

THE IMPORTANCE OF PRE-NUPTIAL ENQUIRY ACCORDING TO CIC c. 1067 AND CCEO c. 784 IN THE KERALA CONTEXT

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Subsequent to a rather exhaustive research Sr. Deepa offers a general understanding of pre-nuptial investigation. Then after explaining the purpose of CIC c. 1067 and CCEO c. 784 dealing with the norm on such investigation, the author highlights challenges and problems involved in conducting the pre-nuptial inquiry and in the light of that, proposes some complementary factors for the effectiveness of the same.

Introduction

It is natural for human beings to get married as long as they have the capacity to do so. CIC c. 1058 and CCEO c. 778¹ uphold this natural right by saying: "All persons can enter into marriage who are not

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¹Citations of the canons of CIC and CCEO are taken respectively from: The Canon Law Society of Great Britain and Ireland, *The Code of Canon Law, in English Translation*, London, Collins William B. Eerdmans Publishing Company, 1983; Canon Law Society of America, *Code of Canons of the Eastern Churches, Latin-English Version, New English Translation*, Washington DC, Canon Law Society of America, 2001.

prohibited by law.” For Christians, this natural reality is graced with the dignity of a sacrament (CIC cc. 1055, 1056, 1134; CCEO c. 776 §2) by its being instituted by Christ, and therefore, the Church, the body of Christ, regulates Christian marriage by its own laws. Even natural law requires that those who wish to get married should possess not only the freedom and capacity to express their will to do so but also the capacity to realize what is affirmed in that will. It is this primary requirement of the natural law that is reaffirmed when the Catholic Church surrounds the sacred institution of marriage with many legal safeguards. One of the most prominent of these safeguards is the directive to the pastors, to carry out a diligent and careful pre-nuptial investigation of the future brides and grooms. Pre-nuptial investigation is of utmost importance for the Church as it is hoped to safeguard the institution of marriage and family from fraudulent and illicit practices. The detailed and specific directives in this regard reflect the deep concern of the Catholic Church about the pressures and dangers surrounding the institution of marriage in today’s world. Emphasising the importance of such investigation Pope Benedict XVI made the following observation on the occasion of the inauguration of the judicial year of the tribunal of the Roman Rota:

Among the means for ascertaining whether the project of the engaged couple is truly conjugal the pre-matrimonial examination stands out. This examination has mainly a juridical purpose: to ascertain that nothing impedes the valid and licit celebration of the wedding.... It is a unique pastoral opportunity ...in which, through a dialogue full of respect and cordiality, the pastor seeks to help the person to face seriously the truth about himself or herself and about his or her own human and Christian vocation for marriage.²

This observation of the Holy Father summarises the mind of the Church which is unambiguously presented in CIC c. 1067 and CCEO c. 784. This article attempts to illustrate how important it is in the context of Kerala where assisted or arranged marriage is the normal practice.

²Benedict XVI, *Allocution to the Roman Rota*, 22 January 2011, AAS 103 (2011), 108-113. English trans. taken from http://www.vatican.va/holyfather/benedict_xvi/speeches/2011/january/documents/hf_benxvi_spe_20110122_rota-romana_en.html. Accessed on 20 April 2012.

1. General Understanding of Pre-Nuptial Investigation

Etymologically the word “pre-nuptial” means “before marriage.”³ The *Oxford Dictionary of English* defines it as what is antecedent to marriage. According to the *Oxford Latin Dictionary*, the root meaning of the word *nuptiae* is “the act of becoming, or the state of being, married, marriage.”⁴ Therefore pre-nuptial investigation means investigation that takes place before marriage and it is different from preparation for marriage or catechetical formation of the spouses. And this investigation is formally conducted by the parish priest or his delegate according to the directives of the Canon Law.

The Code of Canon Law and the Code of Canons of the Eastern Churches do not give a formal definition of canonical pre-nuptial investigation. Nevertheless, both Codes (CIC c. 1067 and CCEO c. 784) state that the pastor who has the right to assist and bless the marriage, must carry out pre-nuptial investigation so as to prevent an invalid celebration of marriage. Again CIC c. 1066 and CCEO c. 785 say that the pastor has the obligation of preventing invalid celebrations of marriage. Hence, before the marriage is celebrated, it must be established that nothing stands in the way of its valid and licit celebration.⁵ As our focus is specifically on the Kerala context, pre-nuptial investigation by the pastor or his delegate tends to be more important in its culture and traditions where arranged marriage is still the normal practice. And usually the examination is done orally and in writing, where the parties are expected to answering the pre-nuptial enquiry form.⁶

³Catherine Soanes and Angus Stevenson, *Oxford Dictionary of English*, Oxford, University Press, 1981, 2nd revised ed., 2003, 1389.

⁴P. G. W. Glare, (ed.), *Oxford Latin Dictionary*, Oxford, at The Clarendon Press, 1983, 1207.

⁵See, Gerard Sheehy and others, (eds.), *The Canon Law Letter & Spirit: a Practical Guide to the Code of Canon Law*, London, The Canon Law Society of Great Britain and Ireland, 1995, 581.

⁶The decision to use a formal pre-nuptial enquiry form was taken in the CBCI meeting held in Kottayam in the year 1988. Accordingly, both the Latin and Syro-Malabar Churches have prepared separate questionnaires, though essentially the same, to prove the free-state and protect the rights of the parties, according to CIC and CCEO respectively. The Syro-Malankara Church does not have such a questionnaire yet and it follows the customary way of interrogation of each party by the parish priest.

1.1. Purpose of CIC c. 1067 and CCEO c. 784

The purpose of CIC c. 1067 and CCEO c. 784 is explicit in the text itself, which is to reach moral certitude by the pastor, through the examination of the couple, that the parties are free of marriage impediments, that their consent is free and that they are baptised and have sufficient knowledge of Christian doctrine. "The purpose of this enquiry is to establish: (a) that there are no impediments or prohibitions against the marriage; (b) that both parties are entering marriage freely; (c) that both parties understand the nature and obligations of the married state and are able, and actually intend, to accept these obligations."⁷ The word freedom to marry in both canons needs to be understood in the broadest sense possible and should not be reduced to a mere absence of marriage impediments. It includes this but also implies the absence of every other obstacle, like defect of consent due to psychological or mental problems, presence of force or fear in the positive act of will, etc. All these factors may hinder a party from a valid and lawful celebration of marriage. In other words, any factor, whether internal or external, which substantially impedes the internal freedom of a person's capacity to give a free consent, invalidates the juridical act of marriage and the pre-nuptial investigation aims at finding out such elements before the marriage.

1.2. CIC c. 1067, CCEO c. 784 and the Kerala Church

A fundamental and natural right of every human being is to choose his or her state of life among which marriage is the common one. This choice must be deliberate and free from all kinds of coercion. Marriage, which in the Catholic tradition involves a covenantal relation, begins with the exchange of consent between the spouses. It is a free act of the will by which the spouses commit themselves to each other. All the directives of the Church regarding marriage are intended to make sure that the prospective bride and groom enter into this sacrament on their own will and with the lone motif of giving oneself over to the other for the good of the offspring, the family, the Church and the society at large. In today's multi cultural social situation, that is marked by myriads of viewpoints and practices about self, family and society, particularly about marital relationships, the Church never wavers from the ideals of marriage

⁷Gerard Sheehy and others, (eds.), *The Canon Law Letter & Spirit: a Practical Guide to the Code of Canon Law*, 582.

and family and the specific instructions regarding pre-nuptial investigation as stipulated in CIC c. 1067 and CCEO c. 784 present the mind of the Church in this regard. However, one needs to take into account various factors in order to grasp the depth of these canons. Therefore, in the following sections we elaborate on the various factors that make these canons relevant and important in the context of the Church in Kerala.

2. The Cultural Context of Kerala

Marriage as an institution and as a vocation exists in a social and cultural environment, and this environment has a deep influence on the life of every human being. John Paul II was well aware of this inseparable relation between culture and the person. He says: "...because it is a reality that is deeply rooted in human nature itself, marriage is affected by the cultural and historical conditions of every people. They have always left their mark upon the institution of marriage and therefore, the Church cannot prescind from the cultural milieu."⁸ Therefore, marriage and family are to be understood and analysed within the concrete social and cultural contexts of the spouses and this intimate relation between the culture and marriage obliges the pastor of souls to be well aware of those cultural elements to guide the parties in line with them. Hence, understanding the culture of Kerala and the living circumstances of the people is absolutely necessary to know the importance of CIC c. 1067 and CCEO c. 784 as they are applied and lived in this specific cultural context.

2.1. The Modern Scenario

During the past twenty years, many changes have taken place in Kerala due to the influence of globalisation especially through internet, television, cinema, publications, etc. These changes have affected the spheres of social and cultural values as well as perceptions about marriage, family and man-woman relationship. The increase of marriage nullity cases in the ecclesiastical tribunals, particularly on the grounds of simulation, error of quality, fear and force, reverential fear, etc. must be understood against the background of such impacts on marriage and family life.

⁸ John Paul II, "Marriage and Culture," (Allocution to Rotal Officials, 28 January 1991), William Woestman, (ed.) *Papal Allocutions to the Roman Rota 1939-1994*, 214.

On a more general ground, the rapid changes in the economical and social situation force people to migrate to different places, inside and outside India, in search of better jobs and living. Some reside temporarily in other places for study and work. In the case of such people, sometimes marriages take place quickly without proper investigation and preparation, resulting in many invalid marriages. Sometimes the pastor himself finds it difficult to understand the intention of the parties. In the past, the choice of the spouse was restricted within the religious group and community. But today mixed marriages and disparity of cult marriages are on the increase, which adds to the responsibility of the pastor in safeguarding the faith of the Catholic party through diligent pre-nuptial investigation. In addition to these modern issues, what possibly affect more the marriage of the faithful are the age old traditional practices in the Catholic families as well as Kerala society at large.

2.2. Arranged/Assisted Marriage and the Role of the Parents

The most important cultural factor in the Kerala context is, probably, the system of arranged marriage which is a deeply rooted tradition of Indian culture in general. In such a form of marriage, there is a twofold consent involved, namely, the consent of the couple and the consent of their parents. Though, in former days the latter alone was sought, today the former also is seriously taken into consideration. In this changed scenario, the term assisted marriage or proposed marriage is more suitable than arranged marriage, because more than arranging marriage, the parents assist the children in selecting their partner. With the assistance of parents and others both parties try their best to acquire as much knowledge as possible about the other party, before reaching a final decision regarding their marriage. The selection of a partner is, thus, the fruit of a dialogue between the boy or girl and the family members, and the boy and girl are mostly given the freedom to choose. The prospective bride and groom are given more chances today to interact with each other over telephone or via other media and they are even encouraged to attend the marriage preparation programme together.⁹

In the cultural context of Kerala, as Varghese Palathingal rightly says, "marriage was considered not merely as an unbroken union of a man and a woman but more as a communion of two families" and

⁹Augustine Kallely, "Loving in Assisted Marriage: an Analysis of the Concept of Love in the Contemporary Marriage Practices of Kerala Christians in South India," *Intams* 14 (2008), 70-87, at pp. 76-77.

it is with marriage that the spouses begin to love each other.¹⁰ Therefore, the role of the parents is significant in marriages. When they arrange marriage for their children, they look carefully into the social, economic and moral sides of the other party in order to safeguard their own status, reputation and relationships.¹¹ Thus the parental consent depends on a variety of factors, such as family status, parental authority, dowry, virginity, educational qualification, age, occupation etc. Consequently, during the visits done by the family members of both parties, each party will consider the compatibility of the prospective spouses regarding “character, education, physical appearance, family background, financial situation, health, religious communities, job, age, the geographical distance between the residences, dowry, etc.”¹² They look for the family’s social, economical and moral behaviour through various ways such as matrimonial bureaus, marriage advertisements, marriage brokers, etc. Even in newspaper advertisements the person’s religion, age, occupation, salary, complexion, etc. are given.

The moral behaviour or the moral uprightness of the person and of family members and the absence of criminal background also are carefully investigated. Moral uprightness is highly expected from the other party, especially with regard to sexual relationships, since “the traditional position of the Indian society by and large with regard to sexual behaviour is that sexual acts are to be exercised only within the confines of marriage.”¹³ Therefore, pre-marital and extra-marital sex is considered wrong and virginity before marriage is regarded as very important. Since there is the belief that God unites the couple in the sacrament of marriage the couples commit themselves not only

¹⁰ Varghese Palathingal, “Marital Consent of the Thomas Christians in the Indian Socio-Cultural Milieu,” *Eastern Legal Thought* 1 (2002), 97-115, at pp. 103, 105.

¹¹ Jose Marattil, “Reverential Fear as a Ground of Marriage Nullity in the Indian Cultural Context,” *Studies in Church Law* 6 (2010), 198.

¹² Augustine Kallely, “Loving in Assisted Marriage: an Analysis of the Concept of Love in the Contemporary Marriage Practices of Kerala Christians in South India,” *Intams* 14 (2008), 76.

¹³ Cyril De Souza, “Youth and their Values System,” in Jesu Pudumai Doss and others, (eds.), *Youth India: Situation, Challenges and Prospects*, Bangalore, Kristu Jyoti Publications, 2006, 69-88, at p. 81.

to the partner but also to God, who has willed this particular partnership.¹⁴

As we mentioned above, this is not to ignore the modern scenario where traditional understanding of conjugal morality is being challenged and changed by high mobility, industrialization and rapid technological development, new perceptions of sex-roles, premarital and extra-marital sex, divorce, etc. Now in many cases life is thought to be the exclusive concern of the individual¹⁵ where the roles of the parents and traditional systems lose weight.

Nonetheless, parental authority has never become insignificant, as it has deep roots in the culture of the Indian society and Kerala is even more traditional in keeping such values. In fact, "there is no culture in Asia which totally excludes the role of parents in the arrangement of their children's marriage."¹⁶ Parents are responsible for their children's spiritual as well as temporal welfare. Until they are married, children remain subject to their parents. Parents feel that it is their fundamental duty to give their son or daughter in marriage the best possible match. And it is not seen as a violation of the children's personal freedom in choosing a partner of his or her wish. Normally the children's consent is always asked and the degree of their parents' influence depends upon each family. Nevertheless, in some cases, in exercising their legitimate authority, parents might force their children, although unintentionally, into celebrating marriage. It may also happen in cases, where the father or mother is a dominating character, that the children may not have the courage to express their opinions on the proposed marriages. In such cases children are coerced to comply with the wishes of the parents.¹⁷ Jose Marattil rightly observes:

¹⁴Kallely, "Loving in Assisted Marriage: an Analysis of the Concept of Love in the Contemporary Marriage Practices of Kerala Christians in South India," *INTAMS* 14 (2008), 76, 78.

¹⁵James Punnaplackal, "The Changing Nature of Relationship in Marriage and Sexuality: a Need for an Integral Understanding of Catholic Conjugal Morality," *Vidyajyoti* 75 (2011), 669-684, at pp. 672, 676.

¹⁶Augustine Mendonça, "Culture and Nullity of Marriage," *Canon Law Society of Great Britain & Ireland News Letter* 165 (2011), 53.

¹⁷Jose Marattil, "Reverential Fear as a Ground of Marriage Nullity in the Indian Cultural Context," *Studies in Church Law* 6 (2010), 200.

There is no doubt that culture has its impact on the matrimonial consent of spouses. A human being is a product of culture, and his or her mind is invariably conditioned by cultural influences. The system of arranged marriages is so deeply rooted in Indian culture that even today the majority of marriages are the result of the system. Although most unions thus entered last a long time, there are many that fail within a very short period of time after the wedding. ...On the one hand, the Church rightly upholds the inviolability of personal freedom in the choice of one's state in life. On the other hand, the Church respects and accepts what is good and valuable in every culture.¹⁸

2.3. Reverential Fear

Though the present Codes do not speak explicitly of reverential fear as a ground of marriage nullity, in the context of assisted marriages it does play a major role in invalidating marriage. Filial reverence is part of Indian culture and it is very typical of Kerala's society. Right from childhood children are taught to respect and obey their parents and elders almost unquestioningly. Those who lack this respect towards parents and elders are not well accepted in society and are considered as a disgrace to the family. Because of such respect and accustomed obedience, children sometimes accept their parents' decisions, or even leave everything to the discretion of their parents and forfeit their personal capacity and freedom of choice. A deep sense of gratitude or reverence towards their parents makes them sometimes feel that any decision against that of their parents is bad and shameful. This blind reverence often affects their decision and often in marriages they accept the decision of their parents, even contrary to their own will. Jose Marattil writes: "...in cases of reverential fear the reverence and respect one owes to parents or significant others interfere with one's natural right to choose freely one's life partner."¹⁹ J. Prader, based on a Roman Rotal judgment (28 December 1940), states that in Oriental and African cultures children generally leave parents to arrange marriage for them. If the children

¹⁸Jose Marattil, "Reverential Fear as a Ground of Marriage Nullity with Special Reference to the Indian Culture," *Studia Canonica* 43 (2009), 431-486, at pp. 432-433.

¹⁹Jose Marattil, "Reverential Fear as a Ground of Marriage Nullity with Special Reference to the Indian Culture," *Studia Canonica* 43 (2009), 432-433.

accept their proposal in conformity with the parents' will, following their traditional belief that parents give what is best for them, the marriage is valid. If a party is under moral coercion and reverential fear, that marriage can be declared null.²⁰ Even within the same culture, the reactions of parents or others could be different. Normally in Kerala, children are free to accept or reject the proposals brought by the parents or others. This is because in such families children are brought up with a certain amount of freedom to dialogue with the parents and hence they can confidently share their views and take part in decision making. But in some families, the parental involvement will be very strong and the children may not have the courage to resist it. Here, the children lose the freedom of choice out of reverence they owe to them. When such reverential fear overpowers their free choice, the case falls under the norm of CCEO c. 825.

2.4. Economic Changes

Economic change is a ubiquitous phenomenon in modern Indian society. It plays such an important role in human life today and it is impossible for one to live without being part of it. In marriage preparations also, the economic position of the other party is an important concern for the parties. It includes consideration of the nature of job, salary, type of house, education, property owned, etc. of the proposed spouse. Often it is the boy and his family that are really concerned with the financial status of the girl. Sometimes, a person, either boy or girl, marries another, simply on account of his/her strong financial situation. Because of the influence it has on marriage, at times people do not reveal their true economic status or job until after marriage.

Nevertheless, as the number of employed women has increased, particularly in Kerala, in comparison with other parts of India, they too are becoming financially independent. The employment of women is not only acceptable but is often encouraged and this has remedied the economic dependence of the girl to some extent. In spite of that, often it is considered the duty of the father to find a suitable marriage partner for his daughter and provide an adequate dowry as a share in his property.

²⁰Joseph Prader, *Il matrimonio in oriente e in occidente*, (Kanonika 1), 203-204.

Though the Indian Parliament passed the Dowry Prohibition Act in 1961 and has legally banned the dowry system, it still prevails in the form of gift giving or giving a share in the family property. The middle class and poor families are the main victims of this social evil. And in order to escape from financial problems or having been lured by the sound economic condition of the other party, marriages take place against the wish, especially, of the girl. As Marattil rightly says, "A girl, whose father cannot afford the financial demands of her intended's family, would not be able to marry that person. On the contrary, a girl may end up marrying an unsuitable partner when the latter is prepared to marry her with a lower dowry, which her father can afford at the expense of losing her freedom to marry the partner of her choice."²¹ Thus the economic factors play an important role in marriage.

2.5. Age Factor

Another significant factor, which enters into the choice of a marriage partner, is age. As a tradition, the proposed bride must be younger to the prospective groom, as it is thought that the husband assumes the responsibility of the wife who is transferred to his house. Nowadays, since both boys and girls are interested to complete their studies and get a job before marriage, marriage takes place generally for women at the age between 20 and 26 and for men between 27 and 30. What is more important for our analysis is the general custom that a younger one, usually, cannot get married before the elder ones. Parents have great concern that their elder son or daughter should get married first. In such situations sometimes the elder one is forcefully married to another one, thinking of the younger ones. But one should feel relieved that at present it is not a taboo for the younger one to get married before the older one, especially considering job factors or other issues.

2.6. Mixed and Disparity of Cult Marriages and Caste System

India is a sub-continent of different religions and disparity of cult marriages are not uncommon, though it is still not a widely acceptable custom. Often the Catholic party, particularly if it is the man, compels the non-Catholic woman to convert to the Catholic faith prior to the wedding, in order to keep the status of the family. However, if for example, the boy is from a traditional Syro-Malabar

²¹Jose Marattil, "Reverential Fear as a Ground of Marriage Nullity in the Indian Cultural Context," *Studies in Church Law* 6 (2010), 206.

family and the girl from a high-caste Hindu (*Brahmin*) family, it is very difficult for both families to accept the other even if they were in love for some years. A conversion of one into the other's faith in order to keep the name and status of the family or to please the parents has not only legal consequences but also causes family problems. Though in such cases, the boy or girl could seek dispensation for the disparity of cult marriage, when the parents strongly oppose such marriages, or in order to save the name of the family, one may agree for another marriage without real intentions. In such cases often the other party is being cheated and sooner or later that relationship breaks down. In some cases parties approach the ecclesiastical tribunal years after the breakdown of the marriage, while staying with the former lover involving post-marital affairs.

Another factor that affects marriage relationships in the Kerala society in a subtle form is caste system, which is not so well defined and pervasive as in the Hindu community. Among the Kerala Catholics one main area where it is prevalent is where the Latin and Syrian or Syro-Malabar Christians live together. In such a mixed atmosphere there is always a feeling of superiority on the part of the Syrians. Among the Syrians and the Latins who have distinct origins and traditions, there is a general assumption that "Syrians have a superior social status than the Latins."²² In addition, "the Syrian community on the whole is economically also much better off than many other groups. Consequently it is considered to be a forwarded (economically and socially) community."²³ This is true also regarding educational status. Because of these factors, marriage between Syrians and Latins were not a regular phenomenon in the past, though today the situation has changed, especially among educated young people.

Marriage between newly converted Christians and Syrians are not much welcomed by the parents even now because of their alleged low family status and educational standards, compared to that of the Syrian Christians. Many Syro-Malabar parents think that the newly converted Christians have no deep Catholic faith. Hence parents may force a party to give up his or her love relationship with such a person and marry another one. Among the St. Thomas Christians

²²George Koilparampil, *Caste in the Catholic Community in Kerala*, Ernakulam, St. Theresa's College, Department of Sociology, 1982, 4.

²³Jose Kuriedath, *Authority in the Catholic Community in Kerala*, Bangalore, Dharmaram Publications, 1989, 23.

themselves there is the division between the Nordhists and Suddists or Knanites. The *Knanaya* Catholics of the Syro-Malabar Church claim their origin to Thomas of Cana, a Syrian merchant, and the 72 families that migrated to Kerala, in A.D. 345 from Mesopotamia, probably due to the persecution of the Christians in the Persian Empire by Sapor II. The descendants of this group maintain their separate identity. The division is real and the Suddists are very strict adherent of endogamy in marriage relationships. Hence it is not usual that the Suddists and Nordhists inter-marry. To avoid expulsion from the Suddist community and other family problems parents do not encourage such marriages. In this way the boy or girl is forced to accept somebody other than the one he or she loves.

Faced with such a complex and deep cultural situation, there is always the danger of parties entering into marriages without their free and total will. Most of the factors we discussed are so deeply rooted in the minds of the people that they dare not to oppose or go against them for fear of ostracization, either of themselves or of their family, from the community. The increase in the application for marriage nullity in the tribunals are clear indicators that marriages contracted without free consent, but because of the above mentioned factors most often fail. That is why the prescriptions of these canons become very important and relevant.

3. Challenges and Problems in Conducting Pre-Nuptial Investigation

Though pre-nuptial investigation is a means to make sure of the free-state of the parties for a valid celebration of marriage, it is not without its own difficulties. The gravest difficulty is that the investigating pastor may not be able to make out whether the party is going to simulate his or her consent, or if the quality which he or she principally and directly intends, is present in the partner or if the party has the capacity to assume the responsibilities of married life. The surge of quick marriages on account of migration, mixed marriage, marriages of disparity of cult, etc. also pose challenges to an effective pre-nuptial investigation. The following are some of such issues briefly explained.

3.1. Migration

Among those who work in far of places, countries or states very often it is only the external elements such as physical stature, family background, educational qualification, employment, financial set up, etc. that are subject of major consideration while searching for a life

partner. If most of these elements are found to be satisfactory or matching, the parties proceed with marriage. The internal factors that constitute the personality of the partner, such as character, habits, attitudes, temperaments, sexual behaviour, psychological maturity, mental capacity and adjustability, etc. which are more important in forming a lifelong partnership are not adequately taken into account.²⁴ It does not mean that these external factors are the only concern of those people who are going out for work in different places or countries but the point is that they do not have sufficient opportunities to know well the behaviour of the person, attitude of the family, etc. Often it happens that the marriage is to be done quickly within the short holiday the young person gets and hence there is possibility only of getting some peripheral information regarding the other party. Since parties get little chance to know each other, only after marriage they come to realise that expected quality is absent in the partner. Or that the other party has had other love affairs or psychological deficiencies. All of these have been causes of the increase in the number of invalid marriages.

3.2. Those without Proper Parish/Parish Priest

In some situations, it happens that there are young people who have no possibility to have a parish neither in their own rite nor in other rites in the working area. Due to work responsibilities and distance from the church, they may not take serious efforts to go for regular Sunday Mass and other Church ceremonies. As a result, the parish priest of the place may not know the person and especially his or her relationships/love affairs, if any. Though the free-state certificate is required from persons who were outside the eparchy, after reaching the marriageable age, those who cannot get it from the parish priest, acquire it from the civil authorities and present it to the parish priest. It is true that they may not have married elsewhere but if they have intimate relationships with other persons, it may not be revealed and in order to save the name of the family, they may hide such things, but after marriage they might continue it. Here the fidelity of the partnership is jeopardised and it creates problems in marriage life. Since very often illegal relationships are not known to the public, it is easy for a man or a woman to simulate consent and thus end up in invalid marriages.

²⁴Paul Alappatt, "Jurisprudence II," *Eastern Legal Thought* 8 (2009), 188-209, p. 194.

3.3. Disparity of Cult and Mixed Marriage

In Kerala other religions also are present and, hence, marriages leading to the issue of disparity of cult are not rare. However, as we discussed earlier, in order to satisfy the parents or to keep the name of the family sometimes the non-Christian party, especially if it is a girl, is compelled by the boy's party to convert to the Christian faith. In the same way if the girl is of the Catholic faith, sometimes the other party may be compelled to convert to the Catholic faith. Compared to non-Christian partners, in mixed marriages²⁵ such conversions are relatively very less in number and rarely take place. It is not easy for an investigating pastor to know the motive behind such conversions or what the intentions in the promises of the Catholic party based on CIC c. 1125 and CCEO c. 814 respectively and the particular law of each Church *sui iuris*. Still the majority of young people want both spouses to be of the same religion and denomination, and thus want the conversion of their spouse. Though there are exceptions among young people and families, as was already mentioned, traditional families still demand the conversion of the non-Christian to the Catholic faith in order to have at least their children's marriage celebrated in the parish.

3.4. Marriage with Members of Other Churches *Sui Iuris*

In Kerala three rites - Syro-Malabar, Syro-Malankara and Latin - are present and there do not arise problems related to the pre-nuptial investigation of the parties, as in all these Churches, the mode of investigation is more or less the same. However, in the Syro-Malankara Church, instead of the pre-nuptial enquiry form, there is the customary investigation by the pastor. Their recently promulgated particular law, however, does recommend and demand the use of a pre-nuptial enquiry form.²⁶ Canonical issues like the

²⁵Like Syrian Orthodox Church, Orthodox Syrian Church, etc.

²⁶Major Archiepiscopal Curia, *The Code of Particular Canons of the Syro-Malankara Catholic Church*, Catholic Centre, 2012, canons 522-523. "The pre-nuptial enquiry shall be conducted sufficiently in ad-vance as to provide time for the publication of three marriage banns - *vilichu chollu* - on three consecutive Sundays or days of obligation during the celebration of Holy Qurbana in the respective parish churches of the parties before the marriage. There shall be a pre-nuptial enquiry form which is to be duly filled in by the party confidentially in the presence of the parish priest or his delegate. The proposed bride and bridegroom are to be given adequate training in the liturgy of marriage by the parish priest." "At the time of the

minister of the celebration of marriage (marriage between a Latin faithful and a Syro-Malabar faithful), marriage impediments, differences regarding the impediments of abduction, affinity, public propriety and spiritual relationship, etc. are canonical problems that do not fall under the purview of this study.

3.5. Marriage Brokers

In Kerala, marriage brokers do play an inevitable role in finding suitable partners and arranging marriages. Parents entrust them the task of finding out a suitable partner for their children and they bring various proposals according to the social and economic status of the family. The marriage broker gives a picture of the other party regarding the complexion, qualities, job, moral aspect, social and economic aspect, reputation of the family, etc. which is followed by the mutual visits of the two families. Problems arise when the marriage brokers are not honest in giving true details regarding the other party, especially with regard to personal qualities and moral character of the parties. Some people fully believe what the broker says and depend only on them without doing further investigations and the innocent party at the end feels cheated by the other party. In some cases the marriage broker may be very familiar with one of the parties and he may hide the presence of any psychological problems or previous love affairs, thinking that after marriage everything will be all right. In such cases there is a greater possibility for the relationships to break up and the marriage itself may officially be declared null based on any of the previously mentioned factors. And if the pastor of the soul is not careful, he may fail to find out such factors and thus fail to prevent celebrating an invalid marriage.

4. Complementary Factors

Marriage is one of the most important sacraments that constitute a healthy Christian family and society. Therefore, no effort should be spared in ensuring the value, the validity and endurance of marriage. On the face of the challenges and problems we mentioned,

pre-nuptial enquiry, the proposed bride or bridegroom who lived for a period of more than six months outside his or her domicile has to produce a certificate of free-state from the parish priest of that place before the celebration of marriage. The certificates of civil authorities or other persons beyond suspicion may be accepted in case of the non-availability of the aforementioned certificate. If it is lacking, he or she swears an affidavit regarding his/her free-state covering the period of his or her stay in those places."

we may propose the following that would add to the effectiveness of the pre-nuptial investigation by the pastor of souls and that might help prevent invalid marriages.

4.1. Approach of the Parish Priest

Although in normal circumstances, parish priests concerned are taking every effort to prevent invalid marriages, they often face lack of openness from the parties concerned, which may be remedied by his friendly and fatherly approach. He should attempt to draw the party into an open discussion to find out if the party hides any problem, due to various factors, some of which we have discussed above. One major area of attention should be the force by the parents or reverential fear experienced by the party. Both CIC and CCEO state that no human power can replace the marriage consent, which has to be a willful and personal act by the parties alone. Therefore, the pastor who carries out the investigation should be diligent in finding out the free consent in a friendly atmosphere, where the other party feels the freedom to open himself or herself up. For example, out of reverential fear for parents or anybody else, the party may not tell easily the pastor that he or she is under force or that he or she has a love affair with a particular person. The effectiveness of the enquiry in such situations depends on the approach of the pastor, in friendly and unconventional styles and manners. Sometimes, the pastor may be busy with his other pastoral activities and may not find much time to enquire about the couple. But even in his busy schedule, it is necessary to pay great attention and to go through their filled-in enquiry form and to verify their free-state and free consent.

When the pastor approaches the parties or vice versa either for investigation or for the examination of the latter's understanding of catechism, the pastor's free approach and availability will surely influence the prospective bride and groom. Sometimes, out of familiarity with the parties, it could be taken for granted that he or she is free from all kinds of impediments or obstacles and that they can enter into valid marriage. In such situations, however, he or she may not disclose themselves unless he or she is openly asked about. Therefore, the parish priest should take the investigation seriously.

4.2. Opportunities for Mutual Interaction

An important complementing factor to an effective pre-nuptial investigation is promoting sufficient opportunities for both parties to acquire a personal knowledge of the partner. Taking into account the

cultural situation of Kerala, it may be practically difficult to get a true picture of the personality of the partner. However, if they can somehow come to know each other better before marriage, many cases like fraud, error of quality, etc. could be avoided. After marriage, the girl moves from her father's house to that of her husband. There she comes into contact with persons who do not know her and whom she does not know. There is a possibility of conflict between her and members of that family. Therefore, if the parties are known to each other as well as to their families, nullity of marriage arising from issues like error of quality and mental disorder can be avoided to a great extent. But it does not mean that knowing each other before marriage can resolve all problems related to married life because there does not exist any simple solution for them. The Rotal decisions on marriage nullity cases in the Western society prove it. Normally in the West spouses come to marriage after many years of mutual knowledge (courtship), not only of each other but also of the family members and friends of each other and, at times, even after living together for some years. But here also reasons like fraud, error of quality, inability to assume the responsibilities, etc. are often found as grounds for the nullity of marriages.²⁷ In the context of Kerala, formally unmarried couples' staying together, personal meetings with the future spouse, etc. are not accepted, a point which we have mentioned already. Therefore, the parties may be given the opportunity to visit the family and family members of the future spouse with his or her own family members or relatives and that may help a person especially the girl to know the behaviour and background of the other party.

As the number of broken marriage is on the increase many of the Syro-Malabar bishops have emphasised that more pastoral concern needs to be shown to the innocent parties in such marriages.²⁸ The Syro-Malabar synod has given some instructions on marriage and family and some of them directly pertain to our point of discussion. The following are some of their suggestions that are relevant to our point:

²⁷Rotae Romanae Tribunal, *Decisiones seu Sententiae*, Vol. XCIV, Città del Vaticano, Libreria Editrice Vaticana, 2010; Rotae Romanae Tribunal, *Decisiones seu Sententiae*, Vol. XCIV, Città del Vaticano, Libreria Editrice Vaticana, 2012.

²⁸*Synodal News* 11 (2003), 24.

1. Opportunities must be provided for mutual knowledge of the parties before marriage, which does not mean love-marriage as generally understood. But knowing each other better is one remedy to lessen the problems after marriage.
2. Chances should be given to the parties also to do various tests to determine both the physical and mental health of the persons. One important test must be for HIV/AIDS. As there are many marriage nullity cases judged on the grounds of psychic problems, certificates stating physical and mental health conditions would be helpful in preventing the parties from invalid celebration of marriage.
3. The woman who has to stay in the family of her husband should get an opportunity to visit her future husband's house and family members before marriage, so that they get ample opportunity to know each other.
4. The over dependence on marriage brokers is to be reduced. It is necessary today to have marriage bureaus and matrimonial websites, which provide better opportunities for the parties to know each other.²⁹

In spite of such instructions, in some cases it is clear that they are not followed. This is particularly true in the case of parties working outside Kerala. However, once followed, these instructions can positively contribute in establishing healthy and lasting marriage relationships.

4.3. Adequate Preparation

Though there are different programmes and courses conducted as preparation for marriage, sometimes many young couples do not find time or do not show much interest to participate in them. Generally in Kerala it is compulsory that young couples, who intend to enter into married life, participate in a marriage guidance course. But some only want to fulfil the requirement and hence do not take adequate interest in them. Therefore, other approaches like one-day programmes might be more practical and easily accessible to the youth. So it is good to conduct such short programmes at the parish level during common holidays or other more preferable times, in which classes and instructions related to marriage and family life should be given. Such courses will not seriously interfere with their

²⁹*Synodal News* 12 (2004), 65-68.

work or other commitments and hence preferable for those who are working.

4.4. Credibility of the Marriage Brokers

In the present set up it is the parents or significant others who seek information regarding the other spouse, and sometimes some people believe only what the broker says. This kind of serious third-party involvement in a person's marriage is not without risk, especially of misrepresentation and deception both in regard to the status of the families but also regarding the qualities of the party concerned. Therefore, parents or the responsible persons must be sure of the honesty and moral standing of the broker. They must make sure that the findings of the broker are expressed correctly and honestly, without any personal interest. In any case such enquiries are not a substitute for the enquiry done by the parents of the parties and it should take place before marriage.

Conclusion

“Matrimonial consent is a human act, an act of a knowing and willing person, who is also a product of a particular socio-cultural environment. It is an undeniable fact that cultural factors influence human acts. Its effects are certainly variable depending on the nature of the particular variable involved and the strength of its influence on the person concerned.”³⁰ This observation by Augustine Mendonça points to a very significant aspect of marriage, namely, the importance of its cultural context. It has always been a prime concern of the Church to ensure complete absence of impediments, full freedom and free consent of the parties, together with their ability to fulfil the mutual rights and obligations of conjugal life, which requires the capacity for the full use of one's reason, etc. For this reason, it has insisted on detailed and careful process of pre-nuptial enquiry. And what is significant is that the present canons under discussion show sensitivity to cultural values in the context of marriage by allowing the particular Churches *sui iuris* to establish norms concerning pre-nuptial enquiry. Such provisions in the Code enabling each Church *sui iuris* to decide on the concrete aspects of the implementation of pre-nuptial investigation is both an

³⁰Augustine Mendonça, “Cultural Contexts and the Nullity of Marriage,” *Canon Law Society of Great Britain and Ireland Newsletter* 166 (2011), 52.

acceptance of this fact and also an invitation to take seriously the cultural factors while conducting pre-nuptial investigation.

Though the system of assisted marriage still takes place, nowadays generally parents or others do not violate the individual's freedom of choice. Still unpleasant events in marriages do happen. Therefore, pastors have to be extra cautious to find out such elements that are difficult to surface. Keeping in mind these factors, pre-nuptial investigation is carried out diligently in Kerala in order to protect and safeguard the freedom of the parties as well as the sacrament of marriage itself. While being proud of its own cultural practice of assisted marriage, each Church *sui iuris* has taken every effort to help the pastors for a fruitful investigation of the prospective bride and groom. In addition a careful and diligent effort from the part of the prospective bride and groom and their families will complement the efforts of the pastors, as it will expose factors that are not brought to the attention, even of the careful pastor. In any case the Church always takes extreme care to make sure that all its members enter into this sacrament validly and licitly and hence the emphasis on careful pre-nuptial investigation.