

MIXED MARRAIGES IN THE CONTEXT OF TAMILNADU

Mixed marriages in the context of Tamilnadu bring out every time new situations rendering it very complex if we do not apply the principles concretely. The latest developments in the canonical legislation by the supreme legislator pose new approach on this matter. Rapid growth of Catholics abandoning the catholic practice and joining pentacostal groups adds to the complexity of problems. This paper is an attempt to understand the different aspects of Mixed marriages in the legislative system and its application in our new situations.

A. BIBLICAL AND HISTORICAL BACKGROUND

Marriage with non-Israelites was forbidden and Ezra in the 6th c. B.C. asked those who married other girls to keep away from them¹, although the practice of marrying women from pagan world had been in existence from the time of Judges and during the time of kings like David and Solomon. It was not an accepted custom. St.Paul found the situation very alarming at Corinth when the non-believer after conversion found it difficult to live his/her faith, he/she can leave the pagan partner and marry a believer so that he/she can practice the Faith². It is from here we find the Pauline privilege. From the beginning of Catholicism in the west, the problem of mixed marriages was encountered in the Church and regulated by councils such as Elvira(a.314), of Arles (a.314), of Laodicia(a.372) and of Calcedonia(a.451). As U.Navarrete remarks that two important points emerged from these councils: the danger of losing one's faith which was called "*adultery of soul*" and the difficulty of having communion between Faithful and infidel³. The same attitude continued till XII century. The Council of Trent did not explicitly say anything about the mixed marriage but made the *form of marriage obligatory also for disparity of cult and mixed marriages*. The sacramental nature of marriage was insisted very much and the Church found its exclusive competence to regulate the marriage among the Faithful. The situation worsened when schism and heresy divided the Catholic Church. The French Revolution, Liberalism and Religious Freedom found their insistence on the practice of the Church on regulating mixed marriages. Although the dispensing faculty was with the Pope, it was slowly given also to the Diocesan Bishop and his equals.

1917 Code spoke of two types of impediments to marriages: Diriment Impediments and Impedient impediments. The marriages of mixed religion fell under the second category of impediments. The impedient impediment did not invalidate the marriage but prohibited it. The dispensation was granted only

¹ Ezra 9:2; 10:11

² 1 Cor.7:14

³ U.NAVARRETTE, *Matrimoni Misti: conflitto fra diritto naturale e teologia?* In QuDirEccle 3(1992)265-286

when also the non-catholic party gave a promise to remove all dangers to the Catholic spouse losing the Catholic Faith and both the parties unconditionally promised to baptize and educate their children in the Catholic Faith⁴.

Vatican and Post Vatican Era

The Religious freedom was very much spoken of in the Declaration *Dignitatis Humanae*; recognition of other religions in the Decree *Nostra Aetate* and ecumenical dialogue in the decree *Unitatis Redintegratio*. These documents changed the climate and attitude of Catholics towards people of other religions. However, the Vatican II did not bring out any document on the mixed marriage. The Council Fathers gave their proposals to Pope Paul VI to bring out a document after having discussed the competent organisms. Their proposals as summed by U.Navarrette are the following:

1. There should be separate norms of marriages with non-Catholics;
2. The Catholic party has a grave obligation towards baptizing and bringing up of the children in Catholic Faith and the non-Catholic party should be aware of the promise to be made by the Catholic party;
3. The canonical form should be observed in the Mixed marriages. However, the Local ordinary can dispense when there is a grave difficulty in observing the form;
4. The marriage among the Christians is celebrated during the Liturgy while for the marriage of parties of different religion, it can be celebrated if the local ordinary finds it opportune;
5. Removal of excommunication for those who celebrated their marriage before a non-catholic minister⁵.

The Congregation for the Doctrine of Faith gave an instruction, *Matrimonii Sacrementum* on March 30, 1966. The same matter was taken up for discussion by the Synod of Bishops in its first assembly in 1967. The response of the Synodal Fathers was entrusted to a commission and as a result the Motu proprio *Matrimonia Mixta* was issued by Pope Paul VI on March 31, 1970. The following points are the salient features of the document:

- i. The term '*mixed marriage*' was used to mean the marriages between Catholic and non-catholic baptized and between Catholic and non-baptized.
- ii. To allow at minimum the conditions referred by the Synodal Fathers and to leave to the Episcopal Conference the faculty to determine the modality of getting the declaration and promise.

⁴ CIC 1061, § 1,2

⁵ U.NAVARRETE, PP.272-273.

- iii. With regard to the canonical form, it was considered *ad validitatem* although the local ordinary can dispense when there is a grave difficulty.
- iv. Regarding the Liturgical rite, it has already been introduced in the *order of Matrimonial rite* and it should be followed.
- v. It forbade a Catholic minister to celebrate the Marriage with the non-catholic minister, while it insisted the responsibility of the Ordinaries and Parish priests to help the families of mixed marriages⁶.

The above points entered into the Legislation of CIC 83 with two new elements:

- The impedient impediments are removed;
- Removal of defect of faith by a formal act with regard to the marriages in three occasions:
 - o In the context of impediment arising out of disparity of cult can.1008/1
 - o The obligation of the form of marriage if at least one of them is a catholic can.1117
 - o Mixed marriages c.1124

B. CANONICAL LEGISLATION ON MIXED MARRIAGE

1. Notion of “Mixed marriage”

In CIC c.1124, the term *Matrimonio mixta* has a special significance referring to a marriage between a Catholic and a non-catholic baptized. It is fundamentally a marriage between two baptized and so it is a Sacramental bond. Baptism and Faith in the Triune God are the basis. The concept of “*Catholic*” is further clarified by CIC c.1124 :- one who is baptized in the Catholic Church or received into it after baptism.

i. Those baptized into the Catholic Church

By Baptism into the Catholic Church, one is constituted as a person in the Church configured to Christ and incorporated into the Church c.849. As a person, the Faithful is endowed with certain rights and obligations c.96.

If the Catholic party was baptized in an Oriental Church, as per c.111/1, and now wants to marry a non-catholic baptized person, the procedure for mixed marriage is governed by the Oriental Code.

In case, the person received baptism after the age of 14, he/she would have chosen the Catholic Church of either Latin Rite or Oriental Rite. And now

⁶ Ibid., p.274; V.DE PAOLIS, *I Matrimoni Misti*, in *Matrimonio e disciplina Ecclesiastica*, Milano 1996, p.148.

he/she wants to marry a non-catholic baptized. The norms of the two codes are applied accordingly c.111.3.

ii. Those received into the Catholic Church

- a. A non-catholic baptized person can at any time be received into the Catholic Church as and when the person wants.
- b. A Catholic belonging to a particular Sui Iuris Church can change his Ritual Church by the permission from the Apostolic See c.112/1 and so received into the Latin Church.
- c. The children of the parents, baptized in a Sui Iuris Catholic Church, can return to the Latin Church at the age of 14. C.112/3⁷.

iii. Those Defected from the Catholic Church by formal act

The third category of “not defected from it by a formal act” is removed from the canonical tradition by Pope Benedict XVI as it has been very difficult to prove those who have defected with a formal act⁸. Can.1071/4 gives an answer to solve a situation where the Catholic has notoriously rejected the Catholic Faith. Now after the *Omnium in Mentum*, those who are considered to be defected from the Catholic Faith are within the purview of observance of the form of marriage⁹.

Two Consequences:

- a. If those Catholics who have gone away from the Catholic Church into any pentacostal or Charismatic sect and in case they would like to marry in our Church, they are still considered to be Catholics and they are bound by the canonical form.
- b. If any of such Catholics wants to marry a Catholic, the marriage is to be considered as a marriage between two Catholics and not a mixed marriage.

⁷ Pope FRANCIS, *De Concordia inter Codices*, 31, May 2016.

⁸ Pope BENEDICT XVI, MP, *Omnium in Mentum*, 26, October 2009, Art.5. The text of can.1124 of the Code of Canon Law is modified as follows: “*Marriage between two baptized persons, one of whom was baptized in the Catholic Church or received into it after baptism, and the other a member of a Church or ecclesial community not in communion with the Catholic Church, cannot be celebrated without the express permission of the competent authority*”.

⁹ The reasons to abrogate the phrase are given: i. In practice, the defection is very difficult to prove both in the theological and canonical standpoints; ii. Many difficulties arose in pastoral activity and the practice of Tribunals; iii. the law indirectly facilitate and even promote apostasy in places where the Catholic faithful are not numerous or where unjust marriage laws discriminate between citizens on the basis of religion; iv. It made difficult for those who wanted to come back to the Catholic Faith and remarry following the failure of their first marriage.

2. Necessity for permission

i. Marriage is a communion

Can.1055, teaching the Christian marriage as a covenant presupposes communion of life, love and faith. The spouses are called to live their witnessing life of Faith bringing out to the world the nobility of God's love for human beings. Mixed marriage poses a difficulty for those partners to live and more specially practice their Faith in common. Secondly the Catholic partner has the serious obligation to practice the Catholic Faith and duty to conserve the communion with the Church c.209. The mixed marriage places the Catholic party in a very difficult situation wherein the above obligations are at stake. Hence the ecclesiastical Law prohibits the marriage of a Catholic with a non-catholic baptized.

An impediment constitutes a law which renders an obstacle for the celebration. In order to proceed with the marriage, one needs dispensation i.e., relaxation of the law in particular cases. The motive for dispensation would be proportionately grave can.90/1. The permission on the other hand is a prescription to act licitly. It is not meant for removing an obstacle but it is necessary for fulfilling a condition. Permission is not a dispensation, but a requisite to fulfill the law. Just and reasonable causes are necessary to grant the permission.c.1125.

ii. Just and reasonable causes

- Spiritual well being of the parties
- Possibility of conversion of the other party into Catholic Faith
- Only possibility in those situations where there are scarcity of Catholics
- To convalidate a matrimonial union
- The parties otherwise are prepared for marriage and failure to grant the permission would result in contracting their marriage elsewhere¹⁰ or live in a disorderly marital union.

3. Conditions for granting the permission

i. Declaration of the Catholic Party

This has been a serious obligation arising on the party of the Catholic party to practice he/her faith based on baptism. It is an obligation arising from the divine law and so the gravity is higher. And the Church cannot dispense any of her members to be exempt from observing the divine principles of

¹⁰ ABATE, A.M., *Il matrimonio nella nuova legislazione canonica*, Roma 1985, p.186; BEAL, P.JOHN, *Marriage in New Commentary on the Code of Canon Law, Study Edition*, Bangalore 2003, c.1124.

practicing the Catholic Faith. And up to Vatican II, the old regulations imposed an obligation also on the non-catholic party not to stand in the way of the catholic partner in practicing the Catholic faith and demanded a declaration. The tone is mitigated in the present legislation demanding only the catholic party to take a declaration. The fulfillment of such an obligation on the part of the catholic party depends on her own will; it is to be followed with an attitude of heroism¹¹. Hence the canon underlines that the Catholic party has to remove dangers of defecting from the Faith.

ii. Promise of the Catholic Party

The second condition which c.1125 imposes on the Catholic party in mixed marriage to obtain the permission from the local ordinary is the promise to baptize and bring up the children in the Catholic Faith. It is based on the obligation arising out of cc.1055 i.e., the very purpose of the matrimonial covenant is oriented towards procreation and education of children. It is one of the natural obligations which the parents assume out of their marriage. However, the obligation imposed by the ecclesiastical law in c.226/2, speaks of it as a very grave obligation to educate them. When the same canon speaks of Christian education, it does not impose such a very grave obligation. However, one can understand the seriousness of such an obligation to educate if the parents are Catholics. The same obligation of imparting catholic education is again stressed in c.793.

This obliges the catholic party as far as possible i.e., within his/her capacity because the fulfillment of such a promise depends not only one's own internal decision but also external factors because the catholic party may be either impeded or greatly limited by external circumstances in the exercise of such obligation towards children. These obstacles can be unwillingness of the non-catholic party after the marriage; social customs etc. What is more important is the sincere determination on the part of the catholic party to baptize and educate the children in Catholic Faith. The promise does not exclude the possibility of the difficulties or impossibilities of fulfilling it. However, if there is a moral certitude about the sincerity of the promise, it is enough.

iii. The role of non-catholic baptized

Based on the religious freedom, one cannot morally force either implicitly or explicitly to change his/her religious faith because of marriage. Neither is it required to change one's ritual Church. But what is important here is the right to live together and establish a communion of love and life. By totally accepting each other and surrendering each other by way of consent, the

¹¹ ABATE, P.187

spouses pledge to live a life which will not and should not hinder in practicing one's own faith. Based on the obligations arising out of the Faith, the spouses would be thrown out in conflicting situations wherein they cannot fulfill their obligations. Much worse is the state of children. In order to avoid such situations and to respect the fundamental right to one's faith and of privacy, the other party in mixed marriage is to be well aware of the obligations arising out of special situation based on their marriage.

The obligation to educate the children falls equally on both the spouses. Here the obligation of one may interfere that of the other in choosing the type of education or the school they want to select. Hence the other party may be indifferent, accepting or even opposing.

In case, the pastor comes to know already before granting the permission that the other party does not accept the children to be baptized in the Catholic Faith, can the permission be given when other requirements are evident? The Congregation for Doctrine of Faith gave a response saying that the permission can be given in these circumstances in grave situations wherein otherwise

- the parties cannot get married in the Church and their life will be scandalous,
- spiritual well being of them will be at stake, or
- they cannot get married and exercise their right to life of communion.

However, there should be a sincere promise on the part of the Catholic party to baptize and educate all their children in our Faith¹².

iv. Instruction to both on essential properties of marriage

Here we may come across someone who may not be well aware of the teaching of the catholic Church on marriage especially those elements which might affect the matrimonial consent. Failure in knowing and getting convinced of these essential elements of marriage would endanger the marriage itself and later on the same marriage might be accused of invalidity on the ground of simulation or error. A non-catholic baptized may not be brought up in a religious background to understand that the Catholic marriage enjoys two properties – unity and indissolubility. Before the marriage, all the legal requirements might not have a great value for the non-catholic because his/her prime motive is to get married with so and so. In such a climate, it is the role of the pastors to instruct them especially the non-catholic party about the uniqueness of catholic teaching on marriage and see that the non-catholic party is convinced of these principles. All his efforts are to prepare the non-catholic party to elicit a consent which is

¹² S.C. for Doctrine of Faith, 4 September 1972, Prot.N.1310/72m, Response to D.M. Olcomedy, Archbishop of Malacca, Singapore.

mature and deliberate.¹³ Normally fulfillment of the third condition is not taken into consideration nor verified before granting the permission. It is an area where we have to design a method to verify whether or not the parties are sufficiently instructed and prepared for the celebration of marriage according to the teaching of the Catholic Church. Expecting them to undergo the *Marriage preparation course* as it is followed now, would be very minimum.

4. The mode of obtaining declaration and promise

As the above conditions are to be proved in the external form, the declaration and promise have to be made in the way provable in the external form i.e., in a written form; it can also be made orally in the presence of their proper pastor who takes record of such a declaration and attests his signature. Notification of such a declaration to the non-catholic party should also be made in a proven form. Printed form can also be used; but the pastor has to attest that the declaration and promise are made sincerely. The Episcopal conference has to make provisions how these above conditions are to be fulfilled practically¹⁴.

The CCBI has given its direction:

- The declaration and promise are to be made in writing.
- The non-catholic party is to be informed in good time before the marriage
- It should be countersigned by the priest and it has to be prereserved along with the marriage dossier¹⁵.

C. THE CANONICAL FORM AND ITS APPLICATION IN THE CONTEXT OF TAMILNADU

The canonical form is needed both for validity and licitness. c.1127 imposes the legal requirement for the celebration of a mixed marriages.

If the marriage is between a Catholic and a non-catholic of Oriental Church, the canonical form is only for licitness and for the validity, the intervention of a priest (not a cleric)¹⁶ is needed. The intervention of a priest is to guarantee the public nature, sacramentality and validity of the celebration of marriage. It can also be by a delegated priest. Hence deacon is excluded from being the official witness in mixed marriages celebrated in the Oriental Rite.

¹³ Pope St. JOHN PAUL II, *Familiaris Consortio*, no.68

¹⁴ CIC. c.1126

¹⁵ CCBI meeting, Bombay 1993, in CCBI, *Complimentary Legislations to the Code of Canon Law*, c.1126.

¹⁶ De Concordia inter Codices, Art.11, c.1127

1. Dispensation from the canonical form

When there is a grave difficulty to observe the canonical form, the local ordinary of the catholic party can dispense from the observance of canonical form c.1127/2. The CCBI has given a few situations in which grave difficulty may arise:

- Serious problems of conscience
- Compelling demands for the spiritual well-being of the parties
- Tranquility of family relationship
- Future well being of the family
- Respect for the faith of the catholic party
- Assurance that the children will be brought up as Catholics¹⁷.

If it is going to be blessed in another diocese, the local ordinary of the catholic party has to consult the ordinary of the place of celebration. V.De Paolis is of the view that such a consultation is needed for the validity of granting dispensation from the observance of the canonical form as per ca.127/2. It is not however, the local ordinary of the place of celebration to grant the dispensation.

2. Requirement of a public form

i. Civil Form

A substituting public form can be a civil form after which the parties may have for example a prayer service either together with the ministers of the both the Churches or separately by the two ministers in their respective Churches. It is not substituting the marriage celebration, rather it is to give respect to the religious sentiments of the parties getting married. In this situation, observance of liturgical norms is to be followed. Anyhow, there should not be any attempt to have another celebration of marriage i.e., canonically renewing the consent of the parties. In our culture the tying of Thali is an evident and external sign of exchange of consent; it cannot be done in such a prayer meeting or reception. In the same way renewal of consent in the liturgical rite of the non-catholic party is not accepted.

ii. Form of local custom

The local customary marriage celebration can also be a public form and by which the message to the community that they have become husband and wife, is established and communicated. In our context, it might be an exchange of garland in the Pandal/ Mandapam in the presence of elders. Both the ministers

¹⁷ CCBI, *Complimentary Legislations to the Code of Canon Law*, c.1127 as approved in the meeting at Bombay, 1993.

may be present and their role is not to be official witness of the Catholic Church nor to receive their consent but to bless them for their happy married life. The elders are not also delegated official witnesses of the Church as per can.1112/1.

iii. Form of the Church of the non-catholic party

Any public form would also imply the use of the form of marriages exercised in the Church of the non-catholic party. In accepting the form in those marriages with CSI and TELC or other pentacostal sect, as a public form, it might mislead our Catholics. The only difference in such situations remains that the catholic party has accepted his/her commitment to practice the catholic faith and to baptize and bring up the children in the catholic faith. As long as there is a moral certitude that there is a sincere will on the part of the catholic party, such a form can be allowed. It can be allowed in those situations in which the family of the non-catholic party might be very particular that the marriage be celebrated in their church. It can be allowed for the peaceful celebration of marriage. In addition, it can be allowed when there is no scandal to the Catholic community¹⁸. In practice such a venture cannot be effective to allow the catholic party to fulfill the catholic obligations

The CCBI has not given any specific direction about the choice of the public form. It has given to the Local ordinary the discretion of choosing a public form¹⁹.

With regard to the mixed marriage with a party of Oriental Church, the dispensation from the canonical form does not exclude the presence of a priest. Even if a public form is chosen, the blessing of a priest of their Church is needed for validity²⁰.

3. The role of both the ministers in the celebration of mixed marriages

- i. If the marriage is celebrated according to the canonical form of the Catholic Church, the catholic minister is the official witness receiving their consent. In case the minister of the non-catholic party is present in the celebration, his role is not to receive the consent of his subject. His presence is to show his solidarity with his subject and pray together; he may read the Gospel if it is outside the Liturgy and may give a blessing at the end of the celebration. He is not a con-celebrant either.

¹⁸ ABATA, A.M., *Il Matrikmonio nella nuova legislazione canonica*, p.196.

¹⁹ CCBI, *Complimentary Legislations to the Code of Canon Las*, c.1127.

²⁰ *Ibid*, c.1127.

- ii. If the mixed marriage is to be celebrated in the form of the Church of non-catholic party as dispensed by the local ordinary and approved it as a public form, the presence of a catholic minister in such a celebration is to pray together and wish the parties. He is not to concelebrate with the other minister in their liturgy nor to receive the consent of the parties.
- iii. No double celebration c.1127/3: It is prohibited to conduct another marriage celebration in which the exchange or renewal of consent is carried out. Hence, when a marriage is celebrated in CSI Church with their form as acknowledged as a public form, the catholic minister cannot conduct once again their marriage rite outside the mass just to satisfy the catholic party. However, the law does not prevent them to have a prayer service conducted by the catholic minister during which the married spouses receive additional graces for their happy married life.

4. Risk of allowing the form of marriage of non-catholic party as a public form

In principle, the local ordinary may allow the form of CSI or TELC as a public form after having dispensed the canonical form. But we give an impression to the Catholics that the marriage celebrated in the CSI and TELC Church is equally valid. Such an impression would eventually weaken the interest of the Catholic party to fulfill the catholic obligation arising out of the mixed marriage. In addition, the family environment of the non-catholic partner would exert an internal coercion or moral force to slowly accept the faith of the non-catholic party. The Catholic party would face a serious risk in practicing her catholic faith. It may not be very serious when the catholic party is the groom and the bride is a non-catholic. In such a case, even though the marriage was conducted as per the rite of the non-catholic party due to any grave reason, the family is going to be attached in a catholic environment. But, it is gravely serious when the non-catholic party is groom and the catholic party is the bride.

The same analysis can be applied to the marriages of disparity of cult. Dispensation can be granted for the impediment arising out of the disparity of cult and dispensation from the canonical form of marriage. If the party/ies have decided to make use of the Hindu form of marriage as a public form, because the choice of making the public form is vested with the parties and not the dispensing authority, there is all the more danger of scandal to the Catholic community.

For these reasons, if a marriage between a catholic and a CSI or TELC Christian is decided to take place in the non-Catholic Church, we cannot prevent the parties. In such cases, we cannot write the banns for the catholic party. We presume that the party falls into the CSI or TELC Church as its member. When the family comes back to the Catholic Church after their marriage is celebrated, they are received into the Catholic Church and they become members of the Catholic Church. If only the catholic party wants to frequent the Liturgy and practices of the Catholic Church, she can be allowed and the principles of admitting the non-catholic Christians into the sacraments would be applied. She cannot be a member both in the Catholic Church as well as in the CSI or TELC or other Churches not in full communion with the Catholic Church.

Marriage Celebration

Normally the Mixed marriage is to be celebrated outside the Mass. However, if the situation warrants, it can be celebrated within the mass with the consent of the local ordinary. In such cases, the liturgical norms are to be applied with regard to the Eucharistic communion. However, the marriage celebration of the disparity of cult is to be celebrated outside the Mass²¹

5. A note of marriages with the members of Pentacostal Sect

If the similar situation arises between a catholic and member of a pentacostal sect who was once a catholic, he is still considered to be catholic because the code does not accept the formal act of defect of faith in marriage situations. As a consequence, a marriage took place outside the Catholic Church between a member of pentacostal sect baptized in the Catholic Church and with a CSI or TELC or between two Catholics who are not practicing now and become members of pentacostal sect and in case their marriage is broken, they are in an advantage position to contract their second marriage in the Catholic church without any prior bond although they had contracted a marriage in their sects or in any other Church not in communion with the Catholic Church.

In case the Catholics defected from the Catholic faith, became members of pentacostal sect, married in their own form and now want to practice once again their Catholic faith, their marriage bond is to be considered invalid due to lack of canonical form. Such marriages can be rectified applying the principles of radical sanation as per can.1161/1.

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²¹ Rite of Marriage, English Translation 2016, Instruction Art.36

Sources and Bibliography

1. CCBI, *Complimentary Legislation to the Code of Canon Law*, 1994.
2. POPE FRANCIS, ap., let., MP, *De concordia inter Codices*, May 31, 2016.
3. POPE BENEDICT XVI, Ap, let., MP, *Omnium in mentum*, October 26, 2009.
4. PONTIFICAL CONUCIL FOR LEGISLATIVE TEXTS, *Actus Formalis Defectionis ab Ecclesia Catholica*, March 13, 2006.
5. PAL MAXIMILIAN, *Mixed Marriages in the Canonical Legislation: a Brief Survey*, in *Iura Orientalia* 3(2007) 119-139
6. ABATE, A.M., *Il Matrimonio nella nuova legislazione canonica*, Roma 1985.
7. DE PAOLIS, V., *I Matrimoni misti*, in *Matrimonio e disciplina ecclesiastica*, Milano 1996, pp.141-168.
8. CASTAÑO, J.F., *Il Sacramento del matrimonio*, Terza edizione, Roma 1994.