



## Disparity of Cult Marriages and the Particular Law of the Syro-Malabar Church

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In a religiously heterogeneous society where the social distance between religions is less, it is quite natural that more interreligious marriages occur. Two sets of people who are influenced more by this mingling are those in the lower strata of the community and those who are highly educated.<sup>1</sup> Though many factors promote positive thinking towards interreligious marriages, either a total lack of religious constraints or a strong negative attitude towards the strict practices of one's faith can become a prominent cause. I do not venture to analyze these issues in this article since these are beyond its scope.

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1 See the article by Alex Minichele Sewenet, Fasil Merawi Tessagaye and Getnet Tadele, "Interreligious Marriage: Social and Religious Perspectives" in *Research Gate* 3/6 (2017) 355-362, p. 357, foot note 28, in which the authors refer to Petersen, L. R., "Education, Homogamy, and Religious Commitment," *Journal for the Scientific Study of Religion* 33, 1994, pp. 122-134.

Today, it is a social reality that inter-religious marriages celebrated in the Church after dispensation from the impediment of disparity of cult are on the increase. Formerly, though the law permitted such marriages, the parties were reluctant to approach the competent authority for dispensation from the impediment to celebrating marriage in the Church, especially when the Catholic party was a girl. As a result, often, the girl joined the religion of the non-baptized party, whether by force or not. In such cases, no dispensation or permission was given since a following apostasy of the Catholic party would increase the depth of scandal among the faithful. Nowadays, the girls in general are bold enough to affirm their right to follow the religion they practice, even if they choose a life partner from another religion. There are, of course, exceptions too.

The Catholic Church has well-established norms regarding inter ecclesial or inter-religious marriages. The inter-religious marriages involve an impediment of disparity of cult, for ordinarily, marriage is permitted between two baptized persons only. Therefore, a baptized and a non-baptized person cannot validly celebrate marriage in the Church unless a dispensation from the impediment of disparity of cult is obtained from a competent authority. The Catholic party must make promises and declarations as per canon 814 of the Code of Canons of the Eastern Churches to obtain such permission and dispensation. In this article, I try to analyze common law on the disparity of cult marriages and the particular laws of the Syro-Malabar Church and make a few concrete proposals to revise the particular law of the Syro-Malabar Church for more clarity in this regard.

## **1. The Impediment of Disparity of Cult**

Marriage is one of the seven sacraments in the Catholic Church. The Church believes and teaches that Christ raised the natural institution of marriage between a baptized man and a

woman to sacramental dignity. The canonical legislation on Christian marriage, inspired by the Second Vatican Council document *Gaudium et spes*, paragraph 48, is as follows: “By Christ’s institution, a valid marriage between baptized persons is by that very fact a sacrament in which the spouses are united by God after the pattern of Christ’s indefectible union with the Church, and are, as it were, consecrated and strengthened by sacramental grace” (CCEO c. 776 §2).<sup>2</sup> From the apostolic period marriage as a sacrament instituted by Christ was in the consciousness of the Church. However, it was not a dogma until the Council of Trent.<sup>3</sup>

The Church has always upheld the sacramentality and indissolubility of marriage as a defence against the secularizing tendencies within and outside the Church. This concern is behind the impediment of disparity of cult, which prohibits marriages between a baptized and a non-baptized person. This impediment is found in both the Latin and Eastern Codes. For example, the Eastern Code states in canon 803 §1: “Marriage with a non-baptized person cannot validly be celebrated.”<sup>4</sup> However, this

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2 CIC c. 1055§1 puts this idea as follows: “The matrimonial covenant ..., has been raised by Christ the Lord to the dignity of a sacrament between the baptized.” Paragraph §2 states: “For this reason, a valid matrimonial contract cannot exist between the baptized without it being by that very fact a sacrament.”

3 “If anyone says that marriage is not in a true and strict sense one of the seven sacraments of the gospel dispensation, instituted by Christ, but a human invention in the Church, and that it does not confer grace: let him be anathema”: Council of Trent, session XXIV, *De doctrina*, c. 1: Norman P. Tanner, *The Decrees of the Ecumenical Councils*, v. 2, London, Sheed & Ward, 1990, p. 754.

4 The Latin Code specifies that the law applies to Catholics only. The text of CIC c. 1086 § 1 reads as follows: “A marriage between two persons, one of whom was baptized in the Catholic Church or received into it, and the other of whom is not baptized, is invalid.” (This is the text amended in 2009, where the exception for apostates who rejected faith by a formal act has been abrogated. For the amendment see Pope Benedict XVI, Ap.

is an ecclesiastical law impediment, which can be dispensed. Since marriage is a natural institution, the Church also allows non-sacramental marriages. That means a baptized member of the Church, if he/she freely chooses to marry a non-baptized person, the Church allows this under certain conditions. Unless these conditions are fulfilled and the dispensation is granted, the impediment of the disparity of cult will invalidate the marriage.

Moreover, as a loving mother, the Church has great concern for the Catholic faith of every individual. For this reason, from the post-apostolic tradition onwards, marriages with non-believers were considered an act of debauchery and were forbidden. Those who engaged in such marriages were denied fellowship with the Christian community.<sup>5</sup> The Council of Chalcedon (451), canon 14, prohibited readers and cantors from marrying a wife of heterodox views.<sup>6</sup> The Council of Trullo (Quinisext) explicitly forbade all faithful to marry a “heretical woman” or a “heretical man”. Such marriages, if they occurred, were considered null as per canon 72.<sup>7</sup> This tradition has been kept in the 1917 Code of Canon Law. According to canon 1070, “the marriage is null that is contracted between a non-baptized person and a person

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Letter, *motu proprio, Omnium in mentem*, October 26, 2009: [https://www.vatican.va/content/benedict-xvi/en/apost\\_letters/documents/hf\\_ben-xvi\\_apl\\_20091026\\_codex-iuris-canonici.html](https://www.vatican.va/content/benedict-xvi/en/apost_letters/documents/hf_ben-xvi_apl_20091026_codex-iuris-canonici.html)). The Eastern norm also affects only those baptized in the Catholic Church, for the merely ecclesiastical norms bind only those who have been baptized in the Catholic Church or received into it (CCEO c. 1490).

5 See Tertullian, *Ad uxorem*, II, 3: [https://www.tertullian.org/latin/ad\\_uxorem\\_2.htm](https://www.tertullian.org/latin/ad_uxorem_2.htm), accessed on 04.12.2021.

6 Norman P. Tanner, *The Decrees of the Ecumenical Councils*, v. 1, London, Sheed & Ward, 1990, pp. 93-94.

7 See “The Canons of the Council in Trullo”: <https://www.ewtn.com/catholicism/library/canons-of-the-council-in-trullo-11565>, accessed on 04.12.2021. This was the first legislation establishing disparity of cult as a diriment impediment for the Eastern Churches (See John P. Beal, ed., *New Commentary on the Code of Canon law*, New York, Paulist Press, 2000, p. 1288).

baptized in the Catholic Church or converted to her from heresy or schism.” The legislation of the Eastern Churches contained in the Apostolic Letter *motu proprio* of Pope Pius XII, *Crebrae allatae*, stated: “Marriage contracted by a non-baptized person with a baptized person is null” (c. 60 §1). Safeguarding the Catholic faith and the sacramentality of marriage was the motivating force behind these legislations.

Canon 785 §1 of the Oriental Code requires the pastors of souls to prevent any danger of an invalid or illicit marriage celebration with suitable means. Before a marriage is celebrated, they have to make sure that nothing stands in the way of its valid and licit celebration. The pastors have to take this norm seriously; otherwise, negligence can lead to an invalid marriage celebration. The following incident will better clarify this matter. Recently in Kerala, a marriage between a Catholic girl and a Muslim man blessed in a parish of the Syro-Malabar Church kicked up a controversy within the community. The reason was that the Catholic party had not received dispensation from the impediment of disparity of cult. The marriage blessing occurred in a parish and an eparchy other than the home parish and eparchy of the Catholic girl. The parish priest of the place of celebration of the marriage had told the Catholic party to complete the canonical procedures in the home parish. Although the parish priest of the home parish had given a letter to the parish priest of the place of celebration asking him to complete the canonical procedures there, the latter took it for granted that the dispensation was already obtained and proceeded to bless the marriage. The publicity it received in the media and the scandal it caused demanded disciplinary action from the Church authorities. Therefore, a Commission was appointed by the General Moderator of Administration of Justice of the Syro Malabar Church to inquire into the matter and ensure discipline in the celebration of disparity of cult marriages. The duty of the Commission was to examine whether the pastors have employed

all the suitable means to avoid the invalid or illicit celebration of marriage.

After the inquiry, it turned up that there was culpable negligence on the part of the parish priests, both of the home parish of the Catholic party and of the parish where the marriage was celebrated. The culpability was partly due to the ignorance of the existing norms and partly due to negligence or the absence of due diligence to avoid an invalid celebration of marriage.

## **2. Dispensation from the Impediment of Disparity of Cult**

Dispensation is the relaxation of merely ecclesiastical law by the legislator granted himself or a higher authority in a particular case (c. 1536 §1; CIC c. 85).<sup>8</sup> This relaxation should be for a just and reasonable cause (c. 1536 §1; CIC c. 90). The Code clarifies that the spiritual good of the Christian faithful is a just and reasonable cause for dispensation (c. 1536 §2). The dispensing authority freely decides using his discretion whether a dispensation contributes to the spiritual good of the faithful. Since the prime concern of the Church is the spiritual good of the faithful, specific requirements are to be fulfilled by the one who seeks dispensation from the impediment of the disparity of cult.

Now the question is who can dispense from the impediment of disparity of cult. As per canon 795 §1, the local hierarch has the competence of dispensing the Christian faithful enrolled in the same Church *sui iuris*,<sup>9</sup> whether subjects or non-subjects, if

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8 This is often referred to by canonists as a *vulnus legis* (a wound of the law): See John P. Beal, et al, ed., *New Commentary on the Code of Canon Law*, p. 129.

9 The translation of canon 795 §1 given in the Latin-English edition of the Code of Canons of the Eastern Churches by the Canon Law Society of America needs to be commented. *Propriae ecclesiae sui iuris* (dative case) has been translated as “to another Church *sui iuris*”. However, in canon 794 §1 *propriae ecclesiae sui iuris* (genitive case) has been

they are present within the territorial boundaries of his eparchy. If they are subjects, the dispensation is possible even when they are outside the eparchial territory. However, this power is restricted to the ecclesiastical law impediments except for sacred orders, public perpetual vows of chastity in a religious institute unless it is a case of congregations of eparchial right, and conjugicide.<sup>10</sup>

In the instance mentioned above, the parties had contracted a civil marriage and were residing within the territorial boundaries of the parish where the marriage was blessed. Therefore, both the bishops of the home parish of the Catholic party and the place of residence were able to grant dispensation at the request of the parties. Therefore, the parish priest of the place of celebration could have directed the Catholic party to the bishop of his eparchy instead of demanding to complete the process in her home eparchy. This would have given him better assurance regarding the dispensation obtained before marriage.

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translated as “of his own Church *sui iuris*”. See also canon 829 §1, which has translated *propriae ecclesiae* (dative) as “his Church *sui iuris*”. In normal situations, the local hierarch can dispense the faithful belonging to another Church *sui iuris* if they are subjects as per c. 916 §5. However, in danger of death, dispensation can be granted even to “other Christian faithful actually present within the territorial boundaries of his (of the local hierarch) eparchy” (c. 796 §1). In canon 796 §1 “other Christian faithful” does not have the specification “*propriae ecclesiae sui iuris*”. Therefore, as Pablo Gefaell comments, unlike canon 795 §1, this canon includes also faithful of another Church *sui iuris*, or even of non-Catholic Church (See the commentary given to canons 795 and 796 by Pablo Gefaell in John D. Faris and Jobe Abbass, ed., *A Practical Commentary to the Code of Canons of the Eastern Churches*, Canada, Wilson & Lafleur, 2019, pp. 1430-1431).

- 10 Dispensation from the impediment of sacred orders and the public perpetual vow of chastity made in monasteries and orders is reserved to the Apostolic See. Within the patriarchal/major archiepiscopal boundaries the patriarch/major archbishop can dispense from the impediments of public perpetual vow of chastity made in congregations of any right and from conjugicide. Outside the proper territory even these impediments are dispensed by the Apostolic See (c. 795 §§1, 2).

## 2.1. The Requirements for Dispensation

The Catholic party shall submit a written petition containing the promise and declaration as per canon 814 (CIC c.1125), together with the endorsement of the parish priest to the local hierarch requesting dispensation from the impediment of disparity of cult.<sup>11</sup> Before forwarding the petition, the parish priest must ascertain both the parties' free state<sup>12</sup> and age and the Catholic party's baptism. For this, unless he/she is a parishioner, the Catholic party may be required to produce the baptism certificate.

As we have seen, the impediment of disparity of cult is an ecclesiastical law impediment. The local hierarch has the discretion to dispense from this impediment, considering the Catholic party's promise and declaration as per the norms of canon 814. The requirements for granting the dispensation are stipulated in canon 814 as follows:<sup>13</sup>

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11 Cf. *The Code of Particular Law of the Syro-Malabar Church*, Article 175 §1. Hereafter, *The Code of Particular Law*.

12 *The Code of Particular Law*, Article 174 §6. Regarding free-state, article 153§1 of the Code of Particular Law of the Syro-Malabar Church stipulates that those who have lived for more than one year outside the eparchy after reaching marriageable age should submit a free-state certificate to the parish priest concerned. 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 (art. 153 §2). Normally, the certificate of the parish priest is required for this purpose. However, the certificates of civil authorities or other persons beyond suspicion may be accepted in case of the non-availability of the former (art. 153 §3). This norm is applicable when it regards the free-state of non-baptized persons also. As per the Syro-Malabar particular law, an exemption from the above norm may be granted only by the local hierarch of the party on any appropriate arrangement decided by him (art. 153 §4).

13 *The Code of Particular Law*, Article 175 §§1-3.



1° The Catholic party declares that he or she is prepared to remove the 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 these 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.

It is for the particular law to specify how these declarations and promises are to be made and the mode of informing the non-baptized party of these declarations and promises (c. 815). The particular law of the Syro-Malabar Church, article 182, establishes that 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.<sup>14</sup> These norms are more or less some pastoral obligations, as seen below.

### **3. The Obligations of the Pastors**

The pastors of souls are to make sure that the couples are duly prepared for the marriage. The particular law of the Syro-Malabar Church gives the following guidelines regarding this: First of all, when the parties approach the parish priest with the desire for celebrating a marriage with the impediment of disparity of cult, he has to dissuade them saying “marriage within the same faith is better for the harmony of the family and the upbringing of children”.<sup>15</sup> “If they insist on conducting

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14 See also *The Code of Particular Law*, Article 175 §§1-4.

15 See *The Code of Particular Law*, Articles 174 §§1, 2. These norms are equally applicable for mixed marriages and disparity of cult marriages.

the mixed marriage, they should be appropriately instructed about the faith of the couples, the celebration of marriage, the formation and practice of faith after marriage, the duties towards children,” and the like.<sup>16</sup> The Catholic partner is to be instructed to hold his/her ecclesial faith as supreme or paramount while respecting the religion of the non-Christian partner.<sup>17</sup>

There are also other norms such as those concerning the obligation of the Catholic party to attend the marriage preparation course, produce the baptism certificate, and the like. In addition, the non-Christian party is also encouraged to attend a pre-marriage preparatory course and a premarital counseling session. Finally, the parish priest or the pastor of the place where the marriage is solemnized has to ascertain the eligibility of the bride/bridegroom for marriage.<sup>18</sup>

The petition for dispensation from the impediment of disparity of cult is to be endorsed by the parish priest of the Catholic party. Before endorsing the petition and forwarding it to the local hierarchy, the parish priest must inform the non-Christian partner about the declaration and promise of the Catholic party and notify the matter in the petition. The Code of Particular Law of the Syro-Malabar Church further clarifies that “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.”<sup>19</sup>

So also, the parish priest has to discuss with the parties, before marriage, the matter of the Catholic baptism and education of the children they will have. Therefore, he has to encourage them to decide on this question before marriage.<sup>20</sup>

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16 *The Code of Particular Law*, Article 174 §3.

17 *The Code of Particular Law*, Article 174 §4.

18 *The Code of Particular Law*, Articles 174 §§5-7.

19 *The Code of Particular Law*, Article 175 §3.

20 *The Code of Particular Law*, Article 175 §4

#### 4. Betrothal and Publication of Banns

As per CCEO canon 782 §1, “the engagement, which according to the ancient tradition of the Eastern Churches laudably precedes marriage, is governed by the particular law of the respective Church *sui iuris*.” Canon 786 obliges every faithful to reveal any impediments of which they are aware to the pastor or the local hierarch before the celebration of marriage. If they have to do this, they should get information regarding the impending marriages between two specified persons celebrated in the parish. In civil norms, the marriage banns are termed “notice of marriage.” This gives an occasion to raise objections based on civil norms.

The mode of marriage banns is a matter of particular law. In the Syro-Malabar particular law, there are specific norms regarding the mode of publication of banns.<sup>21</sup> As per the particular law, the local hierarch has the discretion to allow betrothal and the publication of banns in inter-religious marriages. The local hierarch has to duly consider the nature and circumstance of each petition before taking the decision. If these are allowed, their form also shall be stipulated in the same rescript.<sup>22</sup> In many cases, the publication of banns is omitted if this would become scandalous to the community of faithful in the judgment of the local hierarch. Sometimes, especially in the case of conservative Catholic families, the apprehension of the family of the Catholic party regarding the disgrace caused by such inter-religious marriages prompts them to request not to publish the banns.

#### 5. The “C” Form or the Statement of No-objection from the Parish Priest

In the Syro-Malabar Church, exchanging marriage *Kuries* (Forms)<sup>23</sup> between the parish priests concerned safeguards the

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21 *The Code of Particular Law*, Articles 163-167.

22 *The Code of Particular Law*, Article 176.

23 As per the particular law of the Syro-Malabar Church, marriage *Kuries* or Forms include A, B, C, D and E. Forms A and C are no-objection

licit celebration of marriage. From betrothal onwards, such kuries are exchanged. The kuries or Forms contain details such as the name of the parties, their baptismal name, name of parents, the date and place of birth, the date and place of baptism, and the like. The “Form C” is given to the parish priest of the place of celebration of marriage by the other parish priest or both the parish priests, if the marriage is celebrated in a parish other than the parish of either of the parties. This is also equivalent to a certificate of no objection. Article 168 of the Syro-Malabar particular law clearly states that marriage is lawfully blessed only after obtaining “Form C”. If a marriage of persons other than parishioners, of whom at least one is a Syro-Malabarian, is celebrated in a parish, the parish priest or his delegate can bless this licitly only on receipt of “Form C” or a similar document from the concerned parish priests.<sup>24</sup>

In disparity of cult marriages since the non-baptized party does not belong to any parish, it is for the parish priest of the Catholic party to employ suitable means to ascertain the free-state or eligibility of the non-baptized party to marriage.<sup>25</sup> If the betrothal and marriage are celebrated in another parish, the parish priest of the Catholic party has to give the details of both the parties in the “Form A” or “Form C” sent to that parish priest. It is opportune to have a separate “Form C” for the disparity of cult marriages since one party is not baptized.

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certificates for betrothal and marriage respectively given by the parish priests of the spouses to the parish priest of the place of celebration (If the betrothal or marriage is celebrated in the parish of one of the spouses, the parish priest of the other spouse gives Form A or C, as needed). Form B is “information regarding the betrothal conducted” and Form D is a certificate regarding the celebration of marriage. Form E is a “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” (*The Code of Particular Law*, Article 151).

24 *The Code of Particular Law*, Article 186.

25 See footnote 12 above.

## 6. The Form of Celebration of Marriage

Regarding canonical form canon 828 §1 stipulates that “only those marriages are valid which are celebrated with a 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.” Though the Code foresees an extraordinary form of celebration as an exception during some circumstances specified in the Code (c. 832), in normal circumstances “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).<sup>26</sup> A dispensation from canonical form is reserved to the Apostolic See, or within the proper territory, to the Patriarch/the Major Archbishop. Such a dispensation is given only for a “most grave cause” (c. 835).

The particular law of the Syro-Malabar Church lays down a few specific norms regarding dispensation from canonical form. The Major Archbishop shall grant dispensation only after having consulted the local hierarch and “for a most grave reason”.<sup>27</sup> The

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26 *The Code of Particular Law*, Article 177 §1, 3.

27 *The Code of Particular Law*, Article 178 §1. The particular law does not specify any particular reason which can be considered as “most grave”. However, the *Directory for the Application of Principles and Norms on Ecumenism* (ED) published by the Pontifical Council for Christian Unity on 25 March 1993 gives a few indications when it concerns marriages between a Catholic and a non-Catholic. The reasons for dispensation may be maintaining family harmony, obtaining parental consent to the marriage, recognizing the particular religious commitment of the non-Catholic partner or his/her blood relationship with a minister of another Church or ecclesial Community. The obligation imposed by some Churches or ecclesial Communities to observe their own form of marriage is not a motive for dispensation (ED 154-155). Though these are not applicable as such in disparity of cult marriages this gives a model for the dispensing authority to apply due discretion. The particular law can give further clarifications in this regard.

parish priest must endorse the petition for dispensation and the local hierarch of the Catholic party must recommend it.<sup>28</sup> Though dispensation from the form is given, the particular law further specifies that “there should be a public form of celebration”.<sup>29</sup>

The importance given to the Catholic form of marriage is evident from these norms. The CCEO further forbids “to have another religious celebration of the same marriage to furnish a new consent” before or after the canonical celebration of marriage (c. 839).<sup>30</sup> There are norms regarding the liturgical celebration of inter-religious marriages too. The marriage celebrated according to the Catholic form ordinarily takes place outside the Eucharistic Liturgy.<sup>31</sup>

## 6. The Ordinary Minister and the Place of Marriage

The Catholic Church has explicit norms regarding the minister and the place of marriage. Ordinarily, the marriage is blessed before the local hierarch, local pastor, or a priest delegated by either of them (c. 828 §1).<sup>32</sup> The CCEO further stipulates: “Local hierarchs and local pastors validly bless the

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28 *The Code of Particular Law*, Article 178 §2.

29 *The Code of Particular Law*, Article 178 §3

30 *The Code of Particular Law*, Article 179 §1.

31 Cf. *The Code of Particular Law*, Article 180 §1. If it is a case of mixed marriage between a Catholic and a non-Catholic Oriental, for a just cause, the local hierarch may permit the celebration of the Holy Qurbana. The norms on *communicatio in sacris* and the special agreements between the Churches are to be considered regarding the reception of the Divine Eucharist (*The Code of Particular Law*, Article 180 §3). However, there shall be no celebration of the Holy Qurbana in connection with the marriage between a Catholic and a non-Catholic non-Oriental (*The Code of Particular Law*, Article 180 §2). This norm is applied with regard to the inter-religious marriages too.

32 CIC c. 1108 §1 allows to delegate also a deacon as an ordinary minister, unless either of the parties belong to an Eastern Church, whether Catholic or non-Catholic (See the amendment made by Pope Francis, *De concordia inter codices*, Ap. Letter *motu proprio* issued on 31 May 2016: <https://>

marriage of parties, whether they are subjects or non-subjects, provided that at least one of the parties is ascribed in his Church *sui iuris*” (c. 829 §1; CIC c. 1109.).<sup>33</sup> However, for liceity, the parties should have either a domicile or a quasi domicile or a month-long residence in the parish/the eparchy. In the case of transients, they should have an actual residence in the place of marriage (c. 831 §1, 1°; CIC c. 1115).<sup>34</sup> If the parties, except in the case of transients, do not have a domicile, quasi domicile, or a month-long residence within the parish territory, the parish priest requires a "C" Form *Kury*, as already mentioned.

Regarding the place of marriage, the particular law of the Syro-Malabar Church stipulates: “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.”<sup>35</sup> In the disparity

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[www.vatican.va/content/francesco/it/motu\\_proprio/documents/papa-francesco-motu-proprio\\_20160531\\_de-concordia-inter-codices.html](http://www.vatican.va/content/francesco/it/motu_proprio/documents/papa-francesco-motu-proprio_20160531_de-concordia-inter-codices.html)).

- 33 However, a personal hierarch or personal pastor can validly bless the marriage only if one of the parties is his subject (c. 829 §2; CIC c. 1110). Within the proper territory of the Syro-Malabar Church, the local hierarch and the local pastor of Southists have personal jurisdiction over the faithful belonging to the Eparchy of Kottayam. Therefore, in a parish belonging to the Southists, the local pastor can bless the marriage of two persons belonging to the Syro-Malabar Church validly only if one of the parties belongs to the Eparchy of Kottayam.
- 34 As per anon c. 916 §1 a person acquires his or her local hierarch and pastor of the Church *sui iuris* in which he or she is enrolled through both domicile and quasi-domicile, unless other provision is made by common law. The proper local hierarch and pastor of a transient is the pastor of his Church and the hierarch of the place where the transient is actually staying (c. 916 §3).
- 35 *The Code of Particular Law*, Article 185 § 1. In extraordinary circumstances, the local hierarch may grant permission for the celebration of marriage at a suitable place other than the church (art. 185 §2). If the marriage is celebrated in a parish other than the parish church of either of the spouses, the local parish priest of the place of celebration will have the ordinary jurisdiction to bless that marriage. However, if the parish church belongs to another Church *sui iuris*, the local parish priest will have jurisdiction

of cult marriages, the local hierarch or the local pastor of the Catholic party shall be the ordinary minister of marriage.

The norms regarding the competent minister and the place of marriage are applicable in the disparity of cult marriages also. In the incident referred to in this article, the parties had been staying for more than a month within the parish territory where the marriage was celebrated, after contracting a civil marriage. Therefore, the parish priest could bless the marriage both validly and licitly (after obtaining the dispensation from the competent authority), even without obtaining any “C” Form or no-objection certificate from the parish priest of the home parish of the Catholic party. However, in such a situation, if a party residing in a particular territory approaches the parish priest of that place to get the marriage blessed in the Church, it is the sole responsibility of the parish priest to complete all the formalities and make sure that the marriage will be blessed validly.

## **7. Some Suggestions Regarding the Norms to be Stipulated**

It is pertinent to have more clarity in the norms of particular law regarding the disparity of cult marriages to avoid unfortunate events as described above. Therefore, an eventual revision of the particular law of the Syro-Malabar Church may take into consideration the following matters also:

1. Explicit norms concerning the prenuptial inquiry and the free-state certificate of the non-baptized party are lacking in the present norm.

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only if one of the spouses belongs to his Church *sui iuris*, or the parish priest is properly delegated by the one having jurisdiction over the faithful. For example, if the marriage between two persons belonging to the Syro-Malabar Church is blessed in a Latin church, the Latin parish priest will not have ordinary jurisdiction to bless that marriage. If he is to bless the marriage the Syro-Malabar local hierarch or the local pastor having jurisdiction in that area has to delegate him.



2. A different format for Form “C” adapting the present one may be used for these marriages taking into account the non-baptism of one party. So also norms regarding Forms C, D, and E are to be made strictly applicable in the disparity of cult marriages.
3. Specific norms are to be made regarding the pastoral care of the Catholic partner in the disparity of cult marriages. Questions such as the parish to which the Catholic party belongs after the wedding, the faith formation of the children born of such marriages, etc, remain unaddressed in law.
4. The law is silent regarding the possible specific disciplinary actions if the Catholic party behaves fraudulently and knowingly makes vain promises to get permission for the marriage. This leads to disciplinary actions not based on common standards in different eparchies.<sup>36</sup>

## 8. Some Concrete Norms

As we have seen, the present particular legislation of the Syro-Malabar Church seems inadequate to meet all the requirements of the time. The following concrete norms may be helpful while detailed norms or guidelines for the disparity of cult marriages are enacted.

### 8.1. Obligations of the Parties to Marriage

- i) Both parties have to meet the parish priest of the Catholic party in person before marriage. The Catholic party must

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36 *The Code of Particular Law*, Article 184 contains a norm obliging the parish priests to report to the local hierarch the matter of transgression of a Catholic party of his parish, who contracts marriage with a non-Catholic or a non-Christian without the required permission or dispensation, so that ecclesial penal action may be taken against those responsible for the transgression and scandal. However, here also, a norm stipulating a specific penal action is absent.

make the declaration and promises as per CCEO canon 814 in front of the parish priest who recommends the petition for dispensation. The parish priest shall make sure that the non-baptized party is truly aware of the Catholic party's promise and obligations.

- ii) The Non-baptized party has to bring a 'free-state certificate' from a civil authority or a person beyond suspicion, confirming his/her freedom to marry. So also, a prenuptial inquiry form prepared especially for this purpose is to be duly filled before the parish priest. In addition, the facts regarding previous marriages, either civil or religious, are to be verified.
- iii) If a divorced person approaches to marry a Catholic, the validity of his/her previous marriage is to be verified. If the previous marriage was celebrated validly as per the laws binding him/her at the time of marriage, the non-baptized party has to get either a dissolution of bond from the Apostolic See or a declaration of nullity from the ecclesiastical tribunal of the domicile of the Catholic party.<sup>37</sup>

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37 See The Pontifical Council for Legislative Texts, *Dignitas connubii*, Instruction to be observed by diocesan and interdiocesan tribunals in handling causes of the nullity of marriage, dated 25 January 2005, Article 4 §2. Though this instruction is not directly applicable to the tribunals of the Oriental Catholic Churches (art. 1 §1), there are authors who opine that it is analogously applicable. For example, see Sajan George Thengumpally, "The Possible Application of *Dignitas connubii* by the Tribunals of the Oriental Catholic Churches," in *Iustitia* 4/1 (2013) 69-99. The justifying reasons for this application, as per the author, include, first of all, the desire of the Codification Commission of the Oriental Code to make the procedural norms identical to that of the Latin Code (*Nuntia* 3 (1976 ) 23). So also, the spirit of c. 1499 allows referring to *Dignitas connubii* in case of doubt of law. However, it is to be made applicable to the Oriental Churches by an instruction of the same Congregation or the Congregation for the Oriental Churches. So also, a patriarchal, major archiepiscopal or metropolitan Church *sui iuris* can incorporate these norms in the particular law or the heads of these Churches can issue an instruction in this regard.

## 8.2. Marriage Celebration

- i) Separate marriage *Kuries* shall be prepared specifically for the disparity of cult marriages in every eparchy.
- ii) The text prepared for the disparity of cult marriages shall be used in the liturgical celebration. The marriage shall be solemnized without the Eucharistic celebration.
- iii) 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 (c. 839).<sup>38</sup> Even if obliged to participate in some family functions, the Catholic party shall not actively participate in the non-Christian party's religious ceremonies.

## 8.3. Pastoral Care

- i) The Local hierarchs and other pastors of souls are to see to it that the Catholic spouse and the children born of a disparity of cult 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).<sup>39</sup>
- ii) If the Catholic party chooses the domicile of the non-baptized party, the Catholic party's pastor shall make sure that the Catholic party is registered in the Catholic parish of his/her new domicile.
- iii) The Catholic partner is to be reminded of his/her obligation to impart to the children born of this marriage proper Catholic formation in harmony with the Catholic tradition to which he/she belongs.<sup>40</sup>

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38 This norm is already present in the *Code of Particular Law*, Article 179 §1.

39 The norm given in the *Code of Particular Law*, Article 183, regarding mixed marriages.

40 *The Code of Particular Law* has stipulated this in article 181 §4, 1°, which concerns only marriages between members of the Catholic Church and the Malankara Syrian Orthodox Church.

## 8.4. Penal Sanctions

The following penal sanctions also may help to promote discipline in the Church regarding this matter:

- i) A Catholic party who celebrates marriage with a non-baptized person without dispensation from the competent ecclesiastical authority, or fraudulently and knowingly makes a false declaration to get dispensation is to be denied sacraments and sacramentals. If the Catholic party joins the non-Christian religion, he/she is to be punished with major excommunication.
- ii) A Catholic party who conducts another religious celebration of the same marriage after the canonical celebration of marriage, to furnish new consent, is to be punished with a minor excommunication. The parents or other persons who take their place, who consent to it or participate in it, are also to be punished with a minor excommunication (c. 839).
- iii) If a priest who is aware of an impediment to marriage blesses it, without seeking dispensation from the competent authority, he is to be punished with a suspension for a period determined by the local hierarchy.

## Conclusion

Though the Church recognizes the right of the Catholic faithful to make a free choice regarding his/her marriage partner, the concern of the Church for the salvation of the soul of the Catholic party is evident in the norms regarding the disparity of cult marriages. As St Paul reminds us, “the unbelieving husband is sanctified by the wife, and the unbelieving wife by the husband” (1 Corinthians 7:14). However, there is also the possibility of endangering the faith of the Catholic party in inter-religious marriages. The Church's motherly concern prompts her

to take necessary precautions to protect her children from such dangers. Therefore, the Church's legislation declares marriages between a baptized and a non-baptized as invalid unless a dispensation is obtained. So also conditions are stipulated for granting dispensation. We have seen the various norms in the Common law of the Church and the particular law of the Syro-Malabar Church regarding the disparity of cult marriages. There are also specific norms in the eparchial statutes of different eparchies. However, clarity is lacking when it comes to the details, and different eparchies apply these norms with varying degrees of rigidity. Therefore, it is pertinent to modify the norms of the particular law giving even the minute details. Thus, the Synod should make standard norms equally applicable in all the eparchies. This will help to avoid both the extremes of rigidity and laxity.

