense from the marriage banns of the parties who, although subject to the law, belong to a different eparchy? According to the spirit of the Common Law, the hierarch of the place of marriage cannot lawfully dispense from the publication of banns unless he is the proper

¹⁴⁴ We arrive at this statement based on our discussions with some of the pastors of the Syro-Malabar parishes and canonists who were involved in the process of drafting the Particular Law. No written document is available to substantiate this statement.

hierarchy of the parties on the basis of their domicile or quasi-domicile. Interpretations issued by the Pontifical Commission for the Redaction of the Code of Eastern Canon Law on 3 May 1953 substantiate our answer to the above question.¹⁴⁵

Dispensation from the publication of banns is usually requested by those who live outside the country. One of the reasons could be, let us say, that people work abroad and come home for their wedding on a short vacation. Because of restrictions, they are compelled to schedule dates of their betrothal and marriage celebrations within a short period, leaving insufficient time for the publication of banns. In such cases the parties can submit a written application to their local hierarchy seeking dispensation from the publication of banns. If the parties belong to two different eparchies, they need to submit a joint application to the local hierarchy of only one of the parties. It is the duty of the eparchial curia, in turn, to inform the local hierarchy of the other party regarding the dispensation or permission as the case may be. Citing the importance of the publication of banns, the particular law clearly states:

If the marriage did not take place within six months from the completion of the publication of banns, they have to be repeated unless the local hierarchy dispenses from this norm.¹⁴⁶

¹⁴⁵ "Question I: Can a local hierarchy in whose eparchy the marriage will be celebrated relieve from the marriage banns, in accordance with can. 18 §2, parties subject to the law, who, however, belong to different rites?

Answer: Affirmative, provided he is the proper hierarchy of that (party) who is in need of the dispensation.

Question II: Can a local hierarchy in whose eparchy the marriage will be celebrated dispense from marriage banns, in accordance with can. 18 §2, parties belong to the rite of the hierarchy, who nevertheless is not their own hierarchy?

Answer: Negative" (AAS, 45, [1953], p. 312). See POSPISHIL, *The Law on Marriage*, p. 55.

¹⁴⁶ PLSMC Art. 176.

Once the publication of the banns is complete, the date of the celebration of marriage cannot be prolonged for more than six months from the final publication. Therefore, the marriage should be celebrated within six months from the final publication of the banns. If the marriage is not celebrated within that prescribed time, either the banns should be repeated or the parties should obtain a dispensation from the repetition of the publication of banns.

CCEO does not explicitly mention marriage banns. The *CIC/83* on the other hand, considers the marriage banns a general obligation, and leaves the issuance of the norms on the banns to the episcopal conference.¹⁴⁷ However, the *motu proprio Crebrae allatae* (= *CA*) contained specific norms on marriage banns.¹⁴⁸ The *motu proprio* had separate

¹⁴⁷ *CIC* c. 1067: "The conference of bishops is to issue norms concerning the examination of the parties, and the marriage banns or other appropriate means for carrying out the necessary inquiries which are to precede marriage. The pastor can proceed to assist at the marriage after such norms have been diligently observed."

¹⁴⁸ *CA* c. 12: "The pastor shall announce publicly between which persons marriage is to be contracted, if particular law demands it.

c. 13 §1: "The marriage banns are to be announced by the parties' own pastor."

§2: "If a party has lived in another place for six months after having reached puberty, the pastor shall refer the matter to the Hierarch, who may at his discretion, either demand that the banns be announced here, or prescribe that other proofs or evidence concerning his free status be procured."

c. 14: "The banns are to be announced in the church on three consecutive Sundays and other holydays of obligation, during divine services which are attended by numerous faithful."

c. 15: "The local Hierarch may substitute in his territory for the banns the affixing of the names of the parties at the doors of the parish church, or of another church, for a time of at least eight days, yet so that this period includes two holydays of obligation."

c. 16: "Banns of marriages which are to be contracted with dispensation from the impediment of disparity of worship or of mixed religion shall not be announced, unless the local Hierarch, scandal having been removed, in his discretion deems it proper to permit them, provided that the apostolic dispensation has preceded, except in the case of can. 32, and reference to the religion of the non-Catholic party is omitted."

c. 17 §1: "All the faithful are obliged to reveal impediments, if they know such, either to the pastor or the local Hierarch, prior to the celebration of the marriage."

norms for the obligation (*CA* c. 12), place (*CA* c. 13), time (*CA* c. 14), and the mode of the publication of the marriage banns (*CA* c. 15). Also we find special norms for banns in mixed marriages (*CA* c. 16), the obligation of the faithful to respond to the banns (*CA* c. 17), and dispensation from banns (*CA* c. 18). Preserving the tradition and finding the provision in *CCEO* c. 784,¹⁴⁹ the *PLSMC* has issued norms specifically dealing with the marriage banns. These norms are very similar to the norms given in *CA*. However, some major differences we find are: (1) the particular law does not speak of the obligation of the faithful to reveal impediments, if they know such;¹⁵⁰ (2) unlike *CA*, *PLSMC* permits the parish priests to dispense from one of the three publications of marriage banns, and to the protopresbyter to dispense from two publications;¹⁵¹ (3) according to *CA*, the

§2: If there are several proper Hierarchs, it is for him to dispense in whose eparchy the marriage is to take place; and if the marriage is to be entered into outside the proper eparchies, the proper Hierarch of either of them." See V.J. POSPISHIL, *The Law on Marriage: Interritual Marriage Law Problems*, English trans., Chicago, Universe Editions, 1962, pp. 53-55. *CA*, in *AAS*, (1949), pp. 89-119.

¹⁴⁹ "In the particular law of each Church *sui iuris*, after consultation with the eparchial bishops of other Churches *sui iuris*, exercising their power in the same territory, norms are to be established concerning the examination of the couple and other means for inquiries that are to be carried out before the marriage, especially those that concern baptism and the freedom to marry, which are to be diligently observed so that the celebration of marriage can proceed" (*CCEO* c. 784).

¹⁵⁰ See *CA* c. 17 §1.

¹⁵¹ See *PLSMC* Art. 175 §2. *CA* c. 18 reserved this power exclusively to the local hierarch.

marriage could be celebrated three days after the last publication of the banns, unless a good reason demanded otherwise.¹⁵²

2.4.3 — The Celebration of Marriage

A uniform and obligatory form of marriage was established for all Eastern Catholic Churches with the promulgation of *Crebrae allatae*.¹⁵³ Canons 828-839 of *CCEO* provide the obligatory norms for the form of marriage. Under the title 'Form of Marriage', the particular law of the Syro-Malabar Church treats only one canon which states: "Marriages are to be celebrated according to the approved liturgical text."¹⁵⁴

In regards to the mixed marriage, the particular law repeats what is stated in *CCEO*:

The form of the celebration of marriage prescribed by the law is observed if at least one of the parties celebrating the marriage was baptized in the Catholic Church or was received into it.¹⁵⁵

¹⁵² *CA* c. 20 §1: "The three days which ought to elapse between the last publication of banns and the wedding can be shortened if in the judgment of the pastor the free status of the party is ascertained beyond a reasonable doubt, and, in addition, there is a sufficient reason submitted by the parties for an immediate marriage ceremony. It is the right of the pastor himself to make such a decision, not of the priest who actually will assist at the marriage with a delegation from the pastor. Nor does the pastor need permission from the ordinary." English trans. in POSPISHIL, *The Law on Marriage*, p. 57.

¹⁵³ See POSPISHIL, *Eastern Catholic Church Law*, p. 571.

¹⁵⁴ *PLSMC* Art. 200. This Article is in tune with the *CCEO* c. 836, which reads: "Extra casum necessitatis in matrimonii celebratione servantur praescripta librorum liturgicorum et legitimae consuetudines."

¹⁵⁵ *PLSMC* Art. 187 §1. *CCEO* c. 834 §1 reads: "Forma celebrationis matrimonii iure praescripta servanda est, si saltem alterutra pars matrimonium celebrantium in Ecclesia catholica baptizata vel in eandem recepta est."

Respecting the spiritual tradition of the non-Catholic Eastern Churches, the particular law of the Syro-Malabar Church accepts the validity of a marriage celebrated according to the liturgical form of the Eastern Church to which the non-Catholic party belongs. For, the particular law says:

A marriage between a Catholic and a member of an Eastern Church is valid if it has taken place within the celebration of religious rite by an ordained minister, as long as other requirements of law for validity have been observed.¹⁵⁶

This provision of the particular law simply reiterates the Common Law.¹⁵⁷ For marriages of Catholics and Eastern non-Catholics, the canonical form of marriage is required for liceity, and not for validity. To recognise the marriage as valid, the celebration has to take place in the presence of the Eastern rite priest according to the prescribed norm of his Church and he should impart the customary nuptial blessing to the couple. With no exception to priestly blessing and other requirements of law (cf. *CCEO* c. 834 §2), although non-observance of the canonical form does not affect the validity of the marriage in these cases, its lawfulness requires that a Syro-Malabar faithful, who plans to marry in an Eastern non-Catholic church, e.g., in a Jacobite church, seek permission from the local hierarch of the Syro-Malabar Church. However, the Syro-Malabar Church would not recognize the validity of the marriage if one of the parties is bound by some diriment impediment, such as prior marital bond or not attaining the canonical age for marriage.

¹⁵⁶ *PLSMC* Art. 187 §2.

¹⁵⁷ *CCEO* c. 834 §2: "If, however, a Catholic party ascribed to an Eastern Church celebrates a marriage with one who belongs to an Eastern non-Catholic Church, the form for the celebration of marriage prescribed by law is to be observed only for liceity; for validity, however, the blessing of a priest is required, while observing other requirements of law."

The Syro-Malabar Church, however, preserves detailed and meaningful marriage ceremonies, the richness of which is especially remarkable when we compare them with the customs and culture of the land. The marriage rite in the Syro-Malabar Church has a double dimension: the ecclesiastical or canonical, and the cultural. The presence of two witnesses, exchange of mutual consent and the nuptial blessing imparted by the priest are the ecclesiastical dimensions. However, the *tāli kettu* (= tying of a medallion around the neck of the bride by the bridegroom), and *mantrakōdi anikkal* (= the placing of the veil over the head of the bride by the groom) which are very important for the people, are the socio-cultural dimensions. From an ecclesiastical point of view, the absence of the socio-cultural dimension at a marriage celebration does not invalidate the marriage, but, in the cultural context, the celebration of marriage without the *tāli kettu* and *mantrakōdi anikkal* is considered to be an incomplete celebration. These are the external signs of the marriage, as people perceive it, even today. Therefore, special prayers for the blessing of *tāli* and *mantrakōdi* are provided in the liturgical text for marriage, and are recited by the priest as part of the liturgical celebration. The exchange of finger rings was not part of the Indian culture, but because of the integration of the western culture, it has become a common practice that has found its place in the Syro-Malabar liturgy of marriage ceremony. Because of the socio-cultural importance, these prayers of blessings are considered as important parts of the liturgical ceremony.

Unlike the Latin rite, in the Syro-Malabar Church there is no special form of liturgical celebration for mixed marriages. The marriage ritual of the Eastern Catholic Churches shows that there was always only one form of celebrating the marriage. This

was made clear when *CA* did not include the prescripts of c. 1102 of *CIC/17*, instead, it stated:

Outside the case of necessity, the rites and ceremonies which are prescribed in liturgical books approved by the Church or recognized by legitimate customs shall be observed at the celebration of a marriage.¹⁵⁸

The Eastern Code took this stand because, "marriages with non-Catholics were rare and often performed without the intervention of the Church, especially if the non-Catholic party was not baptized, since the conviction of the necessity of a religious form of marriage was not universal at all times."¹⁵⁹ This means that the liturgical ceremonies of marriages of Syro-Malabar Catholics must be observed always in the same manner, even in the cases of mixed marriages.

If a situation occurs in which a Latin rite priest is to legitimately assist at the marriage of a Syro-Malabar faithful with a baptized non-Catholic person, the Latin priest has to observe the prescripts of the Latin Code and not of the Eastern Code or the particular law of the Syro-Malabar Church. In the same way, if a Syro-Malabar priest is to legitimately assist at a marriage of a Latin Catholic with a baptized non-Catholic person, the Syro-Malabar priest should follow the Eastern Law.¹⁶⁰ Consequently, in the case of a Latin rite priest, who is the proper pastor of a Syro-Malabar faithful, while assisting at a marriage of Syro-Malabar faithful with a baptized non-Catholic person, he should observe the same requirements as mentioned above. In each case the priest shall

¹⁵⁸ *CA* c. 91.

¹⁵⁹ POSPISHIL, *The Law on Marriage*, p. 192.

¹⁶⁰ See THE PONTIFICAL COMMISSION FOR THE REDACTION OF THE ORIENTAL CODE OF CANON LAW, Response, in *AAS*, 45 (1953), p.104.

ensure that the required canonical form of marriage is observed. It would not be prudent for a Latin rite deacon to celebrate the marriage of an Eastern Catholic and a non-baptized.

The particular law emphasizes the observance of the canonical form for marriages between Catholics and non-Catholics who are not members of the Eastern Churches: “Canonical form is required for the validity of marriages between Catholics and the members of non-Catholic and non-Oriental Churches and ecclesial communities.”¹⁶¹

The particular law makes special mention of the marriage donations and church dues as something to be settled before the marriage celebration. Details regarding this norm are left to each eparchy and local practice.¹⁶² This, however, is only a disciplinary norm affecting the parties as the parishioners with regard to the temporal administration of the church, and it should in no way affect the liceity or validity of marriage.

2.4.3.1 — Dispensation from the Form

Dispensation from the form of celebration of marriage can be obtained while respecting the agreements made between the Catholic Church and the Malankara Syrian Orthodox Church. The particular law substantially reiterates the Common Law on the matter:

¹⁶¹ *PLSMC* Art. 187 §3.

¹⁶² *PLSMC* Art. 179: “The spouses are to give marriage offerings or *vivahakkazhcha*, in connection with the celebration of the marriage, to their respective parish churches according to the norm fixed in each eparchy. Regarding the utilization of this amount the prevailing custom and regulation in each eparchy shall be followed.”

With due regard for canons 23 §2 and 32 §3, dispensation from the form for the celebration of marriage required by law is reserved to the Apostolic See or the Major Archbishop, who will not grant it except for a most grave reason.¹⁶³

In conformity with the provision of the Common Law, the particular law reserves the power of dispensing from the canonical form to the Apostolic See or to the Major Archbishop. Unlike the Latin bishops, the Eastern Catholic bishops do not have this power. Nonetheless, Pope John Paul II extended this power to the Papal representatives with respect to the Eastern Catholics,¹⁶⁴ but the particular law makes no mention of this provision.

The law requires that the request for dispensation from the form be endorsed by the parish priest of the Catholic party and by the hierarch of the place of marriage.¹⁶⁵ Moreover, for the celebration of marriage the particular law insists: "Even if dispensation from the form of celebration of marriage is granted for a most grave reason, there should be a public form of celebration and a sacred rite."¹⁶⁶

¹⁶³ *PLSMC* Art. 188 §1. *CCEO* c. 835: "Dispensatio a forma celebrationis matrimonii iure praescripta reservatur Sedi Apostolicae vel Patriarchae, qui eam ne concedat nisi gravissima de causa."

¹⁶⁴ As noted in the first chapter, Pope John Paul II decided that the dispensation from the form of marriage for Eastern Catholics can be granted by the Papal representatives around the world "for a very grave reason, on condition for validity that the marriage is celebrated according to some public form" (Apost. Nunciature U.S.A., n. 5895/7, 12 November 1991, as reported in POSPISHIL, *Eastern Catholic Church Law*, p. 542).

¹⁶⁵ "Petition for this dispensation must have the endorsement of the parish priest of the Catholic party and of the hierarch of the place of marriage" (*PLSMC* Art. 29 §2).

¹⁶⁶ *PLSMC* Art. 188 § 3.

A priest cannot lawfully bless a marriage unless the party, who is not the parishioner of the place of marriage, presents to him form 'C' or a corresponding document. The particular law states:

Marriage of persons other than parishioners, of whom at least one is a Syro-Malabarian, shall be lawfully blessed by the parish priest or his delegate only on receipt of Form C or a similar document from the concerned parish priests.¹⁶⁷

Form 'C', in effect, is a no-objection certificate issued by the pastors of the party to the pastors of the place where the marriage is scheduled to be celebrated. This document is normally issued after the betrothal and only at the completion of the announcements of the marriage banns. The document is an assurance to the priest who officiates at the wedding that the parties are free of any impediment to their marriage.

2.4.3.2 — Double Celebration of Marriage

In line with the Common Law, the particular law forbids another religious celebration of marriage, which has already been or is yet to be canonically solemnized.

Before or after the canonical celebration of marriage, it is forbidden to have another religious celebration of the same marriage to furnish a new consent; likewise, a religious celebration is forbidden in which both the catholic priest and the non-Catholic minister ask for the consent of the parties.¹⁶⁸

When a marriage is celebrated in a Syro-Malabar church according to the canonical form, any religious ceremony of the non-Catholic party in which consent is exchanged or renewed is strictly forbidden either before or after the Catholic ceremony. Correspondingly, if a Syro-Malabar party has obtained a dispensation from the canonical

¹⁶⁷ *PLSMC* Art. 196.

¹⁶⁸ *PLSMC* Art. 189 §1. *CCEO* c. 839.

form of marriage, a Catholic ceremony is prohibited before or after the public celebration. This is to avoid any question regarding the efficacy or validity of the original celebration.¹⁶⁹ However, in those places where the civil form is required for recognition of the marriage by the State, a Syro-Malabar Catholic is not prevented from observing the civil form. This is to be done prior to the religious ceremony. The norm regarding the age of marriage can be applied in this case too.¹⁷⁰ Yet, considering the socio-religious situation, and the willingness of the Holy See,¹⁷¹ *PLSMC* Art. 189, §2 says:

However, avoiding scandal, the officiating Catholic priest may invite a non-Catholic minister for a reading of a scriptural passage or giving a brief exhortation and bless the couple. In like manner, the Catholic priest may participate in a mixed marriage with the dispensation from the form of the celebration of the marriage.¹⁷²

The norm permits the ministers of different denominations of the parties to come together for one celebration, provided the marital consent be exchanged only before the Catholic priest if it is celebrated according to the Catholic form or before the non-Catholic priest or minister if a dispensation from canonical form is granted. Permission for a mutual active participation of the ministers in the religious ceremony will enhance the efforts initiated by the Catholic Church towards Christian unity.

¹⁶⁹ See BEAL, Commentary on cc. 1124-1129, *CLSA Comm* 2, p. 1351.

¹⁷⁰ See *PLSMC* Art. 181.

¹⁷¹ See the 1993 *Ecumenical Directory*, nn. 157-158; also see SACRED CONGREGATION OF THE HOLY OFFICE, Reply, 26 October 1964, and Reply, 16 June 1966, in *CLD*, 6, pp. 22-23.

¹⁷² In mutual participation of ministers in the marriage celebration, the division of the performance of rituals is to be made (essential and non-essential rituals). That is to say, if the marriage is celebrated according to the Catholic rite, the Catholic priest will ask for and receive consent and will also impart the main liturgical blessing, and if the celebration is according to the non-Catholic ritual, the prerogative is for the non-Catholic priest. See POSPISHIL, *Eastern Catholic Church Law*, p. 595.

2.4.3.3 — Marriage Celebration and the Holy *Qurbana* (=Mass)

The marriage rite in the Syro-Malabar Church was often performed with the Holy Mass because it was celebrated on Sundays or holy days. Therefore, today the practice of the Church is to integrate the marriage rituals within the liturgy of the word in the Holy *Qurbana*. The introductory prayers and Scriptural readings of the Holy *Qurbana* are special for the occasion. Following the homily the priest says other prayers of the blessings (blessing of *tāli* and *mantrakodi*, etc.) given in the liturgical text of marriage. He asks the couple to exchange their consent and imparts the nuptial blessing. The Holy *Qurbana* then continues with the liturgy of the Eucharist. For practical reasons, the celebration of the wedding *Qurbana* is not scheduled as part of the regular weekend *Qurbanas* in the parish.

However, concerning mixed marriages, *PLSMC* stipulates:

§1. A mixed marriage celebrated according to the catholic form ordinarily takes place outside the Eucharistic liturgy. However, for a just cause, the local hierarch may permit the celebration of the Holy *Qurbana*, if it is a marriage with a non-Catholic Oriental.

§2. There shall be no celebration of Holy *Qurbana* in connection with the marriage between a Catholic and a non-Oriental.

§3. The norm of *CCEO* c. 671 and special norm given by the Apostolic See or by the Synod of Bishops, if any, are to be observed regarding the reception of the Holy Communion on the occasion of such a marriages.¹⁷³

According to the particular law, the celebration of a mixed marriage form should be held outside the Holy *Qurbana*. However, if the non-Catholic party is a member of an Eastern Church, for a just cause, the local hierarch can permit the celebration of a mixed

¹⁷³ *PLSMC* Art. 190. *CCEO* c. 671 §§1,2,5.

marriage within the context of the Holy *Qurbana*.¹⁷⁴ Just causes for permission in this regard are yet to be determined by the particular law. As an example, if a brother or very close relative/family friend of the Catholic party is a priest, the local hierarch can consider it as a just cause. This could be seen as a potential just cause rather than a definitive one.

With regard to the participation and reception of Holy Communion by the non-Catholic party, the particular law urges observance of the Common Law as well as the special norm given by the Apostolic See or the Synod of bishops. This is the outcome of the deliberations on ecumenism of Vatican II.¹⁷⁵ Although there was an understanding that “in danger of death, sacraments of penance and anointing might be given conditionally in certain circumstances,”¹⁷⁶ the norm was expanded after Vatican II.¹⁷⁷ In view of the particular situation of time place and action, the decree on ecumenism *Unitatis redintegratio* granted competence to the bishop’s conference to decide with prudence the right course of action for the *communicatio in sacris*.¹⁷⁸

¹⁷⁴ In the Eastern tradition, originally no marriage liturgy was connected with the Holy Mass. See POSPISHIL, *Eastern Catholic Church Law*, p. 591. Under the influence of the Latin Church, the Syro-Malabar Church had developed a combined liturgy in which the Holy Mass (Eucharistic Liturgy) was celebrated together with the prayers and the blessings of marriage. This was in practice until the new liturgical guidelines were formulated for the Syro-Malabar Church.

¹⁷⁵ In the previous understanding there was an absolute prohibition of sacramental ministrations to “heretics or schismatics, even those erring in good faith and asking for sacrament,” without prior reconciliation. See *CIC/17* c. 731 §2.

¹⁷⁶ F.R. McMANUS, Commentary on cc. 840-1165, in *CLSA Comm 2*, p. 1024.

¹⁷⁷ The underlying principles of this norm of *communicatio in sacris* can be traced from the decree on ecumenism, *Unitatis redintegratio*.

¹⁷⁸ See *UR 8*.

2.4.3.4 — The Pastor Competent to Assist at a Mixed Marriage

According to the spirit of the Eastern Law, only a *sacerdos* can validly impart the official blessing of the marriage. Where there is more than one priest present for the celebration, the official blessing is to be given by the priest who presides over the celebration.

A mixed marriage shall be celebrated before the pastor of the Syro-Malabar faithful unless the parties have obtained a dispensation from the form of marriage. In a place where there is no Syro-Malabar pastor, the local Latin rite pastor, who is entrusted with the pastoral care of the Syro-Malabar faithful, is competent to assist at the marriage. He needs no delegation for this.¹⁷⁹

2.4.3.5 — Place of Celebration

Article 195 of *PLSMC* determines the place of celebration of marriage:

§1. The marriage is to be celebrated in the parish church of either of the spouses according to the custom in the eparchy, or with the permission of the proper parish priest in any other church convenient for the parties.

§2. In extraordinary circumstances, the local hierarch may grant permission for celebration of marriage at a suitable place other than the church.

The proper place for the celebration of marriage is the parish church of either of the parties. Local custom determines whether it should be in the parish of the bride or of the groom. In most cases it depends on a joint decision of the parties. Although the

¹⁷⁹ POSPISHIL, *The Law on Marriage*, p. 167. In this respect Pospishil says: "If a pastor of the Oriental rite of the Catholic party is available, the local Latin rite pastor has no right to assist at the marriage, and his assistance would be even invalid without proper delegation if the other party is an unbaptized person."

Common Law, under certain conditions, may grant permission for the liturgical celebration of marriage in another ‘sacred place’,¹⁸⁰ the particular law limits the same permission to ‘other church’. If the other church is located outside the boundaries of the legitimate parish, consent of the local parish priest is required.¹⁸¹

2.4.3.6 — Time of Celebration

The determination of the time of the celebration of marriage is left by *CCEO* to the particular law of each Church *sui iuris*.¹⁸² Therefore, *PLSMC* Art. 198 rules:

In accordance with the tradition of the Church and keeping the penitential spirit of the liturgical seasons of Annunciation (*Suvara*) and lent (*Sauma*), the celebration of marriage is prohibited from the 1st to 24th December inclusively and from 1st Monday of lent until Holy Saturday inclusively. However, for just and sufficient reasons, the local hierarch of the place of celebration of marriage may give permission for marriage during these periods on written petition by either of the parties and on the undertaking that the marriage will be celebrated without pomp and show.

It is the Eastern tradition to spend the seasons of Advent and Lent as most sacred times reflecting on the Incarnation and Salvific Mysteries of Jesus. Therefore, the particular law discourages any kind of celebrations that would take away the spirit of the time. However, the particular law says, with a just reason, that the local hierarch can

¹⁸⁰ See *CCEO* c. 838 §1. Sacred places mean a church, oratory or chapel of a convent, seminary, school, hospital, orphanage, or some other location existing for liturgical functions. See POSPISHIL, *Eastern Catholic Church Law*, p. 593.

¹⁸¹ See POSPISHIL, *Eastern Catholic Church Law*, p. 593. “In the case when the other church or oratory belongs to another rite or jurisdiction, the pastor or hierarch will need in addition the consent of the hierarch or pastor or rector for the validity of the marriage assistance” (POSPISHIL, *The Law on Marriage*, p. 200).

¹⁸² *CCEO* c. 838 §2: “Circa tempus celebrationis matrimonii servandae sunt normae iure particulari propriae Ecclesiae sui iuris statutae.”

permit a marriage celebration during this prohibited period, but there should not be any external solemnity connected with the celebration of marriage. The hierarch grants this permission only after obtaining a written application from the parties citing the reason for the same.

The question that could be raised here is: Does this prohibition apply to the Syro-Malabar faithful who are under the jurisdiction of the Latin rite ordinaries? Yes, even if the Syro-Malabar faithful come under the hierarch of the Latin rite, they are bound to observe the Particular Law of their own Church *sui iuris*.¹⁸³ Although the particular law does not bind the Latin ordinary, he can grant such permission to the Syro-Malabar faithful under his pastoral care, who are bound to this law.

Regarding the time of marriage celebration, it is for the local ordinary to decide.

The particular law says:

The special regulations given by the eparchial bishops regarding the time of the celebration of marriage on certain days like Sundays, must be carefully served.¹⁸⁴

In accordance with Eastern tradition and provision in particular law, most of the eparchies have chosen the afternoon hours of Sundays as the most suitable time for marriage celebrations. The afternoon has been chosen to avoid conflict with regular Sunday liturgical celebrations and catechism classes.

¹⁸³ "Orientals, even if they are under the jurisdiction of Latin rite ordinaries, have to observe the respective regulations of their particular law, and not the rules for forbidden times in force in their Latin rite diocese" (POSPISHIL, *The Law on Marriage*, p. 198).

¹⁸⁴ *PLSMC* Art. 199.

2.4.4—Marriage by Proxy

Proxy marriages are prohibited in *CCEO* unless it is established otherwise in the particular law of each *sui iuris* Church.¹⁸⁵ Although *CA* had allowed the local hierarch to permit proxy marriage in specific cases,¹⁸⁶ the Eastern theology is alien to such marriages; it is not found in the Eastern tradition.

According to the Oriental theology it is the Holy Spirit who, through the sacred Rite performed by the priest, transforms the couple who have pledged mutual fidelity in the eyes of the church. The sacramental grace comes down on them through the blessing of the priest who is the minister of the sacrament. The mutual consent of the spouses is regarded as the indispensable precondition for receiving the sacrament of matrimony.¹⁸⁷

According to the Eastern thought, an intermediary cannot accept the sacramental gifts which are conferred directly to the spouses through the nuptial blessing of the priest. The particular law, therefore, states: "Marriage through proxy is not allowed,"¹⁸⁸ and for the validity of a marriage, it is necessary that both parties are personally present at the time of the celebration to manifest their mutual consent. So according to the theology of marriage, the Syro-Malabar Church has taken the proper approach in this regard.

¹⁸⁵ *CCEO* c. 837 §2: "Matrimonium per procuratorem valide celebrari non potest, nisi iure particulari propriae Ecclesiae sui iuris aliud statuitur, quo in casu etiam de condicionibus, sub quibus tale matrimonium celebrari potest, providendum est."

¹⁸⁶ *CA* c. 80 §1: "Marriage cannot be contracted by proxy unless in a specific case the local hierarch granted permission in writing."

§2 "The local hierarch may grant such a permission only in case of necessity, that is, if the parties for a grave reason cannot appear together before the priest."

¹⁸⁷ J. VADAKUMCHERRY, "Marriage Laws in the Eastern and Latin Code," in CHIRAMEL, *The Code of Canons of the Eastern Churches*, pp. 199-200.

¹⁸⁸ *PLSMC* Art. 197.

2.4.5 — Marriage between Members of the Syro-Malabar Church and the Malankara Syrian Orthodox Church

The particular law provides norms to be followed in the celebration of a marriage between a Syro-Malabar Catholic and a Malankara Syrian Orthodox. *PLSMC* Art. 191 states:

- §1 For marriages between members of the Catholic Church and the Malankara Syrian Orthodox Church, the pastoral guidelines agreed upon by these two Churches are to be followed.
- §2 Accordingly, as part of the preparation for these inter Church marriages, besides what is given in Article 184 §§ 1-6, the following norms are to be followed:
1. The priest should ensure that the bride/bridegroom has paid the donations due to the parish in connection with marriage according to the practice of the Churches.
 2. The bride and bridegroom, after mutual consultation, may select the church in which the marriage is to be celebrated.
 3. Written permission for inter-Church marriage from the respective bishops should be obtained by the bride and the bridegroom.
 4. Betrothal may be permitted according to the custom of the place.
 5. Banns which also announce that it is an inter-Church marriage should be published in the respective parish churches.
 6. Once permission is obtained from the Bishops, the respective parish priests are expected to issue the necessary documents for the conduct of marriage.
 7. Marriage in Lent or Advent seasons is only to be conducted with the permission of the Bishops.
- §3. The following norms for the celebration of the inter-Church Marriages are to be observed:
1. The liturgical minister should be the parish priest of the church where the marriage is celebrated or his delegate from the same ecclesiastical communion.
 2. There is to be no joint celebration of marriage by the minister of both the Churches. The marriage is to be blessed either by the Catholic or the Syrian Orthodox minister. However, there could be some kind of participation at the liturgical service by the other minister who could read a scriptural passage or preach a sermon.

3. On the occasion of these celebrations the couple, and any members of their families who belong to these Churches, are allowed to participate in the Holy Eucharist in the church where the sacrament of matrimony is being celebrated.

The above legislation on inter-Church marriages is based on the agreement between the Catholic Church and the Malankara Syrian Orthodox Church. The foundation of this agreement rests on: (1) the common profession of faith between Pope John Paul II and Zakka I Iwas of Antioch on the mystery of the Incarnate Word, (2) the common affirmation of their faith in the mystery of the Church and the Sacraments, and (3) the mutual admission of the faithful belonging to both Churches to the reception of the Sacraments of Penance, Eucharist and Anointing of the Sick for a grave spiritual need.¹⁸⁹ Both the Pope and the Patriarch jointly declared this on 23 June 1984.

For a marriage between a Syro-Malabar Catholic and a Malankara Syrian Orthodox, the particular law has formulated the above norms as pastoral guidelines in light of the agreement between the two Churches. The law demands that the pastors take sufficient care in preparing the couple.¹⁹⁰ The law permits that the couple, after mutual consultation, can choose the church in which marriage is to be celebrated. If they choose a church other than their parish churches they need to obtain permission from their own pastors as well as the pastor of the church of their choice. Although written permissions of the respective bishops are required for inter-Church marriages, unlike other mixed marriages, dispensation from the form is not required to celebrate the marriage in the Malankara Syrian Orthodox Church. The same applies in the case of the celebration of betrothal and publication of banns. However, the law requires that the banns should

¹⁸⁹ PUNNAKOTTIL, *Kothamangalm Rupatha Niyamasamgraham*, p. 246.

¹⁹⁰ See *PLSMC* Art. 184. The article will be discussed in chapter three.

specify it as an inter-Church marriage. All other formalities mentioned in the particular law regarding a marriage celebration, namely issuing the documents by the parish priests, presenting appropriate documents to the pastors by the parties, are to be observed in this case too.

CONCLUSION

The historical synopsis provided in this chapter reveals the fact that the Syro-Malabar Church has traveled through challenging and testing socio-cultural, religious and political experiences which have shaped its patrimony and identity as a *sui iuris* Church. All the elements that constitute this patrimony and ritual identity have had their genesis in the life of the St. Thomas Christians from the apostolic times. However, despite such patrimonial history of the Syro-Malabar Church, it was only on 16 December 1992 that Pope John Paul II accorded to it the status of "Major Archiepiscopal Church," in accord with the legislation contained in the new Eastern Code. Ever since its constitution as a Major Archiepiscopal Church *sui iuris*, the Syro-Malabar Church has taken courageous and commendable actions in bringing its governance in line with the new Eastern Code. This is particularly evident in the legislation the Syro-Malabar Church has enacted on mixed marriage, the object of our study. The significant legislative norms adapted on this matter may be summarized as follows:

First there is a conscious effort on the part of the legislator to render the adaptation of the matter on mixed marriage to the common norms provided in the new Eastern Code, keeping in mind the general principle that a subordinate legislator cannot validly enact laws that are contrary to the law of the Supreme Legislator. Therefore in our

considered opinion, the particular law promulgated by the Syro-Malabar Church on the matter of mixed marriage is in tune with the Common Law of *CCEO*.

Second, in response to the common legislation on ecumenical relations, the particular law includes provisions binding members of both Churches. Thus, for example, the prenuptial conditions, especially those related to the upbringing of children, have been adapted to those agreed upon by both Churches in the Common Declaration of 1984. A more flexible attitude has been adopted by the particular law with respect to time and place of marriage. The particular law contains appropriate guidelines for Catholic ministers to be followed when sacred ministers of both Churches will be involved in the marriage celebration.

Third, the particular law acknowledges the importance of the Eastern theological understanding of the sacrament and its liturgical celebration and also of the socio-cultural aspects of marriage. Prenuptial requirements comprise information from both canonical and social viewpoints, while always maintaining the overriding principle of the unity and indissolubility of marriage.

While the Syro-Malabar Church's accomplishments since its achievement of *sui iuris* status have been impressive, it seems that it has been compelled to limit legislation to a pre-existing framework. For example, the continuing growth of the Syro-Malabar Church outside the state of Kerala, especially the mission eparchies, and international expansion, no doubt due in part to changing emigration and immigration patterns, does not seem to have been considered. In addition, possibilities exist for expanding the

Church's openness towards agreements with other denominations of St. Thomas Christians, such as the Orthodox Syrian Church, a sizeable Jacobite grouping.

In summary, while the promulgation of the particular law has achieved much of importance, we feel that there is scope for further growth and development, in a continuing spirit of ecumenism. Although the *CCEO* will continue to influence future developments, it seems obvious that we need to identify more unifying factors for inclusion in the particular law in the context of our fundamental unity as disciples of Christ.

CHAPTER THREE

THE PASTORAL CARE OF MIXED MARRIAGE FAMILIES IN SYRO-MALABAR CHURCH

INTRODUCTION

Family is the primary vital cell of society and of the ecclesial community. For this reason, much of the pastoral activity of Catholic parishes should be directed towards the support and care of families. Therefore, the pastoral care, as it specifically relates to mixed marriage and the family, must be all encompassing and equally comprehensive.

As we have indicated in the previous chapter, over the past half century the Syro-Malabar Church has seen enormous changes both in the social climate in which the relationships of families develop and in the relationships between the Churches of St. Thomas Christians. In contrast to past practice, these Churches no longer impose marriage-related restrictions in isolation from one another, nor are they as categorical as they used to be.

When the two partners of a mixed marriage actively belong to different denominations and ask the Catholic Church to respect the integrity of their marriage and family life, the request is to be honored, because underlying a pastoral response to mixed marriages is a common theological principle.

For Christians, marriage, which has its origin in God the Creator, also implies a real vocation to a particular state and a life of grace. In order to be brought to its maturation, this vocation requires adequate, particular preparation and a specific path of faith and love, all the more so because this vocation is given to a couple for the good of the Church and society. This has all the meaning and strength of a

public commitment made before God and society that goes beyond individual limits.¹

The Catholic doctrine of marriage as a sacrament converges on the understanding of marriage as a covenant. The union of wife and husband in love both reflects and expresses the covenant love of God and His people. The theology of marriage in general explores how the response to God's love is experienced in the marriage relationship and family life. The unity of the two persons respects their differences and, through the practice of mutual caring, forgiveness, intimacy and nurturing of their offspring, they respond to the love of God.

The subject matter of this chapter explores the relationship between the Churches and reflects the ecumenical developments that have taken place since the Second Vatican Council. The concern here is primarily to identify problems arising from specific Church disciplines, namely, the particular law of the Syro-Malabar Church, and to ease the way to a better understanding of such disciplines. Because there has been a renewed ecumenical climate since Vatican II in the universal Church, and the Syro-Malabar Church has been promoting it, it is important to move with the teachings of the Church as well as to be aware of new patterns evolving within the society of believers as a whole. We will also examine the canonical and theological questions that relate to marriage within the context of contemporary situations and apply the emerging principles to pastoral practice.

¹ PONTIFICAL COUNCIL FOR FAMILY, *Preparazione al sacramento del matrimonio* 13 May 1996, Città del Vaticano, Libreria editrice Vaticana, 1996; English trans. in *Origins*, "Preparation for the Sacrament of Marriage," 26 (1996-1997) pp. 97, 99-109.

The integrity of the whole process of pastoral care can only be sustained by taking into account the canonical and legal issues related to the present social context of family life. This will naturally call for a proper understanding of the terminology, the spiritual background and present social situation of the Syro-Malabar families, and preparation for responsible family life, particularly for the challenge that children will bring to mixed marriages. We will also try to see the Catholic understanding of a Christian family as *ecclesia domestica*.

In summary, this chapter will attempt to cover all the aforementioned points within the framework of the particular law of the Syro-Malabar Church. We will raise some practical questions as a constant reminder that we live in real situations where people respond, both positively and negatively, to conditions which are not necessarily of their making. These might concern not only those with pastoral responsibility but also those who have the opportunity to influence changes in Church policy consistent with ecumenical developments. In recognition of what is already happening, we will attempt in this chapter to anticipate some of the new relationships arising out of the experiences of Churches coming together in mixed marriages. The responses that will ensue will be more pastoral and canonical than dogmatic. The ultimate goal of this endeavor is to highlight opportunities all Christians can have by learning from the experience of yesterday and looking forward to the challenges of tomorrow, so that they will discover together the unity which is God's gift to the Church of Christ.

3.1 — PRELIMINARY CONSIDERATIONS

In view of a better pastoral approach, first of all, we need to understand the terminology discussed here as well as some of the theological concepts in relation to Christian families, especially in the context of the particular law of the Syro-Malabar Church.

3.1.1 – The Terminology

The expression “mixed marriage families,” used passim in this chapter, has been chosen from a number of possibilities² in order to reflect accurately the canonical term. It is intended to convey the meaning of coming together of two Church traditions within the sacrament of marriage. In practice, two Church communities are drawn together in the process of witnessing to the reconciling love of Christ in human relationships. Thus it creates a healing and unifying ecumenical context of Christian communities drawn together in marriage.

3.1.2 – Family as the Domestic Church

Couples in a mixed marriage are bound together not only by their baptism into Christ but specifically by Christian marriage. They are committed to each other in the name of Christ and are united in His love. Yet each one of them may have good reason(s) to remain faithful to Christ through their own Church. Many of the partners in mixed marriages find their life mutually enriching. Their experiences have much to offer their

² Other terms could be used by those discussing these issues are: interchurch families; Christian families of mixed marriage; inter-denominational families; ecumenical families; two-Church families, and so on.

respective Churches as they seek to grow together. Yet they also may suffer more than others because of the continuing tensions within and between the Christian communities to which they are trying to remain faithful.

Those mixed marriage families in which the husband and wife are each fully committed to Churches of different traditions and where the parents and children, therefore, share to some extent in the life of two Christian communities are themselves the hallmark of modern ecumenical pilgrimage. Families as domestic churches (*ecclesia domestica*)³ are the microcosm of the ecumenical relationship.

3.1.3 – Spiritual Tradition of the Syro-Malabar Families

The spiritual life of St. Thomas Christians springs from the apostolic Christ-experience of St. Thomas, from whom they received the example of heroic love towards their neighbors. The families in the Syro-Malabar Church are famous for their well-grounded religious tradition. Most of their traditions have deep roots in the society in which they live. The customary family prayer and giving the sign of peace to one another show the awareness and respect of the family for God's presence at home. The gathering of all members of the family every evening for prayer enhances the intimate union among them. For centuries the praying of the family rosary has become very common among the Syro-Malabar Christians.

The celebration of the Passover feast among the St. Thomas Christian families is an important event which proclaims that Christian families are themselves domestic

³ LG 11; see FC 21; *Catechism of the Catholic Church*, n. 1656.

churches. It is a family feast similar to the celebration of the Eucharist in the church which existed from the very beginning of Christianity in India.⁴

3.1.4 – Social Impact on Families of Mixed Marriage

Marriages are naturally influenced and shaped by the personalities and life experiences of the individual spouses. They are also impacted by the changes in social values. Especially during the past few decades the changes in society's values have been rapid and rampant, and those changes have had significant effect on marriage and family.

These changes include: (1) attitudes toward faith life and sexual relationships, (2) acceptance of abnormal sexual orientation, (3) increase in divorce rate, (4) fertility control and abortion, (5) overemphasis on equality at the expense of mutual responsibility as a parent.

In spite of these problems, it is possible to prepare couples well for marriage and to equip them with the skills and resources to build strong family relationships. As already seen, the Syro-Malabar Church is actively involved in preparing couples for marriage, and through marriage and family life education programs, it strives to raise people's awareness of the dire need to cultivate personal and interpersonal skills necessary to develop and sustain happy and enriching marital and family relationship.

⁴ On Holy Thursday, after the liturgical celebration in the church, the members of the family gather together for the Passover feast. For this feast a special bread is made out of rice flour without yeast with a sign of the cross on it and is eaten with a drink prepared with coconut milk, rice flour and sugar. The eldest in the family (or the head of the family) divides the bread and shares it and the drink with all the members of the family. As a preparation for this meal, the family members sing a song that narrates the entire salvation history. See PODIPARA, *The Thomas Christians*, pp. 93-94; J. VELLIAN, "Passover Family Meal of St. Thomas Christians," in *Diakonia*, 6 (1971), pp. 178-182; T. THEKKEKARA, "Passover Meals in our Homes," in *Eparchial Bulletin*, 67 (1995), p. 9; G. KOLLAMPARAMPIL, "The Peshha Celebration in the Families of St. Thomas Christians of India," in *Ecclesia orans*, 13 (1996), pp. 75-85.

3.1.5 – The Attitude of Catholics Towards Mixed Marriage

For better pastoral care, it is important to know the attitude of Catholics in general towards mixed marriages. In marriage the obvious Catholic ideal is that the two be of one flesh, one mind, one soul, one faith. This complementary unity in marriage few will deny. Yet, in many Catholic eparchies, mixed marriages are increasing in number. In some cases, the actual faith commitment of the partners may be minimal; nevertheless they come to the priest or the minister requesting a religious or liturgical celebration of their marriage in order to receive the Lord's help and blessing in their union of love.

We must be honest about mixed marriages. They are not the means to resolve the differences existing among various Churches or ecclesial communities. Ecumenism is the mutual sharing of gifts in truth. For a Catholic, the truth is that his/her faith is a gift from God, which must be shared with others. Yet this gift cannot be imposed on anyone. Therefore, the greatest gift in his/her possession can only be shared at the good will of the other. The Catholic Church does not encourage any false ecumenism in relation to mixed marriage norms and the pastoral care rendered to the mixed marriage families.

The faith of the partner can nonetheless be a source of strength, growth, and inspiration to the other partner. Even a minimal faith can be fanned in a mixed marriage. This would undoubtedly require great pastoral nurturing from those who provide spiritual support to married couples and families. Expressing the beauty of pastoral care, the Church teaches:

Pastoral activity is always the dynamic expression of the reality of the Church, committed to her mission of salvation. Family pastoral care too-which is a

particular and specific form of pastoral activity - has as its operative principle and responsible agent the Church herself, through her structures and workers.⁵

The Catholic Church does have grave concerns about preserving and handing on the gift of faith in mixed marriages. So do many other religions. Nevertheless, the modern world has created a highly pluralistic society due to migration, mobility, and changing political and social structures. In our society, mixed marriages have become common, and the Syro-Malabar Church cannot dismiss it as not ideal to our Church. It is important to the Church's mission that its laws are applied to concrete cases with compassion and mercy.

3.1.6 – Ecumenical Approach to Pastoral care of Mixed Marriage Families

Before analyzing the canons and the documents on pastoral care, it is important to have a realistic view of ecumenism. Since Vatican II, there have been significant changes in our understanding and practice of pastoral care regarding mixed marriages and families. Walls of prejudice, ignorance, mistrust, and hatred have steadily come down. We are now recognizing the role of the Holy Spirit working in our Churches, and so are working together in solving social problems that cannot be resolved by one Church alone. The focus now is not on heresies and anathemas but on the essential message of Jesus Christ. One of the impressive ecumenical agreements is the one between the Catholic Church and the Syrian Orthodox Church.

Yet, we have to admit the fact that there can be a challenging side to ecumenism. First of all, there exists a real danger of watering down all differences between our

⁵ FC 69.

Churches and their fundamental beliefs. No one can deny that real differences exist between our Churches and they cannot and should not be played down to the extent that one might think they no longer exist. This is just not true. Differences do exist and truth must be upheld. Those who provide pastoral care to mixed marriage families must be aware of this fact, so as to fulfill their ministry truthfully and prudently.

Secondly, there is a tendency to say that 'one denomination is as good as another'. Again this is not true. God bestows His Spirit on His people in a visible way. His community is identifiable by its faith and practice. There is no way we can say that the Catholic Church, objectively speaking, is equal to any other believing community. By this we do not mean to say that the Catholic Church is superior to other Churches but is unique in its identity. Speaking of the ecumenical dimension of mixed marriage, Pope John Paul II in his Apostolic Exhortation, *Familiaris consortio*, stated:

Marriages between Catholics and other baptized persons have their own particular nature, but they contain numerous elements that could well be made good use of and developed, both for their intrinsic value and for the contribution that they can make to the ecumenical movement. This is particularly true when both parties are faithful to their religious duties. Their common Baptism and the dynamism of grace provide the spouses in these marriages with the basis and motivation for expressing their unity in the sphere of moral and spiritual values.

For this purpose, and also in order to highlight the ecumenical importance of mixed marriages which are fully lived in the faith of the two Christian spouses, an effort should be made to establish cordial cooperation between the Catholic and the non-Catholic ministers from the time that preparations begin for the marriage and the wedding ceremony, even though this does not always prove easy.⁶

The Catholic Church is different and unique by Christ's will. This cannot be denied in principle though, in fact, the lives of Catholics may be no better or no worse

⁶ FC 78.

than those belonging to other denominations. So, if we believe in the revelation of Jesus Christ, we cannot unpretentiously say that the Catholic Church is the same as other Churches.

Hence, what we should bear in mind while caring for mixed marriage families is that the ecumenical movement can prove to be positive as well as negative. To stress one aspect to the exclusion of the other could prove harmful to the faith of the people.

3.2 – PREPARATION FOR MARRIAGE

Today the pastoral care of mixed marriage families is becoming more and more challenging with the emergence of a culture which promotes a concept of conjugal love and marriage detrimental to its sacramental value and ecclesial link and is passed on to the new generations as something novel and socially acceptable. Also, situations of poverty, as well as the simultaneous presence of social change “against or outside the Christian vision make both the stability of the family and building up an in-depth education in Christian love difficult and precarious.”⁷

While not ignoring one’s natural right to marry, the Code of Canons of the Eastern Churches identifies a threefold preparation of the future spouses. Accordingly, *CCEO* c. 783 reads:

§1 pastors of the souls are obliged to see to it that the Christian faithful are prepared for the matrimonial state:

1° by preaching and catechesis suited to young people and adults, by which the Christian faithful are instructed concerning the meaning of Christian marriage, the mutual obligation of spouses, and the primary right and obligations of parents

⁷ See “Preparation for the Sacrament of Marriage,” n. 11.

to care, according to their abilities, for the physical, religious and cultural education of their children.

2° by personal instruction of the couple by which they are prepared for their new state.⁸

In the spirit of the Common Law, *CCEO* c. 783 §1,⁹ the particular law of the Syro-Malabar Church (*PLSMC*) Art. 184 §1 states:

In all cases of mixed marriages, the pastors shall make sure that the partners are duly prepared for the same.

The document on the Preparation for the Sacrament of Marriage reiterates: "More than ever necessary in our times is preparation of young people for marriage and family life."¹⁰ Preparation for marriage is "a broad and thorough process of education for married life which must be considered in the totality of its values."¹¹ This reflects the teaching of Pope John Paul II expressed in his Apostolic Exhortation, *Familiaris consortio*:

The very reality of marriage is so rich that it first requires a process of sensitization so that the engaged will feel the need to prepare themselves for it.

⁸ *CCEO* c.783 § 1: "Pastores animarum obligatione tenentur curandi, ut christifideles ad statum matrimoniale praeparentur:

1° praedicatione et catechesi iuvenibus et adultis aptata, quibus christifideles instituantur de significatione matrimonii christiani, de obligationibus coniugum inter se necnon de iure primario et obligatione, quae parentes habent, filiorum educationem physicam, religiosam, moralem, socialem et culturalem pro viribus curandi;

2° instructione sponsorum personali ad matrimonium, qua sponsi ad novum statum disponantur."

The "immediate source of this canon is the conciliar constitution GS 66-67 and the apostolic exhortation *FC* 70, 2 of Pope John Paul II" (see PRADER, "Marrage," in *A Guide to the Eastern Code*, p. 547).

⁹ *CIC* c. 1063.

¹⁰ *FC* 66.

¹¹ "Preparation for the Sacrament of Marriage," n. 10.

Therefore, pastoral care of the family should direct its best efforts towards qualifying that preparation, also making use of pedagogical and psychological aids that have a sound orientation.¹²

The Pope sees Christian marriage as a rich institution of sacramental union of two people, where Jesus becomes the central figure of their union. For the couple to accept this fact with its seriousness, they need to be adequately prepared before they enter into this union. Therefore, the Pope urges the promotion of "better and more intensive programmes of marriage preparation, in order to eliminate as far as possible the difficulties that many married couples find themselves in, and even more in order to favor positively the establishing and maturing of successful marriages."¹³ Since Jesus becomes the central figure in the sacrament of marriage,

Marriage preparation constitutes a providential and favourable period for those oriented toward this Christian sacrament, and a *Kayrós*, i.e., a period in which God calls upon the engaged and helps them discern the vocation to marriage and family life. The engagement period is set within the context of a rich evangelization process. In fact, questions that affect the family converge in the life of the engaged, the future spouses. They are therefore invited to understand the meaning of the responsible and mature love of the community of life and love which their family will be, a real domestic church which will contribute toward enriching the whole Church.¹⁴

The preparation for marriage is "a broad and thorough process of education for married life which must be considered in the totality of its values."¹⁵ Marriage preparation has to be seen and put into practice as a gradual and continuous process. It

¹² "Preparation for the Sacrament of Marriage," n. 10.

¹³ *FC* 66.

¹⁴ "Preparation for the Sacrament of Marriage," n. 2.

¹⁵ *Ibid.*, n. 10

includes three main stages: remote, proximate and immediate preparation.¹⁶ The Apostolic Exhortation *Familiaris consortio*, makes it clear that there should be a clear and precise program for the pastoral preparations. The Pope exhorts:

In this they should lay down, in the first place, the minimum content, duration and method of the "Preparation Courses," balancing the different aspects—doctrinal, pedagogical, legal and medical—concerning marriage, and structuring them in such a way that those preparing for marriage will not only receive an intellectual training but will also feel a desire to enter actively into the ecclesial community.¹⁷

The universal Church, through the Apostolic Exhortation, *Familiaris consortio*, asks each Catholic Church *sui iuris* to lay down specific details regarding the courses of preparation. The Church aims at an integral formation of the future spouses so as to empower them to lead a true Christian family. It includes not only the spiritual growth of the couple and their family but also their physical as well as socio-economic well-being.

As we have seen, regarding the preparation of marriage, *CCEO* c. 783 §1 states that it is the responsibility of the pastors to see their Christian faithful properly prepared for the matrimonial state. The law obliges the parish priests to make sure that the future spouses get adequate knowledge of the Church's teachings regarding the sacrament of marriage¹⁸ and enter into the family life, the domestic church (*ecclesia domestica*), with full commitment. This obligation of the parish priest is clearly stated in *PLSMC* Art. 184 §1, which reads: "In all cases of mixed marriages, the pastors shall make sure that the partners are duly prepared for the same."

¹⁶ *FC* 22.

¹⁷ *FC* 66.

¹⁸ See *The Instruction for Applying the Liturgical Prescription*, n. 80.

Since mixed marriage is also a sacrament, the particular law of the Syro-Malabar Church considers it necessary to prepare the future spouses for the celebration of the sacrament of marriage.

“Preparation for the Sacrament of Marriage,” published by the Pontifical Council for Family outlines the stages of preparation for marriage. We analyze these stages in this section.

3.2.1 – Remote Preparation

Remote preparation begins in early childhood in one’s own family. The training in the family should lead children to discover themselves as being endowed with a rich and complex psychology and with a particular personality with its own strengths and weaknesses. During this period the children should be taught to have esteem for all authentic human values, both in interpersonal and in social relationships. Its aim should be the formation of character, the control and right use of one’s inclinations, the manner of regarding and meeting people of the opposite gender, and so on. Also necessary, especially as Christians, is to have a “solid spiritual and catechetical formation that will show that marriage is a true vocation and mission, without excluding the possibility of the total gift of self to God in the vocation to the priestly or religious life.”¹⁹ In effect, remote preparation is cultivating in the sanctuary of families a respect and care for life based on fundamental Christian principles. It must become a real and proper culture of

¹⁹ FC 66.

human life in all its manifestations and stages for those who are part of the people of life and for life.²⁰

The Church, therefore, considers the importance of the education of the children,²¹ which begins by creating a Christian atmosphere to welcome Christ into the family and in interpersonal relationships.²² Regarding the Christian atmosphere in the family, the Church teaches:

As the domestic church, the family is summoned to proclaim, celebrate and serve the Gospel of life. This is a responsibility which first concerns married couples, called to be givers of life, on the basis of an ever greater awareness of the meaning of procreation as a unique event which clearly reveals that human life is a gift received in order then to be given as a gift. In giving origin to a new life, parents recognize that the child, as the fruit of their mutual gift of love, is, in turn, a gift for both of them, a gift which flows from them.²³

²⁰ See JOHN PAUL II, On the Value and Inviolability of Human Life *Evangelium vitae* (= *EV*), 25 March 1995, nos. 6, 78, 105, in *AAS*, 87 (1995), pp. 401-522. See "Preparation for the Sacrament of Marriage," n. 10.

²¹ "Since all Christians have become by rebirth of water and the Holy Spirit a new creature so that they should be called and should be children of God, they have a right to a Christian education. A Christian education does not merely strive for the maturing of a human person as just now described, but has as its principal purpose this goal: that the baptized, while they are gradually introduced the knowledge of the mystery of salvation, become ever more aware of the gift of Faith they have received, and that they learn in addition how to worship God the Father in spirit and truth (cf. John 4:23) especially in liturgical action, and be conformed in their personal lives according to the new man created in justice and holiness of truth (Eph. 4:22-24); also that they develop into perfect manhood, to the mature measure of the fullness of Christ (cf. Eph. 4:13) and strive for the growth of the Mystical Body; moreover, that aware of their calling, they learn not only how to bear witness to the hope that is in them (cf. Peter 3:15) but also how to help in the Christian formation of the world that takes place when natural powers viewed in the full consideration of man redeemed by Christ contribute to the good of the whole society. Wherefore this sacred synod recalls to pastors of souls their most serious obligation to see to it that all the faithful, but especially the youth who are the hope of the Church, enjoy this Christian education" (SECOND VATICAN COUNCIL, Declaration on Christian Education *Gravissimum educationis* [= *GE*], n. 2, 28 October 1965, in *AAS*, 58 (1966), pp. 728-739).

²² See JOHN PAUL II, Letter to the Families *Gratissimam sane*, (= *Grt Sn*) 2 February 1994, in *AAS*, 86 (1994), pp. 925-968, n. 16; see "Preparation for the Sacrament of Marriage," n. 23.

²³ *EV* 92.

Concerning the objectives to be achieved through the remote preparation, the document on Preparation for the Sacrament of Marriage states that above all such a preparation should enable every member of the faithful called to marriage to understand that, in the light of God's love, human love takes on a central role in Christian ethics. In fact, as a vocation and mission, human life is called to the love that has its source and end in God.²⁴ In this sense, it should be recalled that even when remote preparation deals more with doctrinal content of an anthropological nature, it is to be placed in the perspective of marriage in which human love becomes a sharing, as well as a sign, of the love between Christ and the Church. Therefore, married love makes present among human beings the same divine love made visible in the redemption. The journey or conversion from a rather external and vague level of faith, typical of many young people, to a discovery of the "Christian mystery" that is both essential and decisive: a faith that involves the communion of grace and love with the Risen Christ.²⁵

The remote preparation attains its goal by successfully instilling the essentials of Christian faith and Catholic teachings to make a right judgment regarding self-giving love, the hierarchy of values needed in choosing the best that the society has to offer and in a moral behaviour supported by the faith life in order to face the challenges of life with Christian courage. Thus the formation should enable them to arrive at a personality

²⁴ "Without excluding the possibility of the total gift of self to God in the vocation to the priestly or religious life" (*FC 66*).

²⁵ "Preparation for the Sacrament of Marriage," n. 25.

capable of countering the ideas contrary to the unity and stability of marriage, and of transforming the structures of the so-called social sin.²⁶

In carrying out this remote preparation, the pastor must seek the assistance of catechists, animators of the pastoral care of youth and vocations, and other organizations in the parish. The pastor may “take advantage of homilies during liturgical celebrations and other forms of evangelization, personal meetings, and ways of Christian commitment, in order to stress and highlight the points that contribute to a preparation directed toward possible marriage (cf. *Ordo celebrandi Matrimonium*, 14).”²⁷

The *PLSMC* does not specifically speak of a remote preparation, but in the Syro-Malabar Church, there is a well-organized catechism program for the children from grade one to grade twelve. The catechism textbooks, approved by the competent authority, include all the fundamental teachings of the Church.

3.2.2 – Proximate Preparation

The second stage is called ‘proximate preparation’. It takes place after the parties have decided to get married and before their betrothal celebration. The proximate preparation consists of specific courses and is distinguished from immediate preparation, which is usually concentrated during the meetings between the betrothed and pastoral workers before the celebration of the sacrament of marriage.²⁸

²⁶ See JOHN PAUL II, Apostolic Exhortation *Reconciliatio et paenitentia*, 2 December 1984, in *AAS*, 77 (1985), pp. 257-267, n. 16; “Preparation for the Sacrament of Marriage,” n. 27.

²⁷ “Preparation for the Sacrament of Marriage,” n. 30.

²⁸ See *ibid.*, n. 32.

During proximate preparation, the parties should be provided with the opportunity to verify the maturation of their human values vis-à-vis the relationship of friendship and dialogue that should characterize the parties. "In view of the new state in life as a couple, the opportunity should be offered to deepen the life of faith, especially regarding knowledge about the sacramentality of the Church. This is an important stage of evangelization in which the faith must involve the personal and community dimensions both of the individual engaged persons and their families. In this process, it will also be possible to identify any difficulties they may have in living an authentic Christian life."²⁹

The proximate preparation gradually builds upon the basis of the remote preparation. It starts "from the suitable age and with adequate catechesis, as in a catechumenal process - involves a more specific preparation for the sacraments, as it were, a rediscovery of them."³⁰ The proximate preparation in general could include, "the pastoral care given to the youth which is concerned with the integral growth of the faithful."³¹ Those who offer pastoral care to youth should make sure that it is given within the context of family life, so as to avoid the danger of grouping young people as a separate and independent 'social group'.³² By caring for them as members of their families, the pastoral caregivers would help them orient their values towards a future family of their own.

²⁹ "Preparation for the Sacrament of Marriage," n. 32.

³⁰ *FC* 66.

³¹ "Preparation for the Sacrament of Marriage," n. 33.

³² See *ibid.*, n. 33.

Regarding the proximate preparation, *CCEO* c. 783 §1, 1° says:

by preaching and catechesis suited to young people and adults, by which the Christian faithful are instructed concerning the meaning of Christian marriage, the mutual obligations of spouses, and primary right and obligation of parents to care, according to their abilities, for the physical, religious moral, social and cultural education of their children.³³

This norm prescribes the suitable spiritual preparation of the future spouses. It has been formulated according to the teaching of the Second Vatican Council that a Christian marriage is a road to sanctity.³⁴ Later, Pope John Paul II in his Apostolic Exhortation, *Familiaris consortio*, reiterated this teaching.

Since the norm speaks of the appropriate training that the Christian spouses should receive before they celebrate the sacrament of marriage, the preaching and the catechesis mentioned in this norm should include the teaching on marriage and the family, on the sacrament itself and its rites, prayers, and readings.³⁵ While preparing the future spouses to receive the sacrament of marriage fruitfully for their new state of life (*CCEO* c. 783 §1, 2°; *CIC* c. 1063), the ministers of pastoral care should be careful not to infringe on one's natural right (*CCEO* c. 778; *CIC* c. 1058) to marry.

Once a person has discerned his/her vocation to marry and has made the commitment to be engaged, he/she should be instructed properly on the natural aspects of the interpersonal relationship between a man and a woman in God's plan for marriage and the family. An awareness should be created regarding freedom of consent as the

³³ See *CIC* c. 1063, 1°.

³⁴ See *LG* 41; *GS* 47-52.

³⁵ See *Code of Canon Law Annotated*, p. 1065.

foundation of their union, the unity and indissolubility of marriage, the correct concept of responsible parenthood, the human aspects of conjugal sexuality, the conjugal act with its requirements and ends, and the proper education of children. All of this is aimed at knowing the moral truth and formation of personal conscience concerning the Christian nature of marriage and family.³⁶

This is the time when the pastor should ascertain the motivation for³⁷ and understanding of the marriage on the part of the future spouses.³⁸ During this period the Church considers it necessary to hold frequent meetings “in an atmosphere of dialogue, friendship and prayer, with the participation of pastors and catechists.”³⁹ Such a pastoral milieu is necessary for those preparing for Christian marriage, so that the sacrament may be celebrated and lived with the right moral and spiritual dispositions.⁴⁰

³⁶ See “Preparation for the Sacrament of Marriage,” n. 35.

³⁷ The motivation must reflect a love which is total—that very special form of personal friendship in which husband and wife generously share everything, allowing no unreasonable exceptions and not thinking solely of their own convenience. Whoever really loves his partner loves not only for what he receives, but loves that partner for the partner's own sake, content to be able to enrich the other with the gift of himself... Finally, this love is fecund. It is not confined wholly to the loving interchange of husband and wife; it also contrives to go beyond this to bring new life into being. “Marriage and conjugal love are by their nature ordained toward the procreation and education of children. Children are really the supreme gift of marriage and contribute in the highest degree to their parents' welfare” (PAUL VI, Encyclical Letter *Humanae vitae*, 25 July 1968, in *AAS*, 60 (1968), pp. 481-503, n. 9.

³⁸ “Proximate preparation should certainly ascertain whether the engaged have the basic elements of a psychological, pedagogical, legal and medical nature for marriage and family life” (“Preparation for the Sacrament of Marriage,” n. 35).

³⁹ See *ibid.*, n. 37.

⁴⁰ See *FC* 66.

This preparation should help the future spouses understand marriage as an interpersonal relationship of a man and a woman that has to be constantly developed, and it should give them a proper understanding of the nature of conjugal sexuality and responsible parenthood. It should also equip them with appropriate skills for the education of children and family life.⁴¹

Active involvement of the couple in family ministries of the Church also should be encouraged. Pope John Paul II stated this in his Apostolic Exhortation, *Familiaris consortio*:

One must not overlook preparation for the family apostolate, for fraternal solidarity and collaboration with other families, for active membership in groups, associations, movements and undertakings set up for the human and Christian benefit of the family.⁴²

Pastoral preparation should be organized in such a way that the couple should feel after their marriage that such preparation has provided them with sufficient knowledge regarding the sacrament of marriage and Christian married and family life.

This period of proximate preparation should enable the future spouses to have a clear understanding of the essential characteristics of Christian marriage, that is one, exclusive, indissoluble, and fruitful. It should also prepare them to willingly carry out the mission proper to families in the educational, social and ecclesial areas.⁴³ In sum, this

⁴¹ FC 66.

⁴² Ibid., 66.

⁴³ See "Preparation for the Sacrament of Marriage," n. 45. Regarding the preparation Pospishil writes: "These programs have two main purposes. Firstly, they would like to furnish the future spouses with all that knowledge which will enrich their married life, and enable them to understand that marriage is religious vocation for Christians that can bring them closer to God. The program shows the couple that by placing their married life and that of their family in the

proximate preparation should enable a mixed marriage couple to be true life partners in mutual respect and love, and responsible parents to their children.

The dating process in the Western culture enables the couple to become acquainted with each other before marriage, which of course may have its own challenges. But within the context of the Syro-Malabar Church, especially in the Indian cultural situation, the couple begins to know each other only after their marriage. In each case, during the time of preparation, the pastor should assist them in sharing with each other their personal views and aspirations regarding marriage and family so that they will be able to make a responsible decision to become partners for life. It is important, therefore, for the couple to recognize that when they decide to become spouses, they need to share with each other their beliefs, expectations, values, fears, needs, and learn to deal rationally, positively, and maturely with each other's responses to life situations.

Concerning the proximate preparation for the mixed marriage, the particular law (*PLSMC*) Art. 184 stipulates the following:

§2. When the parties apply for a mixed marriage they should be told that the marriage within the same faith is better for the harmony of the family and upbringing of the children.

§3. If they insist on conducting the mixed marriage, they should be instructed properly about the faith of the couples, the celebration of marriage, the formation and practice of faith after marriage, the duties towards children, and about the special agreements made between the Churches, if any.

§4. It should be stressed that while each partner holds his/her ecclesial faith as supreme or paramount, he/she should respect the ecclesial faith of his/her partner.

Church, among the people of God, they can achieve a higher degree of happiness [...] Secondly [...] the information on the teaching of the Church with respect to the sacrament of marriage and on marriage law [...]” (POSPISHIL, *Eastern Catholic Church Law*, p. 487).

The particular law emphasizes the need to discourage the mixed marriage for the sake of unity and harmony of the family. It reflects the Church's understanding of Christian family as *ecclesia domestica*. The primary concern here is the good of the family. Yet as stated in paragraph 4 above, the Church encourages its members to respect the faith of other people. Even after the advice, if the parties go ahead with their decision to enter into a mixed marriage, the Church offers her full pastoral support. The Church respects the freedom and the fundamental right of a person to choose his or her own state of life. The role of the pastor is only to help the parties choose what is best for them, so that the decision is ultimately made by the couple and not by the pastor. Once the decision is made, the pastor has the duty to instruct them regarding the faith, the teachings of the Church regarding the sacrament of marriage and responsible parenthood in a Christian family.

The particular law also states: "A pre-marriage preparatory course and a pre-marital counseling session are highly recommended" (*PLSMC* Art. 184 §5). This recommendation of the particular law is regarded highly and implemented with utmost seriousness by the Syro-Malabar Church. The courses are arranged according to the spirit of the document of the "Preparation for the Sacrament of Marriage," which says:

The course can be carried out in the individual parishes, if there are enough engaged persons and well-prepared collaborators, in the Episcopal or forane Vicariats, or in parish coordinating structures. Sometimes they can be given by persons in charge of family movements, associations or apostolic groups guided by a competent priest. This is an area which should be coordinated by a *diocesan organism* that works on behalf of the Bishop. Without neglecting the various aspects of psychology, medicine and other human sciences, the content should be *centred on the natural and Christian doctrine of marriage*.⁴⁴

⁴⁴ "Preparation for the Sacrament of Marriage," n. 48.

Accordingly, in the Syro-Malabar Church, the courses are arranged at the eparchial or inter-eparchial levels. If the courses are conducted at the eparchial level, the time and venue of the courses are determined in consultation with the neighboring eparchies. This is to help the future spouses choose a convenient time and place to attend such courses.

It is the duty of the pastors to make sure that the future spouses have gone through such courses by requiring them to submit a document stating the completion of the course. Generally they are encouraged to go through such courses before their betrothal celebration; if not, it is necessary that they attend this course before the celebration of their marriage.

3.2.3 – Immediate Preparation

The immediate preparation is more canonical and liturgical. This is the time when a pastor pays personal attention to those who are about to celebrate marriage. It is always preferable that this preparation, if possible, be done by the pastor himself who will have to deal with certain confidential matters about the parties. For *CCEO* c. 783 §1, 2^o: states: “by personal instruction of the couple by which they are prepared for their new state.”⁴⁵

Regarding the immediate preparation, Pope John Paul II exhorts:

The immediate preparation for the celebration of the sacrament of Matrimony should take place in the months and weeks immediately preceding the wedding, so as to give a new meaning, content and form to the so-called premarital enquiry required by Canon Law. This preparation is not only necessary in every case, but

⁴⁵ Cf. *CIC* c. 1063, 2^o.

is also more urgently needed for engaged couples that still manifest shortcomings or difficulties in Christian doctrine and practice.⁴⁶

In order that the couple may participate in the liturgy consciously, actively and fruitfully, the pastor should try to impart to them a deeper knowledge of the mystery of Christ and of the Church, of the meaning of grace and of the responsibilities of Christian marriage. He should prepare them to take an active part in the rites of the marriage liturgy.⁴⁷

The goals of each stage of the preparation mentioned above will be achieved only when the betrothed appreciate the basic truths of the faith, and learn the significance of liturgical symbols and the principal theological meaning of Christian marriage and family life.⁴⁸

In this respect, the *PLSMC* Art. 184 §7 states: "The priest must ensure that the bride/bridegroom is eligible for marriage." According to this norm the pastor should interview the future spouses to see if they have sufficient knowledge about the sacrament of marriage and its essential properties, Christian family life and responsible parenthood (*CCEO* c. 776; *CIC* cc. 1055, 1056 and 1134); and he must establish that nothing stands in the way of valid and lawful celebration of their marriage (*CCEO* c. 785 §1).

⁴⁶ *FC* 66.

⁴⁷ See *ibid.*

⁴⁸ The particular goals of each stage will be achieved if — in addition to the fundamental human qualities and the basic truths of the faith — the engaged will also learn about the principal theological and liturgical content that marks the different phases of preparation. As a result, in the effort to adapt their life to those values, the engaged will acquire the true formation that prepares them for married life. See "Preparation for the Sacrament of Marriage," n. 19.

The preparation for a mixed marriage in itself should result in a cultural evangelization.⁴⁹ Along with religious values, this preparation should help “strengthen solidarity, respect, justice and forgiveness in personal and collective relations flow from marriage as the foundation of the family”⁵⁰

The aim of the immediate preparation should consist of the following:

- a) A synthesis of the previous preparation, especially its doctrinal, moral and spiritual content, thus filling in eventual gaps in basic formation;
- b) Experiences of prayer (retreats, spiritual exercises for the engaged) in which the encounter with the Lord can make them discover the depth and beauty of the supernatural life;
- c) A suitable liturgical preparation which also envisages the active participation of the engaged, with special attention to the Sacrament of Reconciliation;
- d) Good use of the canonical talks that are envisaged with the parish priest, so that everyone can get to know one another better.⁵¹

The immediate pastoral preparation for the sacrament of marriage should include all the aspects of the canonical and liturgical preparation required by the Church. It must find suitable occasions to introduce the betrothed couple to the rite of marriage. As well as deepening the Christian doctrine on marriage and the family with particular attention to moral duties, in this preparation the engaged should be guided to take an informed and active part in the marriage celebration and understand the meaning of the liturgical

⁴⁹ “Strata of humanity which are transformed: for the Church it is a question not only of preaching the Gospel in ever wider geographic areas or to ever greater numbers of people, but also of affecting and as it were upsetting, through the power of the Gospel, mankind's criteria of judgment, determining values, points of interest, lines of thought, sources of inspiration and models of life, which are in contrast with the Word of God and the plan of salvation” (*Evangelii nuntiandi*, n. 19); see “Preparation for the Sacrament of Marriage,” n. 20.

⁵⁰ “Preparation for the Sacrament of Marriage,” n. 20.

⁵¹ *Ibid.*, n. 50.

actions and texts.⁵² Preparation for the liturgical celebration is one of the most important parts of immediate preparation. The document on the "Preparation for the Sacrament of Marriage" also states:

The liturgical preparation for the sacrament of Marriage should make the most of the elements of ritual that are currently available. To indicate a clearer relationship between the nuptial sacrament and the paschal mystery, the celebration of marriage is normally set within the celebration of the Eucharist.⁵³

The liturgical preparation applies not only to the people who are getting married but to all those who will take an active role in the wedding liturgy.⁵⁴ So the witnesses, the parents of the couple, the lectors and other lay ministers, and the choir are to be properly prepared for the celebration.⁵⁵ The Church acknowledges the importance of the presence and the active participation of the community, for it states:

Inasmuch as it is a sacramental action of the Church, the liturgical celebration of marriage should involve the Christian community, with the full, active and responsible participation of all those present, according to the place and task of each individual: the bride and bridegroom, the priest, the witnesses, the relatives, the friends, the other members of the faithful, all of them members of an assembly that manifests and lives the mystery of Christ and His Church. For the celebration of Christian marriage in the sphere of ancestral cultures or traditions, the principles laid down above should be followed.⁵⁶

⁵² See "Preparation for the Sacrament of Marriage," n. 52.

⁵³ *Ibid.*, n. 53.

⁵⁴ "Those who will take an active part in the liturgy should be invited also to prepare themselves properly for the sacrament of Reconciliation and the Eucharist. It should be explained to the witnesses that they are not only the guarantors of a juridical act, but also representatives of the Christian community which, through them, participates in a sacramental act relevant to it, because a new family is a cell of the Church. On account of its essentially social character, marriage calls for the participation of society and this is to be expressed through the presence of the witnesses" (*ibid.*, n. 55).

⁵⁵ See *EV* 92; "Preparation for the Sacrament of Marriage," n. 56.

⁵⁶ *FC* 67.

These guidelines are meant to help the couple to lead a peaceful and happy Christian family life. With regard to the periods of remote, proximate and immediate preparation, the Church teaches that while bringing together actual experiences in order to effect a major change of mentality and practices associated with the celebration, pastoral workers should take care to follow and make comprehensible what is already set down and established by the liturgical rite. It is obvious that such understanding will depend on the whole process of preparation and the community's level of Christian maturity.⁵⁷

Now, what if one fails to go through the proximate and immediate preparations? Can it be an impediment for the celebration of his/her marriage? The Church is clear about it. We read in *Familiaris consortio* as follows:

Although one must not underestimate the necessity and obligation of the immediate preparation for marriage, which would happen if dispensations from it were easily given - nevertheless such preparation must always be set forth and put into practice in such a way that omitting it is not an impediment to the celebration of marriage.⁵⁸

This implies that the means of pastoral preparation for marriage, recognized by the eparchial bishop or the Church *sui iuris* cannot, strictly speaking, impose it on the future spouses, as it does not constitute an impediment to marriage.⁵⁹ For, "diriment impediments are not to be established by the particular law of a Church *sui iuris*, except for a most grave cause" (CCEO c. 792).

⁵⁷ See "Preparation for the Sacrament of Marriage," n. 73.

⁵⁸ FC 66.

⁵⁹ See *Code of Canon Law Annotated*, p. 1065.

The mind of the Church is that both the ministers of pastoral care and the future spouses should consider the preparation as a serious requirement for the celebration of the sacrament of marriage. However, if the parties would have to suffer some serious inconvenience in order to go through the proximate and immediate preparation, it shall never be considered as an impediment to the celebration of marriage provided that such an impediment is not established by the Church's particular law.

Although the absence of proximate and immediate preparations do not affect the validity of marriage, yet it is to be considered serious so that:

... if couples present themselves with the urgency of celebrating their marriage soon and without proximate preparation, the parish priest and his co-workers will have the responsibility of offering them some occasions to make up an adequate knowledge of the doctrinal, moral and sacramental aspects set out in the proximate preparation for marriage and finally include them in the phase of immediate preparation.⁶⁰

All these stages of preparation are intended to avoid any invalid or illicit marriage. For *CCEO* c. 785 §1 (*CIC* c. 1066) reads:

Pastors of souls are obliged according to the needs of time and place to prevent by suitable means every danger of an invalid or illicit celebration of marriage, and thus, before the marriage is celebrated, it must be established that nothing stands in the way of its valid and licit celebration.

Although this canon is concerned chiefly with the prenuptial inquiry that is part of immediate preparation, yet it covers the whole process of preparation geared toward a valid and licit celebration of the sacrament of marriage.

The instructions in the faith given to adults preparing for baptism may be given to most couples seeking mixed marriage in the Church. Thus, looking into the specific pastoral need, a series of instructions outlining the basic beliefs of the Catholic Church

⁶⁰ "Preparation for the Sacrament of Marriage," n. 51.

regarding the Catholic faith in general and about marriage in particular could be presented to a couple in a mixed marriage. These instructions are meant not to undermine the ecumenical initiatives of the Church but clarify any misconceptions the non-Catholic party may have regarding the Catholic faith. This should not be interpreted as an effort to force the non-Catholic party to become a Catholic.

The handing on of their faith to the children is the primary duty of the Catholic party. The Catholic party, therefore, promises to do all in his/her power to educate the offspring in the Catholic faith. This would mean that he/she will try to do all in his/her specific circumstances to carry out this responsibility. It is up to the pastor to emphasize the gravity of the obligation. However, no one is bound to the impossible. In this regard the pastor is not expected to have in advance absolute certainty that the children will be brought up in the Catholic faith.

Some may consider that the imposition of such a requirement on the Catholic party is an infringement on one's freedom and argue that the promise should not be made mandatory but left to the couple without any formal promises or declarations. There are others who propose bringing up some of the children in the mother's faith and others in father's faith. These views are unrealistic and unacceptable to the Catholic Church. The purpose of the promises and conditions is to keep the unity of the faith in the family. As one believing community, and as the members of the one mystical body of Christ, the Church has every right to insist upon the canonical requirements in order to assist the families to maintain unity and integrity within the believing community.

Some people do raise the question if this requirement on the part of the Catholic spouse can be dispensed by the local ordinary. The simple answer to this question is that the Codes of Canon Law do not speak of a dispensation in this regard.⁶¹ Moreover, the Codes establish an ecclesiastical penalty for the parents or guardians who hand over their children to be baptized and brought up in a non-Catholic religion.⁶² However, with regards to mixed marriage, the 1993 *Ecumenical Directory*, n. 51 offers the following interpretation:

In carrying out this duty of transmitting the Catholic faith to the children, the Catholic parent will do so with respect for the religious freedom and conscience of the other parent and with due regard for the unity and permanence of the marriage and for the maintenance of the communion of the family. If, notwithstanding the Catholic's best efforts, the children are not baptized and brought up in the Catholic Church, the Catholic parent does not fall subject to the censure of Canon Law.

This is a more flexible interpretation on an ecumenically sensitive issue. The directory gives an exemption to those who make their best effort to have their children brought up in Catholic faith. In this regard Huels writes:

The 1993 directory excludes from those subject to this penalty Catholic parties in mixed marriages who have made their best effort to have their children baptized and brought up in the Catholic faith. In saying this, the directory affirms the canon which requires the Catholic party to promise to do all "in his or her power" to have the children baptized and brought up in the Catholic faith. In other words, if Catholic parties in mixed marriages have done their best but have failed to

⁶¹ Why does the Code not mention the possibility of such a dispensation? The answer could be that the law on promises of the Catholic party in a mixed marriage is either of divine law or the matter of such promises are constitutive in nature. In either case, the law cannot be subject to dispensation (*CCEO* c. 1537 = *CIC* c. 86). For an indepth discussion on indispensable and dispensable law, see. J. M. HUELS, "Categories of Indispensable and Dispensable Laws," in *S&C*, vol. 39 (2005), pp. 41-73.

⁶² *CCEO* c. 1439 (*CIC* c. 1366): "Parents or those who take the place of parents who hand their children over to be baptized or educated in a non-Catholic religion are to be punished with appropriate penalty."

have the children baptized and raised Catholics, they have fulfilled their promise required for permission for a mixed marriage and are not subject to sanction.⁶³

In spite of this flexible interpretation, the *Ecumenical Directory* is silent regarding any relaxation of the prenuptial requirement on the part of the Catholic spouse.

3.2.4 – Preparation for Marriage Between Members of the Syro-Malabar Church and Malankara Syrian Orthodox Church

The particular law provides special norms for the preparation of marriage between a Syro-Malabar Catholic and a Malankara Syrian Orthodox. *PLSMC* Art. 191 states:

- §1. For marriages between members of the Catholic Church and the Malankara Syrian Orthodox Church, the pastoral guidelines agreed upon by these two Churches are to be followed.
- §2. Accordingly, as part of the preparation for these inter Church marriages, besides what is given in Article 184 §§ 1-6, the following norms are to be followed:
 1. The priest should ensure that the bride/bridegroom has paid the donations due to the parish in connection with marriage according to the practice of the Churches.
 2. The bride and bridegroom, after mutual consultation, may select the church in which the marriage is to be celebrated.
 3. Written permission for inter-Church marriage from the respective bishops should be obtained by the bride and the bridegroom.
 4. Betrothal may be permitted according to the custom of the place.
 5. Banns which also announce that it is an inter-Church marriage should be published in the respective parish churches.
 6. Once permission is obtained from the Bishops, the respective parish priests are expected to issue the necessary documents for the conduct of marriage.
 7. Marriage in Lent or Advent seasons is only to be conducted with the permission of the Bishops.

⁶³ HUELS, "The 1993 Ecumenical Directory," p. 419.

Article 184 §§1-6 of the particular law speaks about the pastoral obligation of the parish priest to duly prepare the future spouses for a valid and lawful marriage. It includes telling the Catholic party to marry within the same faith for the sake of the harmony of the family (*PLSMC* Art.184 §2), teaching the theological and canonical aspects of the sacrament of marriage and Christian family life (*PLSMC* Art.184 §3), advising the Catholic party to hold the Catholic faith in high esteem and to respect the faith of the partner (*PLSMC* Art.184 §4), recommending attendance at a pre-marriage course and a premarital counseling (*PLSMC* Art.184 §5), and asking the Catholic party to produce his/her baptismal certificate (*PLSMC* Art.184 §6). These are the general requirements for any mixed marriage which we have already discussed.

Besides these general requirements, for a mixed marriage between a Syro-Malabar Catholic and a Malankara Syrian Orthodox, the particular law has stipulated some pastoral guidelines (*PLSMC* Art. 191 §2, 1-7). These guidelines, as we saw in the previous chapter, are prepared in the light of the agreement between the Catholic Church and the Malankara Syrian Orthodox Church, which expressed the mutual commitment to close pastoral collaboration and a renewed effort toward full union.

According to the above-mentioned guidelines, the parish priest has the obligation to ensure that the Catholic party has paid the donations due to the parish in connection with marriage according to the practice of the Churches. We have not found any theological basis for this norm, but from our discussion with some of the canonists and pastors of the Syro-Malabar Church, we conclude that this norm is to keep the long practiced tradition of the Syro-Malabar Church. The law itself is clear by stating:

“according to the practice of the Church,” thereby maintaining this tradition to show the commitment of the faithful to their church community. The custom that prevailed was to offer ten percent of the dowry received or given, but now it is considered an offering and no longer related to the dowry. Looking into this law one may feel that there is undue emphasis given to the matter of donation.

An important ecumenical spirit is reflected in Art. 191, which allows the future spouses the freedom to select either of their parish churches for the celebration of their marriage (see *PLSMC* Art. 191 §2, 2). This freedom is exercised after mutual consultation. The particular law demands that both parties require written permission from their respective bishops for the inter-Church marriage. However, if the Catholic party chooses to celebrate the marriage in the church of the Orthodox party he/she does not need any special permission from the local ordinary (hierarchy). Although the particular law of the Syro-Malabar Church respects the freedom of its faithful in choosing the place of marriage, it reminds the faithful of his/her obligation towards one's own faith community. It is in this context that the preceding law of donation finds its relevance.

In the case of a mixed marriage between a Syro-Malabar Catholic and a Malankara Syrian Orthodox, betrothal celebration is not obligatory for the celebration of their marriage. The particular law leaves it to the discretion of the eparchial bishop to permit it or not according to the customs and practice of the place. However, unless special permission is obtained from the competent authority (see *PLSMC* Art.175), the publication of banns is considered to be obligatory prior to the celebration of marriage. The law says that in announcing the banns, special mention must be made that it is an

inter-Church marriage. Accordingly, the banns are to be published in the parish churches of both parties. In keeping with the spirit of the liturgical season, and the oriental tradition, the norms instruct the parties to avoid celebrations of marriage during Advent and Lent. However, in case of necessity the parties can obtain special permission from their respective hierarchs to have the celebration during these liturgical seasons.

Other than the freedom of the parties to choose the place of marriage without special permission, the special guidelines mentioned in Art. 191 §2 seem more or less a repetition of the common norms of marriage.

3.2.5 — Prerequisites for Pastoral Preparation

As part of the pastoral preparation of the future spouses for a fruitful celebration of a mixed marriage, the particular law, in conformity with the Common Law, establishes a number of canonical prerequisites. These are “designed to discover if the future spouses are free and that there are no obstacles to a valid and lawful celebration of marriage.”⁶⁴ A pastor or his delegate can legitimately bless a marriage only after completing the prerequisites.

Therefore, the pastor himself makes the prenuptial inquiries as part of preparation for the celebration of marriage. This inquiry includes instruction about the sacrament of “baptism and the freedom to marry, which are to be diligently observed so that the

⁶⁴ T. RINCÓN-PÉREZ, Commentary on c. 1066, in *Exegetical Commentary*, vol. III/2, 2004, p. 1126.

celebration of marriage can proceed.”⁶⁵ The Pastor, through personal dialogue with each party separately, should make sure that there exists nothing that impedes the celebration of marriage.

Accordingly, *PLSMC* Art. 162 §1 states:

The parish priest shall either officiate at the betrothal ceremony or give Form A for betrothal to the parish priest of the other party only when he is morally certain that the party has at least a basic knowledge of Christian faith and morals and about the nature, purpose and essential properties of the Sacrament of marriage.

The measures mentioned in the above article are intended to prevent any danger of an invalid or illicit celebration of marriage, and enable the parish priest⁶⁶ to make sure before the betrothal celebration that nothing stands in the way of a valid and licit marriage celebration on the part of the betrothed. Form ‘A’ is issued by the parish priest to establish that the party is free of all impediments for the celebration of marriage. The form is issued on the basis of the personal enquiry made by the parish priest. Later for the celebration of marriage another form, namely, *Desa Kuri* or Form ‘C’, is to be issued by the parish priest of the party. This is a “no objection certificate for the licit celebration of marriage” (*PLSMC* Art. 161 §4) of the party, and is issued after the publication of banns stating that nothing stands in the way of a valid celebration of their marriage. Form ‘A’ is the technical and formal instrument by which a record is made of the prenuptial inquiry

⁶⁵ *CCEO* c. 784. See *CIC/83* c. 1067. Considering the needs of times and places, the pastors have the obligation to prevent with opportune means every danger of an invalid or illicit celebration of marriage, and thus before the marriage is celebrated, it must be established that nothing stands in the way of its valid and licit celebration. In danger of death the affirmation of the spouses is sufficient unless there is a contrary indication. See *POSPISHIL*, *Eastern Catholic Church Law*, p. 490.

⁶⁶ In this part of the chapter we use “parish priest” and “pastor” interchangeably in order to keep the exact wording used in *PLSMC*.

to ensure a valid and lawful celebration of the marriage and Form 'C' is a legal record indicating that the marriage can be celebrated, giving the information about the party required by the law for the valid celebration of marriage.

The prerequisites of the pastoral preparation are more strictly canonical or legal. This is to help the couple celebrate the marriage both validly and licitly.⁶⁷ For mixed marriages the canonical requirements of the prenuptial conditions and promises are to be fulfilled.⁶⁸ The particular law says:

The parties should, in the course of the contacts in this connection, be invited and encouraged to discuss the Catholic baptism and education of the children they will have, when possible come to a decision on this question before marriage (c. 815).⁶⁹

While preparing the couple for mixed marriage, the pastor should endeavor to establish a mutual understanding of and respect for each other's faith and religious traditions. While respecting the faith and practices of the non-Catholic party, the pastor

⁶⁷ *CCEO* c. 785 §1. "Pastors of souls are obliged according to the needs of time and place to prevent by suitable means every danger of an invalid or illicit celebration of marriage, and thus, before the marriage is celebrated, it must be established that nothing stands in the way of its valid and licit celebration." See *CIC* c. 1066.

⁶⁸ *PLMC* Art. 185 §1. "For mixed marriage, with due regard for cases mentioned in Articles 182 §2 and 191, the parties shall submit a written petition together with the endorsement of the parish priest of the Catholic party to the local hierarch requesting permission for mixed marriage.

§2. Together with this petition, the Catholic party shall submit a written declaration regarding the promises and obligations mentioned in canon 183, n.1

§3. Before endorsing the petition for permission for mixed marriage, the parish priest of the Catholic party shall inform the non-Catholic partner about the above said declaration of the Catholic party and notify the matter in the petition. If the non-Catholic party has no objection, he/she may be invited to counter-sign the declaration of the Catholic party to the effect that he/she is aware of the promises of the Catholic party (c. 814 §1)." See *CCEO* cc. 813-814; *CIC/83* cc. 1124-1125.

⁶⁹ *PLSMC* Art. 185 §4.

should give the couple comprehensive instructions regarding the Catholic understanding of marriage, family, sexuality and responsible parenthood. They “are to be instructed on the essential ends and properties of marriage, which are not to be excluded by either spouse (c. 814 §3).”⁷⁰

The Eastern Code expressly enjoins upon the parish priest the duty of prudently teaching his people the obligations and the impediments of marriage. Before allowing any couple to marry in the Lord, the couple must be instructed properly in the Catholic faith. For, the particular law says: “The priest must ensure that bride/bridegroom is eligible for marriage” (*PLSMC* Art. 184 §7).

3.2.6 – Practical Suggestions for Preparation

Many eparchies have guidelines providing practical details necessary for the preparation and celebration of marriage in the parishes of their respective eparchies. These guidelines should include instructions to help priests, marriage instructors, and future spouses in the planning of the celebration of marriage. From the above discussion, we draw the following practical suggestions for the preparation:

(1) Contacting the parish priest

When a person plans for a mixed marriage, he/she should contact his/her parish priest before a date is set for the wedding. A personal meeting with the parish priest should be arranged at least three months before the intended date of wedding. This will

⁷⁰ *PLSMC* Art. 183 §3.

give sufficient time for the priest to fulfill his pastoral obligation in preparing the couple according to the norms of the particular law (*PLSMC* Arts. 183 and 184).

(2) Obtaining permission

According to the Article 185 §1 of *PLSMC*, it is the duty of the parish priest to help the future spouses to prepare a written petition to the local hierarch requesting permission for mixed marriage. After speaking with the parties, and telling them that “marriage within the same faith is better for the harmony of the family and the upbringing of children” (*PLSMC* Art. 184 §2), if they insist on a mixed marriage, the parish priest shall approve their petition for permission.

(3) Attending marriage preparation course

This is one of the best ways to prepare for the celebration of the sacrament of marriage and family life. The courses should be given by qualified professional people including married couples of good standing. The course should include sessions on theological and canonical aspects of the sacrament of marriage, celebration of marriage, psychology of men and women, communication in marriage, responsible family planning, social and civil aspects of marriage, and financing.

(4) Private instructions and interviews by the parish priest

This instruction and interview are extremely necessary for the parish priest “to make sure that the future spouses are duly prepared” (*PLSMC* Art. 184) for a valid and lawful celebration of marriage. These instructions and interviews should deal with some of the fundamental aspects of Catholic faith, implications of the sacrament of marriage, and canonical and civil legalities involved. For, in line with *CCEO* cc. 782-785, the

particular law states: "Prior to the betrothal the parties shall fill in the prenuptial enquiry form in front of their respective parish priests in order to make sure that they enter into the marriage covenant with due preparation, knowledge and consent" (*PLSMC* Art.160).

(5) Medical preparation

Looking into the present social situation, the pastor may strongly recommend the partners to have a complete medical examination. If possible the pastor may ask for a copy of the medical report as a record, which should be kept strictly confidential. The pastor also may advise the future spouses to reveal to each other any previous medical (mental or psychiatric) problem they may have experienced. Such pastoral advice will preclude any unexpected disclosures after marriage, which could be grounds for an annulment.

(6) Spiritual preparation

In order to prepare the future spouses for marriage "in the Lord," the pastor should help them open themselves to the Spirit who dwells in them through baptism. This can be promoted by daily prayer, Scriptural reading, weekly Eucharist, the sacrament of reconciliation, and a day of retreat.

(7) Liturgical preparation.

It is important to have adequate preparation for the liturgical celebration of marriage. The spouses should not be ignorant of the prayers, hymns and rituals of the celebration. The pastors should, therefore, explain to them the theological and scriptural relevance of prayers, and the religious and social significance of the rituals.

In the context of the believing community, marriage is both personal and public. It is a personal commitment the couple makes for life, but the community of believers also is affected since the spouses become a visible sign of the Lord's covenantal love. Therefore, it is highly recommended to celebrate the sacrament of marriage in the presence of the community of believers.

3.3 — CELEBRATION OF MARRIAGE

The celebration of marriage is the actualization of the event with words, actions, music, and rituals that underline and heighten its religious and social importance. It is a joyous event for the couple, their families, and the community of believers. Celebration of marriage is not only the culmination of the journey of preparation which the spouses have made but also it is the source and origin of their married life. Therefore, in the celebration of the sacrament special attention must be devoted to the moral and spiritual dispositions of those being married, to their faith in particular. The celebration should be adapted to the social customs and traditions that are not contrary to the prescribed liturgical norms.⁷¹ In this respect the Church instructs:

“Outside the case of necessity, in the celebration of marriage the prescriptions of the liturgical books and the legitimate customs are to be observed in the celebration of marriage” (can. 836). In reviewing and eventually updating the liturgical prescriptions for these celebrations, the competent authorities of each Church *sui iuris* are to carefully safeguard the specific features of their own heritage which show the particular prominence of the meaning of the matrimonial institution in the framework of the history of salvation and,

⁷¹ “If any regions are wont to use other praiseworthy customs and ceremonies when celebrating the sacrament of matrimony, the sacred Synod earnestly desires that these by all means be retained” (SC 77; see “Preparation for the Sacrament of Marriage,” n. 60).

especially, expresses in theological terms the strict relation between it and the nuptial mystery existing between Christ and his Church.⁷²

In a mixed marriage, the person wanting to celebrate the marriage, depending on the depth of his/her faith, may have personal preferences regarding the marriage ceremony. In such cases, it is the duty of the parish priest to assist such persons in their faith in accordance with the teachings of the Church. The parish priest must also understand the reasons why the Church allows introduction into the celebration of marriage praiseworthy customs and traditions of the community.⁷³ In the context of the celebration of mixed marriages, the moral and spiritual dispositions of those being married must be given special attention. There can be people who show apathy towards the teachings of the Church and their faith practices. In such cases the parish priest should try to help the person rediscover and nourish his/her faith. For the Church teaches:

In fact, the faith of the person asking the Church for marriage can exist in different degrees, and it is the primary duty of pastors to bring about a rediscovery of this faith and to nourish it and bring it to maturity. But pastors must also understand the reasons that lead the Church also to admit to the celebration of marriage those who are imperfectly disposed.⁷⁴

The liturgical celebration of a Christian marriage reveals “the essentially ecclesial and sacramental nature of the conjugal covenant between baptized persons.”⁷⁵ Pope John Paul II says that the preparation for liturgical celebration opens up a wide field for

⁷² *Instruction for Applying the Liturgical Prescription*, n. 84.

⁷³ As we have seen in the previous chapter, the liturgical text for the marriage ceremony approved by the Syro-Malabar Church includes *tali kettu* and *manthrakodi aniyikal*, which are purely a social tradition. It has significance only within the cultural context of the proper territory of the Church *sui iuris*.

⁷⁴ FC 68.

⁷⁵ *Ibid.*, 67.

pastoral solicitude, so that the needs deriving from the nature of the conjugal covenant, elevated into a sacrament, may be fully met, and also in order that the Church's discipline regarding free consent, impediments, the canonical form and the actual rite of the celebration of the wedding may be faithfully observed.⁷⁶ The Pope continues:

Pastoral commitment will be expressed here through the intelligent and careful preparation of the Liturgy of the Word and through the education to faith of those participating in the celebration and in the first place the couple being married.⁷⁷

Because of the social nature of a marriage celebration, the parish priest should be sensitive to the social as well as personal motives behind the requests of the couples. The parish priests should make a prudent decision that will not undermine Christian principles. The Church teaches that these future spouses, by virtue of their baptism, share in Christ's marriage Covenant with the Church, and that, by their right intention, they have accepted God's plan regarding marriage. For this reason, at least implicitly, they consent to what the Church intends to do when she celebrates marriage. The fact that motives of a social nature also enter into the request is not enough to justify refusal on the part of parish priests. Moreover, as the Second Vatican Council teaches, the sacraments by words and ritual elements nourish and strengthen faith. It is to this end the married couple are already journeying by reason of the uprightness of their intention, which Christ's grace certainly does not fail to favor and support.⁷⁸

⁷⁶ *FC 67.*

⁷⁷ *Ibid.*

⁷⁸ *See ibid., 68.*

However, the parish priest, in his pastoral prudence, can deny the celebration of a marriage if he finds that, in spite of his efforts to catechize, the couple deliberately rejects the teaching of the Church regarding the celebration. To this effect Pope John Paul II in his Apostolic Exhortation *Familiaris consortio*, states:

... when in spite of all efforts, engaged couples show that they reject explicitly and formally what the Church intends to do when the marriage of baptized persons is celebrated, the pastor of souls cannot admit them to the celebration of marriage. In spite of his reluctance to do so, he has the duty to take note of the situation and to make it clear to those concerned that, in these circumstances, it is not the Church that is placing an obstacle in the way of the celebration that they are asking for, but themselves.⁷⁹

3.3.1 – Celebration of Marriage Between Members of the Syro-Malabar Church and Malankara Syrian Orthodox Church

As already discussed before, the Syro-Malabar Church *sui iuris* has promulgated special norms concerning the celebration of marriage between a member of her community and a member of Malankara Syrian Orthodox Church. The norms are promulgated keeping pace with the pastoral guidelines agreed upon by the two Churches.

For, *PLSMC* Art. 191 reads:

- §3. The following norms for the celebration of the inter-Church Marriages are to be observed:
1. The liturgical minister should be the parish priest of the church where the marriage is celebrated or his delegate from the same ecclesiastical communion.
 2. There is to be no joint celebration of marriage by the minister of both the Churches. The marriage is to be blessed either by the Catholic or the Syrian Orthodox minister. However, there could be some kind of participation at the liturgical service by the other minister who could read a scriptural passage or preach a sermon.

⁷⁹ Ibid.

3. On the occasion of these celebrations the couple, and any members of their families who belong to these Churches, are allowed to participate in the Holy Eucharist in the church where the sacrament of matrimony is being celebrated.

According to the pastoral guidelines of the particular law, the future spouses of mixed marriage have the freedom to choose the place of the celebration of their marriage. The place they choose must be a church of the ecclesial community of either of the parties. If they choose a place other than a church of their ecclesial community, they should obtain permission from their respective hierarchs.

The minister who presides at the celebration of a mixed marriage should be the parish priest of the church or a priest of the same ecclesial community delegated by the parish priest where the marriage is celebrated. It is clear in the norm that it is unlawful for a Catholic priest to preside at a mixed marriage that is celebrated in an Orthodox church; so too, an Orthodox priest cannot lawfully preside at a mixed marriage celebrated in a Catholic church.

The Church also strongly prohibits any kind of joint celebration by the ministers of the Churches. However, a Catholic priest can actively participate in a mixed marriage that is lawfully celebrated in an Orthodox church. In the same way an Orthodox priest can participate in a mixed marriage celebrated in a Catholic church by reading a passage from the Scripture and preaching the sermon appropriate to the situation. On such occasions the ministers must be extremely careful not to draw attention to the differences

between the two Churches and their personal grievances, if any, towards the other Church. The joint celebration is allowed only with the permission of the local hierarch.⁸⁰

Canon 783 §2 of *CCEO* reads: "It is strongly recommended to Catholic couples to receive the Divine Eucharist at the celebration of marriage."⁸¹ The Latin Code, on the other hand places grater emphasis on the entire liturgical celebration as such. According to the Codes of Canon Law (*CCEO* c. 783 §§ 1&3; *CIC/83* c. 1063), the pastors of the future spouses are obliged to take care that the matrimonial state is preserved in a Christian spirit and advances in perfection. Pastoral care must be offered especially by a fruitful celebration of the marriage liturgy, which should express clearly that the spouses signify and share in the mystery of the unity and fruitful love between Christ and the Church.

In accordance with the Catholic understanding of *communicatio in sacris*, the particular law of the Syro-Malabar Church teaches that on the occasion of the celebration of a marriage between a Syro-Malabar Catholic and a Syrian Orthodox faithful, the

⁸⁰ *Ecumenical Directory*, n. 157: "With the previous authorisation of the local Ordinary, and if invited to do so, a Catholic priest or deacon may attend or participate in some way in the celebration of mixed marriages, in situations where the dispensation from canonical form has been granted. In these cases, there may be only one ceremony in which the presiding person receives the marriage vows. At the invitation of this celebrant, the Catholic priest or deacon may offer other appropriate prayers, read from the Scriptures, give a brief exhortation and bless the couple."

⁸¹ "It was the tradition of all Eastern Churches that wedding was not a part of the eucharistic liturgy. When this canon expresses the wish that the couple should receive the divine eucharist 'in' the celebration of marriage, this means that this could be done in conjunction with the marriage rite, preferably prior to it. Under the influence of the Latin Church after Vatican II, some Eastern Catholic Churches have introduced the celebration of marriage within the eucharistic liturgy" (POSPISHIL, *Eastern Catholic Church Law*, p. 489).

couple and any members of their families who belong to these Churches can participate in the Holy Eucharist in the church where the sacrament of marriage is being celebrated.

3.4 — CONTINUED PASTORAL CARE OF MIXED MARRIAGE FAMILIES

Having discussed some of the social as well as religious aspects of modern family life, we shall now look into the continued pastoral care of mixed marriage families.

The family is the micro-unit of the human society. A person, as a social being, is basically formed and shaped in one's own family. It is in the family that faith, morals and ethical values are shared. Hence the Church, especially at the parish level, has to claim its role in the family. This is so because any work toward the building up of the universal Church or a better parish unit needs to start from the family. The Church, committed to working for the realization of a "new heaven and a new earth" (Rev. 21: 1a), considers family as the domestic church (*ecclesia domestica*) and the place where its primary focus is derived by promoting the integrity and welfare of the family. Pope John Paul II expresses this mission of the Church to the family in these words:

After the preparation of engagement and the sacramental celebration of marriage, the couple begin their daily journey towards the progressive actuation of the values and duties of marriage itself. In the light of faith and by virtue of hope, the Christian family too shares, in communion with the Church, in the experience of the earthly pilgrimage towards the full revelation and manifestation of the Kingdom of God. Therefore, it must be emphasized once more that the pastoral intervention of the Church in support of the family is a matter of urgency. Every effort should be made to strengthen and develop pastoral care for the family, which should be treated as a real matter of priority, in the certainty that future evangelization depends largely on the domestic Church.⁸²

⁸² FC 65.

Through the pastoral care of mixed marriage families the Church reiterates the ecclesial character of a Christian family, which has a special role to play in bringing forth the Kingdom of God in the world. The mind of the Church is that "in the first five years of married life, it would be desirable to follow up with the young couples through post-marriage courses, to be carried out in parishes or deaneries."⁸³

In practice, the continued pastoral care of the mixed marriage families implies:

... the commitment of all the members of the local ecclesial community to helping the couple to discover and live their new vocation and mission. In order that the family may be ever more a true community of love, it is necessary that all its members should be helped and trained in their responsibilities as they face the new problems that arise, in mutual service, and in active sharing in family life.⁸⁴

The parish priest must pay special attention to couples in mixed marriages by helping them to live married love responsibly in accord with the demands of ecclesial communion and the practice of their faith life.

Christian marriage preparation can be described as a journey of faith which does not end with the celebration of marriage but continues throughout family life. Therefore, our perspective does not close with marriage as an act, at the moment of its celebration, but is on-going.⁸⁵

All these pastoral efforts should support and help the couple to grow in love for their family and to live after the example of the Holy Family of Nazareth. "Loving the family means being able to appreciate its values and capabilities, fostering them always. Loving the family means identifying the dangers and the evils that menace it, in order to

⁸³ "Preparation for the Sacrament of Marriage," n. 73.

⁸⁴ *FC* 65.

⁸⁵ "Preparation for the Sacrament of Marriage," n. 16

overcome them. Loving the family means endeavoring to create for it an environment favorable for its development.”⁸⁶ To live the family after the Holy Family of Nazareth, one must understand that through God’s mysterious design, it was in the Holy Family of Nazareth that the Son of God spent long years of a hidden life. It was, unique in the world, the prototype and example for all Christian families. Its life was passed in anonymity and silence in a little town in Palestine, where it underwent trials of poverty, persecution and exile. It glorified God in an incomparably exalted and pure way. Such an ideal will not fail to help Christian families indeed, all the families in the world to be faithful to their day-to-day duties, to bear the cares and tribulations of life, to be open and generous to the needs of others, and to fulfill with joy the plan of God in their regard.⁸⁷ The Holy Family should be held up as the finest example for all Christian families to emulate. The canonical legislation of the Church has given due importance to this understanding. Therefore, *CCEO* c. 783§3 says:

After the celebration of marriage, pastor of souls should assist the couple so that by faithfully observing and safeguarding their marriage covenant they may day by day achieve a holier and fuller family life.⁸⁸

The norm states that Church’s pastoral action must be progressive, also in the sense that it must follow the family, accompanying it step by step in the different stages of its formation and development.⁸⁹ If this wider support is neglected in the mistaken hope that the couple will be able to sort out for themselves any practical problem that

⁸⁶ *FC* 86.

⁸⁷ See *ibid.*

⁸⁸ See *CIC* c. 1063, 4°.

⁸⁹ See *FC* 65.

might arise, it will not achieve the goal of true pastoral care of families. It is the duty of each eparchial bishop and the parish priests to take care that the families get adequate pastoral care in order that the couple “love the family and live the family after the Holy Family of Nazareth.” Accordingly, *CCEO*, c. 816 (*CIC/83* c. 1128) states:

The local hierarchs and other pastors of souls are to see that the Catholic spouse and the children born of a mixed marriage are not without the spiritual help needed to fulfill their obligations of conscience; they are also to assist the spouses to foster the unity of conjugal and family life.

The Church legislation is very clear about the duty of the bishops and priests regarding their pastoral roles. The primary duty of a bishop is the pastoral care of the people of his eparchy. The pastors have the obligation to assist their respective bishop in discharging his pastoral duties. Hence, while respecting the norms given by the *sui iuris* Church, every eparchy should have norms governing their pastoral ministry.

According to both Codes of Canon Law, the person principally responsible in the eparchy for the pastoral care of the family is the eparchial bishop. As father and pastor, he must exercise particular solicitude in this aspect of his pastoral ministry. He must devote personal interest, care, time, personnel and resources for the well-being of families and for all those who, in the various eparchial structures, assist him in the pastoral care of the family. The bishops and the priests who constitute an essential part of the Church's ministry should avail themselves for the care of marriage and the family.

The Syro-Malabar Church is actually aware of the widespread marital and family breakdown in society today and no longer takes for granted that its faithful are in some way immune from the dangers that threaten stable married and family relationships. At the very least, therefore, it is vital not to put conflicting Church loyalties in the way of

family unity. It is equally important to take positive steps wherever possible to assist in overcoming the difficulties that might arise in nurturing and strengthening relationships as a result of different backgrounds from which the couple come.⁹⁰

Continued pastoral care must take into account different stages of family life, which starts from the day of wedding and continue through childbirth, caring of infants, schooling of the children, instruction of the adolescent children, the marriage of the children, becoming grandparents, coping with old age, loss of one's partner and finally, facing one's own death. Continued pastoral care can be effective only if those involved in the ministry realize that their ministry encompasses all these stages of life. For the efficacy of continued pastoral care, all those in the field of pastoral ministry should have proper training and ongoing refresher programmes.

Unlike other Catholic families, pastoral care for mixed marriage families should be more generous, modeled on the Good Shepherd. They require extra attention, since they are more in need not only of assistance "but also of more insightful action upon public opinion and especially upon cultural, economic and juridical structures, in order that the profound causes of their needs may be eliminated as far as possible."⁹¹ In continued pastoral care of mixed marriage families, attention should be focused on the support of the faith of the Catholic spouse and the Catholic education of their children.

⁹⁰ An example of the open attitude on the part of the Syro-Malabar Church is reflected in the norm regarding the funeral service and the burial of the couples in mixed marriages. See *PLSMC* Art. 191 §4, 5.

⁹¹ *FC* 72.

3.4.1 – Support for the Faith of the Married Couple

Contemporary marriage and family life are becoming increasingly alienated from extended family relationships. The partners of mixed marriage are committed to one another in the sacrament of marriage, but because they belong to different Churches and intend to remain affiliated to them, their union in Christ must be expressed within those two Churches.

Since partners in a mixed marriage love and respect one another, they should learn to love and respect one another's Churches. They are to be encouraged to become more appreciative of the positive elements and to minimize negative feelings, if any, towards the other Church. Although the spouses belong to two different Churches, the pastors should recognize them as one Christian family, one domestic Church, belonging to the one Church of Christ through two different denominations, two traditions, sadly divided, but now in the process of mutual recognition and reconciliation.

3.4.2 – Education of Children

The Second Vatican Council stated: "By its very nature the institution of marriage and married love is ordered to the procreation and education of the offspring and it is in them that it finds its crowning glory."⁹² In a more expressive way the Church teaches that children should be considered as the supreme gift of marriage.⁹³

⁹² GS 48.

⁹³ See GS 50.

A significant number of men and women are establishing new patterns of couple and family relationship and, therefore, many of today's children will be brought up in non-traditional households. Parents of Christian families too often forget the fact that they are 'married in the Lord' and committed to one another in love and that they have the obligation to share their faith experience with their children. In a Christian family, which is open to life, a child is part of the spiritual dimension of marriage. It is spiritually beneficial to consider the truth that conjugal love is a reflection of Trinitarian love, so that the family that grows in the image of the Trinity includes the child that grows out of total and fruitful love.

The spouses in a mixed marriage, in this sense, should be able to act in communion and collaboration with their parish priests and the other members of their parish communities who are involved in ministry of pastoral care of families. This ministry should facilitate the spouses to exercise their duty as responsible parents, in the first place, within their families. The parents exercise their ministry in the family through the witness of a life lived in conformity with the divine law in all its aspects, through the Christian formation of the children, through helping them to mature in faith, through preparation for different stages of their lives, through vigilance in protecting them from the ideological and moral dangers with which they are often threatened, through empowering them to face the challenges involved in their faith life in their gradual and responsible inclusion in the ecclesial community and the civil community, through help and advice in choosing a vocation, and through mutual help among family members for human and Christian growth together.

The Apostolic Exhortation, *Familiaris consortio*, teaches: “The fundamental task of the family is to serve life, to actualize in history the original blessing of the Creator — that of transmitting by procreation the divine image from person to person” (*FC* 28). Fatherhood and motherhood represent a responsibility which is not simply physical but spiritual in nature.⁹⁴

The children also should be given a wider perspective of true Christian life through the examples of works of spiritual and material charity towards other families, especially those most in need of help and support, towards the poor, the sick, the old, the handicapped, orphans, widows, spouses who have been abandoned, unmarried mothers and mothers-to-be in difficult situations who are tempted to have recourse to abortion, and so on.⁹⁵

A readily available marital counseling service should also be provided for couples, offering a whole range of support in their relationship. The couple will, in turn, impart to their children the possibility of an environment that is loving, stable, and trustworthy. This would be an invaluable experience in the lives of children, enabling them to develop a capacity to choose endearing and committed relationships when they, in their turn, become partners and parents.

⁹⁴ See *Grt Sn* 10.

⁹⁵ See *FC* 71.

3.4.3 – Pastoral Care of the Syro-Malabar and Syrian Orthodox Mixed Marriage Families

The particular law of the Syro-Malabar Church has provided some useful norms concerning the continued pastoral care of the mixed marriage families. The *PLSMC* Art. 191 states:

§4. Regarding the pastoral care of the Catholic-Syrian Orthodox inter-Church Families the following guidelines are to be observed;

1. The Catholic partner is to be reminded that he/she has to commit himself/herself to imparting to their children proper Catholic formation, to the extent possible and in agreement with his/her partner. Such a formation should be fully in harmony with the Catholic tradition to which he/she belongs.
2. The pastors of both partners are bound in conscience to provide continued pastoral care to the inter-Church families in such a way as to contribute to their sanctity, unity and harmony.
3. Each partner is to be advised to attend the liturgical celebration of his/her respective Church, but the couple may be allowed to participate jointly in the Eucharistic celebration on special occasions when this joint participation is socially required.
4. Any declaration of the nullity of such marriage is only to be considered with the consent of the bishops concerned from both Churches.
5. The funeral service should, as far as possible, be conducted according to the rite of the dead person's Church, even though he or she may be buried in either of the cemeteries, especially if the other partner is already buried there in a family tomb.

The Catholic education of the children is one of the major issues involved in the prenuptial agreements in mixed marriages. The pastoral instruction to the Catholic party regarding the education of the children is to be given at the time of proximate preparation and he/she should be reminded of the same at the time of immediate preparation of the parties. The pastor, while giving such guidance, should always respect the faith and sentiments of the non-Catholic party.

Continued pastoral care given to the mixed marriage couples shall not in any way create division in the family; rather it should be orientated towards the unity of the family in faith. The pastor should keep in mind that here he is working towards the unity not just of two people but in a sense of two Churches. His role, therefore, is not only to highlight what makes the Catholic Church unique but also to work on the elements that unite both Churches. It is here that the pastor should be aware of our common beliefs discussed above. In view of the joint pastoral care it is most appropriate that the pastors of both Churches come together and discuss matters related to the care of the particular family.

As already discussed, what is unique to the Catholic understanding of the sacrament of marriage is its indissolubility. Should there be a question of nullity of a marriage between a Syro-Malabar faithful and a Syrian Orthodox, it shall be declared by the Catholic Church only after receiving the consent of Syrian Orthodox bishop.

The particular law recommends that the funeral services of the Catholic party be conducted according to the Syro-Malabar liturgy. At the same time the particular law respects the wishes of the parties if they choose their burial in the same cemetery, Orthodox or Catholic.

Whatever the status of the inter-Church relationships at the international, national, or even local levels, mixed marriage couples should demonstrate their faith and love for one another in their quest for family unity. On the one hand, they experience at an intimate level the pain of continuing division between the Churches. On the other hand they represent the spirit of reconciliation between different traditions. This process of reconciliation has profound significance for our Christian pilgrimage.

Although initially the process of interchurch cooperation may be seen to be relatively minor in nature, the preparation of a couple for marriage and the opportunity it creates for inter-Church dialogue is of much greater significance. For example, the number of persons is increasing who ignore or reject the intrinsic values of marriage.⁹⁶ To help counteract this trend, the Churches should welcome and encourage couples of mixed marriages, rather than consider them disloyal to their own Church for wanting to marry across Christian divisions. Such couples should be acknowledged as a positive resource for the growing unity between the Churches. Above all, mixed marriage families should receive the necessary pastoral support and be viewed as a source of a positive contribution to their Churches through their mutual respect and understanding.

3.5 – CATEGORIES OF MIXED MARRIAGE FAMILIES

In the context of the particular law of the Syro-Malabar Church, the families of mixed marriages can be placed into three different categories. This is not intended to be a strict canonical classification. The three categories of mixed marriage families are: (1) a mixed marriage family of a “Syro-Malabar Catholic and a member of an Eastern non-Catholic Church”, (2) a mixed marriage family of a “Syro-Malabar Catholic and a member of a non-Oriental non-Catholic Church”, and (3) a mixed marriage family of a “Syro-Malabar Catholic and a Malankara Syrian Orthodox (*Bhava Kakshi*)”.

Concerning the first category, that is, “a mixed marriage family of a Syro-Malabar Catholic and a member of an Eastern non-Catholic Church,” the particular law states:

⁹⁶ See GS 48.

A marriage between a Catholic and a member of an Oriental non-Catholic Church is valid if it has taken place with a celebration of religious Rite by an ordained minister, as long as all other requirements of law for validity have been observed. For lawfulness in these cases, the canonical form of celebration is to be observed.⁹⁷

This article is in conformity with *CCEO* c. 834⁹⁸ regarding the form of mixed marriages. But it implicitly makes a distinction between an 'Eastern (Oriental) non-Catholic' and a 'non-Eastern (non-Oriental) non-Catholic'.

By the very fact that the law makes a distinction between the Oriental and non-Oriental non-Catholic, a second category, that is, a family of a 'Syro-Malabar Catholic and a member of a non-Oriental non-Catholic Church', emerges. Moreover, *PLSMC* Art. 192 highlights this distinction as follows: "For marriages with dispensation from the impediment of disparity of cult, the norms and conditions for mixed marriages between a Catholic and a non-Catholic non-Oriental are also to be fulfilled."⁹⁹ This article is not strictly speaking about a mixed marriage (marriage of two baptized persons), but it makes a clear distinction between Oriental and non-Oriental non-Catholics.

The law applied to these two categories, at least concerning the form of marriage, is different. If those involved in the pastoral care of mixed marriage families are aware of such a canonical distinction (of liceity and validity), they will be able to guide the families according to the spirit of the law.

⁹⁷ *PLSMC* Art. 187 §2.

⁹⁸ "If, however, a Catholic party ascribed to an Eastern Church celebrates a marriage with one who belongs to an Eastern non-Catholic Church, the form of the celebration of marriage with one who belongs to an Eastern non-Catholic Church, the form for the celebration of marriage prescribed by law is to be observed only for liceity; for validity, however, the blessing of a priest is required, while observing the other requirements of the law" (*CCEO* c. 834 §2; *CIC* c. 1127 §1).

⁹⁹ See *CCEO* cc. 803 and 814; *CIC* cc. 1086 and 1125.

The third category is “a mixed marriage family of a Syro-Malabar Catholic and a Malankara Syrian Orthodox (*Bhava Kakshi*).” The particular law specifically mentions the latter Church giving special guidelines for this category of mixed marriage. The particular law states:

For marriages between members of the Catholic Church and the Malankara Syrian Orthodox Church, the pastoral guidelines agreed upon by these two Churches are to be followed.¹⁰⁰

This article flows from *CCEO* c. 780 §2 and c. 781, where the Church does not claim exclusive competence in cases of mixed marriages. Following the teaching of the Second Vatican Council,¹⁰¹ *CCEO* c. 780 §2 speaks of the right of the Orthodox Churches to have their own laws and to be governed by them in the case of mixed marriages. *CCEO* c. 781 specifies the application of the above canon in judging the validity of an already celebrated non-Catholic marriage.

Both partners in the third category might be practicing Christians who wish to remain faithful to their respective Churches. In this case, unlike the other two categories, we find some relaxation in Church law.¹⁰² For example, the particular law says: “The bride and bridegroom, after mutual consultation, may select the church in which the

¹⁰⁰ *PLSMC* Art. 191 §1.

¹⁰¹ See *UR* 16.

¹⁰² “If proper pastoral care is given to persons involved in these marriages, the faithful of both communions can be helped to understand how children born of such marriages will be initiated into and spiritually nourished by the sacramental mysteries of Christ. Their formation in authentic Christian doctrine and ways of Christian living would, for the most part, be similar in each Church. Diversity in liturgical life and private devotion can be made to encourage rather than hinder family prayer” (*The 1993 Ecumenical Directory*, n. 152).

marriage is to be celebrated.”¹⁰³ This implies that if the parties choose to have the wedding in the church of the non-Catholic party, the canonical form is required, but for *liceity* and not for *validity*. Moreover, the law states that on the occasion of such a marriage, the couple, and any members of their families who belong to these Churches, may participate in the holy Eucharist in the church where the sacrament of marriage is being celebrated.¹⁰⁴

The spouses in this situation are encouraged to share to the extent possible in the life of each other’s Churches and to raise their children in both traditions. It is in this type of cases that the term “mixed marriage family” may be properly applied and joint pastoral care be necessary in light of *PLSMC* Art. 191.

In these situations, when the initiative for pastoral care is undertaken within the Catholic parish, one is not to assume that the pastoral care of these families is the responsibility of only one Church. The Catholic pastor must determine how committed the non-Catholic partner is to his/her faith. If the Catholic partner is stronger in his/her faith than the non-Catholic partner to his/her own faith, the committed Catholic partner might be able to attract the other spouse to be received into the Catholic Church in accord with the norm of law. In the cases where both the partners are not committed to their own Churches, marriage may be an opportunity to awaken them to the demands of the Gospel.

¹⁰³ *PLSMC* Art. 191 §2, 1; also, see *Ecumenical Directory*, nn. 59 and 60.

¹⁰⁴ See *PLSMC* Art. 191 §3, 3.

3.6 — QUESTIONS FREQUENTLY ASKED ABOUT MIXED MARRIAGE

Marriage is an institution that has always been supported by civil and religious norms. The particular law of the Syro-Malabar Church protects the Catholic understanding of marriage as one of the sacraments and the right to a free choice of marriage for each partner. For this reason, the Church has carefully prepared pastoral legislation for mixed marriages. Since the pastoral concern is directed to the integral formation of mixed marriage families, it is important for us to respond to some questions frequently asked by people involved in pastoral care.

3.6.1 – Ecumenical Significance of Mixed Marriage

“How ecumenically relevant is a mixed marriage?” is a frequently asked question. There is no doubt that in a mixed marriage, that is, a marriage between a Catholic and a baptized non-Catholic, there is ample scope for nurturing a right ecumenical spirit. There are concrete possibilities for the couples and families to pray together, worship together, join in the charitable activities of each other’s faith community, as well as other areas of involvement. Undoubtedly these activities will certainly contribute to an ecumenical spirit and movement, and hopefully may eventually lead the Church to unity in faith and worship as well. However, as we have already noted, there are serious objections to viewing a mixed marriage in this light. We feel that this is not the best way to promote ecumenism.

3.6.2 – Is Mixed Marriage Dangerous to the Faith of the Catholic Party?

One's belief in God and in Jesus Christ is the bedrock of the Christian faith, and it is essential in a mixed marriage to sustain the spiritual life of the couple. But this basic truth has many implications. We are not trying to judge the beliefs and practices of the non-Catholics. We ought to respect their sincerity in the practice of their faith. But we must never forget that there are real differences in beliefs for which people have given their lives. Glossing over these differences with a coating of good will does little to achieve true unity. In a mixed marriage family, it is possible that many personal convictions, as well as the differences in belief will come out in the open leading to potential conflict between the spouses. In such cases, honest, constructive communication is of utmost importance.

The pastoral caregivers have to understand that there are also many beliefs and attitudes that can be shared in common, for example, accepting God as our Father, Jesus Christ as our Saviour, and the Holy Spirit as our Guide. Moreover, the common ideal of Christ-like love should be the pattern for Christian living. The ministers also need to teach the mixed marriage couple common moral values with regard to the sacredness of human sexuality, responsible parenthood, a lifelong commitment to each other, the importance of Baptism, the Lord's Supper, membership and service in a Christian community, and the Christian education of the children. Last, but not least, is the acceptance of the Holy Bible as the fundamental and common source of faith.

The above suggestions could be taken into consideration by the Syro-Malabar pastors in their joint pastoral care for the mixed marriage families so that potential

conflict in protecting the faith of the Catholic party could be avoided and the family unity nurtured and strengthened in accord with the teaching of Christ and his Church.

CONCLUSION

Mixed marriages between Syro-Malabar Catholics and members of non-Catholic Churches, although discouraged by the Church in the past, have not been that infrequent. Recently, however, given the rapidity of changes in society in general as well as in the Church, no doubt stimulated by the increased mobility and intermingling of people, it should surprise no one to witness an upward trend in the number of mixed marriages. Problems arising from such mixed unions are not peculiar to the Catholic Church; non-Catholic Churches face similar problems. As a result, important issues related to pastoral care are being raised which the Catholic Church has to address.

The particular law of the Syro-Malabar Church explicitly discourages mixed marriage because the Church desires that Catholics be able to attain the perfect union of mind and full communion of life, including their faith. The Church, nevertheless, clearly recognizes that every one has a natural right to marry and beget children. This right is to be properly respected.

Both the *CCEO* and the particular law of the Syro-Malabar Church have reasonably flexible norms governing mixed marriages: these include the canonical form of marriage, its liturgical celebration, and the pastoral care to be given to married people. There is now greater recognition of the religious freedom of the non-Catholic partner in mixed marriage. At the same time, greater emphasis is placed on the responsibility of the Catholic partner to hand on to his/her children the gift of the Catholic faith.

The particular law of the Syro-Malabar Church reveals a special pastoral concern for mixed marriages involving the Syro-Malabar and Syrian Orthodox couples, and calls on the pastors of both Churches to offer appropriate pastoral care to these families. The Church recognizes the fact that mixed marriage couples do not live in a vacuum, and it is important for those involved in pastoral care to be informed of the social climate and psychological influences that bear upon the institution of marriage. Therefore, the particular law places strong emphasis on both pre- and post-marriage pastoral care.

The articles in the particular law that speak of the preparation required for the sacrament of marriage highlight the importance of the sacrament in the life of both parties and the Christian community. It also reminds the spouses that the wedding is only the beginning of a long married life filled with challenging responsibilities. The local Christian community and its parish priest have a duty to assist those in a mixed marriage to live out their vocation on their faith journey. According to the norms of the particular law, every parish priest is to ensure that sufficient pastoral care is offered to those in mixed marriage for the good of the entire Christian Community.

In summary, we can say that the particular norms directed toward the pastoral care of mixed marriage families are not restricted solely to pastoral care, but they insist also on the juridical prerequisites for a valid and lawful celebration of marriage. One is not to consider these two provisions mutually exclusive but complementary, for all the measures stipulated in the norms are pastoral in nature. It is undeniable that the particular law of the Syro-Malabar Church shows special attention and interest in regulating the pastoral care of mixed marriage families when it emphasizes the pastoral aspects and not

just canonical aspects of preparation for the celebration of marriage and continued pastoral care (*PLSMC* Art.191§§ 2 & 3). Thus these norms proclaim the fact that Christian marriage is a path to sanctity, and a Christian family an *ecclesia domestica*, a special vocation within the Church.

From our analysis of the pastoral care of mixed marriage families, two issues become immediately apparent. The first concerns the stability and unity of family life. The second provides a useful pointer to Churches working together for the ultimate good of the family. In this chapter our aim was to assist those who bear the responsibility to support mixed marriage families and to interact with them so that the growth of love and understanding in the home influences the life of Church and society. We also have addressed the creative opportunity for growth available to mixed marriage families who are nurtured and guided appropriately. This is a task that must be shared by the Churches involved.

Many of the comments offered in this chapter are in the form of suggestions or recommendations for those who are directly or indirectly involved in the pastoral care of mixed marriage families. Inevitably, however, the attempt made to address issues relating to Church practice raises further topics that are properly the concern of the authorities in the Church. By raising such issues at appropriate levels the Syro-Malabar Church, in conjunction with other Churches, is urged to continue to address critical factors relating to mixed marriage families and by so doing learn lessons of wider application to the 'Church Family' as a whole.

GENERAL CONCLUSION

In his Post-Synodal Apostolic Exhortation *Familiaris consortio*, Pope John Paul II says: "Marriage and family constitute one of the most precious of human values."¹ For this reason, today the Church devotes more attention than ever before to the well-being of the family and the formation of the children. For the Church teaches:

Since God's plan for marriage and the family touches men and women in the concreteness of their daily existence in specific social and cultural situations, the Church ought to apply herself to understanding the situations within which marriage and the family are lived today, in order to fulfill her task of serving.²

Often people get married without mature consideration of the true nature of marriage or without adequate preparation to face the challenges involved in family life. Such marriages often fail. As a consequence, depending on the socio-cultural situation, some resort to divorce or separation while others remain in unpleasant and unhappy unions for life. In either case, the effect upon the family and the Church community they live in, can often be quite damaging.

As we have shown in the foregoing chapters, the Catholic Church has always been aware of the special difficulties that can arise in marriages between Catholics and those of other religious denominations in addition to these faced by couples in general. From earliest times, the problems involved in mixed marriages have been addressed by the Church Fathers and Councils. In this study we have examined the legislation on mixed marriage in the Code of Canons of the Eastern Churches (*CCEO*) and the particular law of the Syro-Malabar Church *sui iuris*. In order to underline the ecumenical

¹ *FC* 1.

² *Ibid.*, n. 4.

approach adopted in this legislation, it was necessary to study the early ecclesiastical legislation on mixed marriage, and the history of the Syro-Malabar Church. We have also considered the 1993 Ecumenical Directory, which is basically an application of both Codes of Canon Law (*CCEO* and *CIC/83*).

An analysis of the various laws leads us to conclude that, while certain aspects of Christian marriages reflect essential sacred values which must be preserved, the Church recognizes its obligation to teach, support, and guide its faithful with sensitivity and respect. We can also see in the Church's laws on mixed marriages a deliberate attempt to foster Christian unity toward which the Church continues to strive. Our analysis of the legislation of the Church on mixed marriage yields the following conclusions.

First, from the beginning, the Catholic Church has protected the natural and the divine institutions of marriage and family, and it continues to do so. The Church expressed her teachings first through the exhortations of the Fathers and the Councils. The Church claimed its competence over marriage, especially over the marriage between a baptized Christian and a nonbeliever, at the Council of Trent, which introduced the canonical form for the validity of marriage. Future Councils and Synods continued to deal with issues related to marriage and mixed marriage in particular. A systematic codification of law on marriage was enacted in the 1917 Code of Canon Law. The present Codes, *Codex iuris canonici (CIC/83)* for the Latin Church (1983) and the *Codex canonum Ecclesiarum orientalium (CCEO)* for all Eastern Catholic Churches (1990) represent the core teaching of the Second Vatican Council on all aspects of marriage.

The Church regards a Christian family as the "domestic church" (*ecclesia domestica*), and it has always sought to promote through its laws certain core values

related to marriage. Primary among those values are the faith of the Catholic party, the education in the Catholic faith of children born of the union, and the unity of faith and harmony within the family. The Church considers itself responsible for promoting and safeguarding these values. As far as mixed marriage is concerned, the obligation to uphold these values ultimately pertains to the Catholic spouse.³ Therefore, the Church stresses the point that the Catholic party has the obligation to live his/her faith and bear witness to it, and to do his/her best to share that faith with the children born of their union. The particular legislation enacted by the Syro-Malabar Church has further specified what this teaching would require of a Catholic in concrete circumstances of a mixed marriage.

The Church recognizes the difficulty that can upset parties to a mixed marriage by imposing on them its own norms on such a marriage. This happens mostly when the parties do not have a proper understanding of their respective obligations. In a mixed marriage, the Catholic partner is obliged to safeguard his/her own faith, and this obligation is of divine law. But the *cautiones* speak of the obligation of the Catholic partner to ensure that children of the union are raised in the Catholic faith. This obligation is of positive ecclesiastical law and is conditional. This implies that the *cautiones* do not require an absolute guarantee that the children born of mixed marriage would be baptized and nurtured in Catholic faith. What the Catholic party is required to do is to promise that he/she would do his/her best to bring up the children born of the union in Catholic faith.

³ See J.M. MAKOTHAKAT, *The Sincerity of Mixed Marriage Promises According to the Recent Legislation*, JCD diss., Ottawa, Faculty of Canon Law, Saint Paul University, 1978, p. 248.

Second, the laws of the Church following the Second Vatican Council reflect a significant openness towards non-Catholic Churches and other ecclesial communities. The conciliar teaching has shaped the Church's legislation of *CIC/83* and *CCEO* on ecumenism and mixed marriage. The basic ecumenical principles may be summarized as follows: (1) the one Church founded by Christ subsists in the Catholic Church with its fullness of grace and means of salvation, that other ecclesial communities too possess salvific means (*LG* 8; *UR* 3-4); (2) every person has the right to hold firmly to what he/she believes to be true and good (*DH* 2-4); (3) both partners are equally responsible for the religious upbringing of their children and they have the duty to fulfill this obligation without undue pressure or interference (*DH* 5); (4) the obligation regarding the religious upbringing of the children must be considered within the context of the overall good of marriage, an intimate communion of life and love, of which children are the supreme gift (*GS* 48-50). In the two Codes, the Catholic Church clearly states that the ecclesiastical law does not directly bind the non-Catholics (*CCEO* c. 1490; *CIC* c. 11).

Both *CIC/83* and *CCEO* acknowledge the fact that members of Orthodox Churches possess certain rights. These rights include basic human rights, the rights flowing from their valid baptism and from the authentic marriage legislation of the Church to which they are ascribed.

The 1993 Directory for the Application of Principles and Norms on Ecumenism presented the theological basis for ecumenism and for the Church's ecumenical discipline. It roots the ecumenical vocation of all Christians in their baptism and interprets the norms on mixed marriages in an ecumenical perspective. It reiterates the teaching of Vatican II on ecumenism and suggests openness to joint celebrations of

mixed marriages beyond what the council had admitted. It expresses a genuine respect for other Churches and ecclesial communities, especially for the Orthodox Churches.

The norms on mixed marriage and the pastoral care of mixed marriage families in the particular law of the Syro-Malabar Church introduce substantially new guidelines compliant with the provisions given by the Eastern Code. These guidelines, however, reflect the spirit of the 1993 Ecumenical Directory. Some of the notable provisions of the particular law are:

- 1) the adaptation of the common norms on mixed marriage found in *CCEO* to the particular circumstances of the Syro-Malabar church;
- 2) provision for the involvement of parish priests and other persons and groups in the ecumenical movement of the Church, including the continued pastoral care of the mixed marriage families;
- 3) directives for the preparation of the prospective spouses of mixed marriages and for the formation for those involved in the pastoral ministries;
- 4) requirements binding members of both Churches, for example, the prenuptial conditions, especially those related to the upbringing of children adapted according to the Common Declaration of 1984 and the 1993 Ecumenical Directory;
- 5) allowance of active participation of a non-Catholic minister at a Catholic wedding, and vice versa, like permitting Catholic ministers to read the Scripture lessons and preach at the liturgical services of other Christian communities; with permission of the local hierarch, Orthodox Christians can read the Scriptures at the Catholic celebration of a mixed marriage.

6) acknowledgment of the importance of the Oriental theological understanding of the sacraments and its liturgical celebration and identifying the celebration of mixed marriage during the Holy *Qurbana* (wedding during the Holy Mass, with the permission of the local hierarch).

7) integration of the socio-cultural aspects into the prenuptial requirements.

These examples confirm the fact that, through its norms on mixed marriage and the pastoral care of the mixed marriage families, the particular law is trying to promote the cause of ecumenism established by the Universal Church.

Third, despite the progress achieved by the Church in its ecumenical endeavors, one is not to overlook the limitations of the legislation of the Church (both common and particular) arising from the difficult work that lies ahead in overcoming serious theological and canonical obstacles to Christian unity. The encouraging fact is that the present legislation of the Church is much clearer in its directives in providing assistance to those involved in the pastoral care of mixed marriage families. As it is said, "unity does not consist in uniformity," but rather, unity consists in accepting and respecting the legitimate freedom and conscience of every person. It is the Church's hope that, in time, the mixed marriage families can become effective instruments of the unity of Christ's Church.

Fourth, both the Common Law and the particular law of the Syro-Malabar Church give great importance to the pastoral care of mixed marriage couples and their families. It is also evident from our analysis that the particular law of the Syro-Malabar Church has provided effective norms and directives for joint pastoral care of mixed marriage families and has left sufficient openness to future progress in this matter. Obviously, the

prenuptial promises of the mixed marriage couple, if they are to be effectively enforced, might exacerbate the tension that already exists between the Churches. This would call for proper preparation of the couples in a mixed marriage and for genuine dedication to the principles of ecumenism on their part.

The pastoral approach to mixed marriage families requires that, at the parish level, the pastors and other ministers of both parties should receive special training and support for their joint ministry. A more extensive formation in ecumenism must be offered to future clerics at the seminary level. All those involved in ministry must be kept up-to-date with the current information and progress related to mixed marriages. Furthermore, the members of the Churches concerned must be adequately prepared to accept and support the mixed marriage families. To this effect, we could suggest participation of the community members in ecumenical workshops on ministry to mixed marriage families. In this respect the mixed marriage families should be invited to minister to each other in their own unique socio-cultural and faith context. To be more practical, there should be frequent, open, honest and trusting interactions between the parishes, especially between those involved in the joint pastoral care. This interaction should start from joint preparation and celebration of the mixed marriages and continue the care of the mixed marriage couples and their families.

In our study, we have been able to illustrate how, in the norms on mixed marriage, both the ecumenical concerns and the theological understanding of Christian marriage were influenced by each other. We see a perfect blend of these two aspects in the norms on mixed marriage legislated both in the Code of Canons of the Eastern Churches and in the particular law of the Syro-Malabar Church *sui iuris*.

APPENDIX

THE PARTICULAR LAW OF THE SYRO-MALABAR CHURCH

MARRIAGE¹

- Article 160 Prior to betrothal the parties shall fill in the prenuptial enquiry form in front of their respective parish priests in order to make sure that they enter into the marriage covenant with due preparation, knowledge and consent (cc. 782-785).
- Article 161 §1. In connection with the celebration of marriage, the following *Kuries* (Forms) must be exchanged between the concerned parish priests:
- §2. Form A - For betrothal
- §3. Form B – Information regarding the betrothal conducted and the proposed dates of the publication of banns and the celebration of marriage.
- §4. Form C – *Desa Kuri* or *kettu kuri*, that is, no objection certificate for the licit celebration of marriage.
- §5. Form D – Certificate for entering the details of the celebration of the marriage in the marriage registers of the parishes of the spouses as well as in the baptismal registers of the parishes where the baptism of the couple took place.
- §6. Form E - Notification to be sent back to the parish priest of the place of celebration of marriage regarding the entry of Form D in the baptismal and marriage registers of the concerned parishes of the spouses (c.841 §§ 1-2)
- Article 162 §1. The parish priest shall either officiate at the betrothal ceremony or give Form A for betrothal to the parish priest of the other party only when he is morally certain that the party has at least a basic knowledge of Christian faith and morals and about the nature, purpose and essential properties of the Sacrament of marriage.
- §2. The local hierarch shall see to it that in his eparchy marriage preparation courses are conducted and norms are set regarding the attendance at such courses.

¹ See "Particular Laws of the Syro-Malabar Church," in *Synodal News*, vol. 11, n. 1 (2003), pp. 37-48.

- Article 163 §1. Those who have lived for more than one year outside the eparchy after reaching marriageable age, should produce a free state certificate.
- §2. If one has lived in different places after reaching the marriageable age, he/she should produce a free state certificate at least from the parish priest of that place where he/she lived for the last one year. He/she also shall make an affidavit regarding his or her free state covering the period of his or her stay in other places.
- §3. Though the certificate of the parish priest is normally required for this purpose, the certificates of civil authorities or other persons beyond suspicion may be accepted in case of the non-availability of the former.
- §4. Exemption from the above norm may be granted only by the local hierarch of the party on any appropriate arrangement decided by him.
- Article 164 The celebration of marriage shall be preceded by betrothal which is to be celebrated sufficiently in advance in order to give time for the publication of marriage banns.
- Article 165 Betrothal is to be celebrated before the local hierarch or the parish priest of either of the parties or a delegated priest or deacon, in the presence of two witnesses in the parish church or with the permission of the parish priest at another church convenient to the parties. However, in places other than churches, it cannot be celebrated without the permission of the local hierarch.
- Article 166 §1. Betrothal may be conducted only on obtaining the form A or an equivalent document.
- § 2. In cases of inter *sui iuris* Church marriages, the law or custom of the other party shall be respected regarding betrothal or engagement.
- Article 167 The celebration of betrothal shall be entered in the register maintained for the purpose and be signed by the parties, witnesses and the officiating priest or deacon.
- Article 168 After the celebration of the betrothal the parish priest of the other party should be intimated through Form B.
- Article 169 In Forms A and B date of birth and date of baptism shall be entered.
- Article 170 The betrothal should be solemnized according to the liturgical text.

- Article 171 §1. The local hierarch of either of the parties may grant dispensation from betrothal for just and sufficient reasons on written application of both the parties.
- § 2. In case of need, the local hierarchs may grant permission to have betrothal in writing by the parties separately regarding their willingness for the proposed marriage before their proper parish priests in the presence of two witnesses. The parish priests shall communicate the matter to each other.
- Article 172 If a party does not want to proceed to marriage after betrothal, he/she shall obtain permission from the local hierarch in order to enter marriage with another person (c. 782 §2).
- Article 173 §1. Marriage banns are published in order to bring to the notice of the parish community the proposed marriage and to give the community an opportunity to bring to the attention of the parish priests impediments, if any, which would impede the valid and licit celebration of the said marriage.
- §2. Permission may be granted by the local hierarch of either of the parties for the publication of banns even before betrothal on written application of both the parties.
- Article 174 Banns are to be published on three Sundays or days of obligation during the Sacred Liturgy in the parish churches and if needed also in the filial churches of the parishes of the parties concerned. Alternatively they may be announced once and published on the notice board of the church for a period covering two more days of obligation.
- Article 175 §1. For just and sufficient reasons, the publication of banns can be dispensed.
- §2. The parish priest is competent to dispense from one of the banns and the Protopresbyter from two. Dispensation from all the three banns is to be granted only by the local hierarch.
- §3. If banns are published only once, the marriage cannot be celebrated on the same day without the permission of the local hierarch.
- §4. In the case of dispensation from banns as per §§ 2 & 3, either of the parties shall submit a petition, stating the reasons, to the competent authority of the place where the marriage is celebrated.

§5. If dispensation from banns is to be obtained, it shall be entered in the register for betrothal and in form B. If dispensation is received, the matter shall be communicated to the concerned parish priests.

- Article 176 If the marriage did not take place within six months from the completion of the publication of banns, they shall be repeated unless the local hierarch dispenses from this norm.
- Article 177 During the course of the publication of banns, if the existence of a public impediment comes to light, the publication of banns shall be stopped. If however the impediment is occult and dispensation is possible the publication of banns is to be continued and completed. The parish priest shall proceed to the celebration of the marriage only after the dispensation has been duly obtained.
- Article 178 Marriage is lawfully blessed only after obtaining Form C.
- Article 179 The spouses are to give marriage offerings or *vivahakkazcha*, in connection with the celebration of marriage, to their respective parish churches according to the norms fixed in each eparchy. Regarding the utilization of this amount the prevailing custom and regulation in each eparchy shall be followed.
- Article 180 §1. Immediately after the solemnization of marriage the details are to be carefully entered in the relevant parish registers and Form D must be filled in and sent to the concerned parish priests to be entered in the baptismal register and also in a marriage register specially maintained for the purpose. Form E shall be sent in return by the concerned parish priest to the parish priest of the place where the marriage took place.
- §2. The priest who blesses the marriage or the parish priest of the place of marriage who discovers any error in the form or substance of any entry in the marriage register may, within one month of the discovery of such error, in the presence of the persons married or, in the case of their death or absence, in the presence of two other witnesses, correct the error by entry in the margin, without any alteration of the original entry and shall sign the entry in the margin and add thereto the date of such correction. Every correction shall be attested by the witnesses in whose presence it was made.
- Article 181 Civil law must be followed as regards the marriageable age without prejudice to c.800 §1. Accordingly in India men must have completed 21 years and woman 18 years (c.800 §2).

Article 182 §1. Marriage between two baptized persons, one of whom is Catholic and the other non-Catholic, is prohibited without prior permission of the competent authority (c. 813).

§2. For a just and reasonable cause the local hierarch can grant permission for a mixed marriage (c. 814).

§3. In granting the permission mentioned in §2, the agreements if any, made between the Catholic Church and a non-Catholic Church are to be followed.

Article 183 With due regard for the cases mentioned in Articles 182 §3 and 191, the local hierarch shall not grant permission for mixed marriages, unless the following conditions are fulfilled (c.814):

§1. The Catholic party declares that he/she is prepared to remove dangers of falling away from the faith and makes a sincere promise to do all in his or her power to have all the offspring baptized and educated in the Catholic Church.

§2. The other party is to be informed at an appropriate time of these promises which the Catholic party has to make, so that it is clear that the other party is truly aware of the promise and obligation of the Catholic party.

§3. Both parties are to be instructed on the essential ends and properties of marriage, which are not to be excluded by either spouse (c. 814 §3).

Article 184 §1. In all cases of mixed marriages, the pastors shall make sure that the partners are duly prepared for the same.

§ 2. When the parties apply for a mixed marriage they should be told that the marriage within the same faith is better for the harmony of the family and the upbringing of the children.

§3. If they insist on conducting the mixed marriage they should be instructed properly about the faith of the couples, the celebration of marriage, the formation and practice of faith after marriage, the duties towards children and about the special agreements made between the Churches, if any.

§4. It should be stressed that while each partner holds his/her ecclesial faith as supreme or paramount, he/she should respect the ecclesial faith of his/her partner.

§5. A pre-marriage preparatory course and a premarital counseling session are highly recommended.

§6. The bride/bridegroom shall produce her/his baptism certificate.

§7. The priest must ensure that the bride/bridegroom is eligible for marriage.

Article 185

§1. For mixed marriage, with due regard for cases mentioned in Articles 182 §2 and 191, the parties shall submit a written petition together with the endorsement of the parish priest of the Catholic party to the local hierarch requesting permission for mixed marriage.

§2. Together with this petition, the Catholic party shall submit a written declaration regarding the promises and obligations mentioned in Article 183 n.1 (c.814 §1).

§3. Before endorsing the petition for permission for mixed marriage, the parish priest of the Catholic party shall inform the non-Catholic partner about the above said declaration of the Catholic party and shall notify the matter in the petition. If the non-Catholic party has no objection, he/she may be invited to counter-sign the declaration of the Catholic party to the effect that he/she is aware of the promises of the Catholic party.

§4. The parties should, in the course of the contacts in this connection, be invited and encouraged to discuss the Catholic baptism and education of the children they will have, and when possible come to a decision on this question before marriage (c. 815).

Article 186

Betrothal and publication of banns may be allowed in these cases at the discretion of the local hierarch after duly considering the nature and circumstance of the petition; if these are allowed their form also shall be stipulated in the same rescript.

Article 187

§1. The form of the celebration of marriage prescribed by law is to be observed if at least one of the parties celebrating the marriage was baptized in the Catholic Church or was received into it (c. 834 §1).

§2. A marriage between a Catholic and a member of an Oriental non-Catholic Church is valid if it has taken place with the celebration of a religious Rite by an ordained minister, as long as all other requirements of law for validity have been observed. For lawfulness in these cases, the canonical form of celebration is to be observed.

§3. Canonical form is required for the validity of marriage between Catholics and members of non-Catholic and non-Oriental Churches and ecclesial communities.

Article 188 §1. With due regard for Articles 182 §2 and 191 §3, dispensation from the form for the celebration of marriage required by law is reserved to the Apostolic See or the Major Archbishop, who will not grant it except for a most grave reason (c.835).

§2. Petition for this dispensation must have the endorsement of the parish priest of the Catholic party and of the hierarch of the place of marriage.

§3. Even if dispensation from the form of celebration of marriage is granted for a most grave reason, there should be a public form of celebration and a sacred Rite.

Article 189 §1. Before or after the canonical celebration of marriage, it is forbidden to have another religious celebration of the same marriage to furnish a new consent; likewise, a religious celebration is forbidden in which both the Catholic priest and non-Catholic minister ask for the consent of the parties (c. 839).

§2. However, avoiding scandal, the officiating Catholic priest may invite a non-Catholic minister to read a scriptural passage or to give a brief exhortation and to bless the couple. In like manner, the Catholic priest may participate in a mixed marriage with the dispensation from the form of the celebration of the marriage.

Article 190 §1. A mixed marriage celebrated according to the Catholic form ordinarily takes place outside the Eucharistic liturgy. However, for a just cause, the local hierarch may permit the celebration of the Holy *Qurbana*, if it is a marriage with a non-Catholic Oriental.

§2. There shall be no celebration of Holy *Qurbana* in connection with the marriage between a Catholic and a non-Oriental non-Catholic.

§3. The norm of canon 671 and special norms given by the Apostolic See or the Synod of bishops, if any, must be observed regarding the reception of Holy Communion on the occasion of such marriages (c. 671 §§1,2,5).

Article 191 §1. For marriages between members of the Catholic Church and the Malankara Syrian Orthodox Church, the pastoral guidelines agreed upon by these two Churches are to be followed.

§2. Accordingly, as part of the preparation for these inter Church marriages, besides what is given in Article 184 §§ 1-6, the following norms are to be followed:

1. The priest should ensure that the bride/bridegroom has paid the donations due to the parish in connection with marriage according to the practice of the Churches.
2. The bride and bridegroom, after mutual consultation, may select the church in which the marriage is to be celebrated.
3. Written permission for inter-Church marriage from the respective Bishops should be obtained by the bride and the bridegroom.
4. Betrothal may be permitted according to the custom of the place.
5. Banns which also announce that it is an inter Church marriage should be published in the respective parish churches.
6. Once permission is obtained from the Bishops, the respective parish priests are expected to issue the necessary documents for the conduct of marriage.
7. Marriage in Lent or Advent seasons is only to be conducted with the permission of the Bishops.

§3. The following norms for the celebration of the inter-Church Marriages are to be observed:

1. The liturgical minister should be the parish priest of the church where the marriage is celebrated or his delegate from the same ecclesiastical communion.
2. There is to be no joint celebration of marriage by the ministers of both Churches. The marriage is to be blessed either by the Catholic or by the Syrian Orthodox minister. However, there could be some kind of participation at the liturgical service by the other minister who could read a scriptural passage or preach a sermon.
3. On the occasion of these celebrations the couple, and any members of their families who belong to these Churches, are allowed to participate in the Holy Eucharist in the church where the sacrament of matrimony is being celebrated.

4. Proper entries must be made in the church registers and marriage certificates should be issued for a record to be made in the register of the other church.

§4. Regarding the pastoral care of the Catholic-Syrian Orthodox inter-Church Families the following guidelines are to be observed:

1. The Catholic partner is to be reminded that he/she has to commit himself/herself to imparting to their children proper Catholic formation, to the extent possible in agreement with his/her partner. Such a formation should be fully in harmony with the Catholic tradition to which he/she belongs.

2. The pastors of both partners are bound in conscience to provide continued pastoral care to the inter-Church families in such a way as to contribute to their sanctity, unity and harmony.

3. Each partner is to be advised to attend the liturgical celebrations of his/her respective Church, but the couple may be allowed to participate jointly in the eucharistic celebration on special occasions when this joint participation is socially required.

4. Any declaration of the nullity of such marriages is to be considered only with the consent of the Bishops concerned from both Churches.

5. The funeral service should, as far as possible, be conducted according to the Rite of the dead person's Church, even though he/she may be buried in either of the cemeteries, especially if the other partner is already buried there in a family tomb.

Article 192 For marriages with dispensation from the impediment of disparity of cult, the norms and conditions for mixed marriages between a Catholic and a non-Catholic non-Oriental are also to be fulfilled (cc. 803 & 814).

Article 193 Local hierarchs and other pastors of souls are to see to it that the Catholic spouse and the children born of a mixed marriage do not lack spiritual assistance in fulfilling their spiritual obligations, and are to assist the spouse in fostering the unity of conjugal and family life (c.816).

Article 194 Whenever a parish priest comes to know that a Catholic party of his parish has contracted marriage with a non-Catholic or a non-Christian without the required permission or dispensation, he shall report the matter to the local hierarch. Ecclesiastical penal action may be taken against those responsible for the transgression and scandal.

- Article 195 §1. Marriage is to be celebrated in the parish church of either of the spouses according to the custom in the eparchy, or with the permission of the proper parish priest in any other church convenient for the parties.
- §2. In extraordinary circumstances, the local hierarch may grant permission for the celebration of marriage at a suitable place other than the church.
- Article 196 Marriage of persons other than parishioners, of whom at least one is a Syro-Malabarian, is lawfully blessed by the parish priest or his delegate only on receipt of Form C or a similar document from the concerned parish priests.
- Article 197 Marriage through proxy is not allowed (c. 837 §2).
- Article 198 In accordance with the tradition of the Church and keeping the penitential spirit of the liturgical seasons of Annunciation (*Suvara*) and lent (*Sauma*), the celebration of marriage is prohibited from the 1st to 24th December and from 1st Monday of lent until Holy Saturday both days inclusive. However, for just and sufficient reasons, the local hierarch of the place of celebration of marriage may give permission for marriage during these periods on written petition by either of the parties and on the undertaking that the marriage will be celebrated without pomp and show (c. 838 §2.).
- Article 199 The special regulations given by the eparchial bishops regarding the time of the celebration of marriage on certain days like Sundays, must be carefully observed.
- Article 200 Marriages are to be celebrated according to the approved liturgical text (c. 836).

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