

MIXED MARRIAGE: CONDITIONS FOR ITS PERMISSION IN CIC AND CCEO

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Fr. Jose Marattil explains canonically what a mixed marriage is and what are the legal requirements and conditions for realizing it. In canon law, “mixed marriage” refers to a sacramental marriage between a Catholic and a non-Catholic. Such marriages are prohibited without the prior permission of the competent ecclesiastical authority. He also discusses which is the competent authority that can grant this permission and based on what ground. Evaluating the new as well as the old norms and regulations in the Catholic Church on mixed marriage, the author exposes the three conditions the Catholic party has to fulfil before entering into such a marriage. He also highlights in comparison with the old code the changes that the new legislation has brought to regulate the mixed marriage. The article also examines how the new legislation considers the non-Catholic party in such a marriage, whether this is binding him/her, what is the intention of the declaration of the Catholic party.

Introduction

Concepts and regulations of marriage, one of the basic institutions of human society, have evolved as society itself developed. Marriage is an important factor in human life, helping society to move from generation to generation through God’s call for love and intimacy. The perfect union of persons and full sharing of life that constitute the married state are more easily assured when both partners belong to the same faith community. Mixed marriages have always posed a

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problem to the Catholic Church in both East and West. However, despite canonical prohibitions on mixed marriages, the number of them continues to be high. The growth and spread of civilization and industry, modern means of communication, urbanization, and the consequent rural depopulation and large migrations¹ have broken some of the traditional, racial, cultural, geographical, and religious barriers to mixed marriages.

The present codes of canon law² repeat the traditional prohibition on mixed marriages. The law no longer classifies mixed marriage as an impediment requiring dispensation; however, a Catholic must obtain permission from the competent authority in order to enter a mixed marriage. This article deals with the conditions that must be fulfilled for competent ecclesiastical authority to give this permission.

1. Mixed Marriage in the Codes of Canon Law

In canon law, “mixed marriage” refers to a sacramental marriage between a Catholic and a non-Catholic. *CCEO*, c. 813 stipulates: “Marriage between two baptized persons, one of whom is Catholic and the other of whom is non-Catholic is prohibited without the prior permission of the competent authority.” Whereas *CIC*, c. 1124 describes mixed marriage as: “Without express permission of the competent authority, a marriage is prohibited between two baptized persons of whom one is baptized in the Catholic Church or received into it after baptism and has not defected from it by a formal act and the other of whom is enrolled in a Church or ecclesial community not

¹See Paul VI, *Motu proprio, Matrimonia mixta*, 31 March 1970, in *AAS*, 62 (1970), p. 277; English trans. in *The Pope Speaks*, 15-16 (1970-71), p. 134 (= *MM*); see also John Paul II, Apostolic Exhortation, *Familiaris consortio*, 22 November 1981, in *AAS*, 74 (1981), pp. 81-191; English trans. in J.M. Miller (ed.), *The Post-Synodal Apostolic Exhortations of John Paul II*, (Huntington, Indiana: Our Sunday Visitor, Inc., 1998) pp. 119-232.

²*Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus* (= *CCEO*) (Libreria editrice Vaticana, 1995); English trans. *Code of Canons of the Eastern Churches: Latin-English Edition*, New English Translation, Prepared under the auspices of the Canon Law Society of America, (Washington, DC: Canon Law Society of America (= *CLSA*, 2001); *Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus* (= *CIC*), Libreria editrice Vaticana, 1986; English trans. *Code of Canon Law*, Latin-English Edition, New English Translation, Prepared under the auspices of the Canon Law Society of America (Washington, DC: *CLSA*, 1999).

in full communion with the Catholic Church." The 1993 ecumenical directory defines mixed marriage as "any marriage between a Catholic and a baptized Christian who is not in full communion with the Catholic Church."³ Spouses in a mixed marriage share the same baptism and Christian faith, although they do not profess identical beliefs.⁴ So, we use the term "mixed marriage" in this strict sense because the canonical issues and implications arising from marriage between Catholics and other Christians differ significantly from those raised by marriages between Catholics and the unbaptized.

Previous law (see, *CIC/17*,⁵ c. 1060; *CA*,⁶ c. 50) categorized mixed marriages as "prohibitive impediments." For ecumenical reasons, the Second Vatican Council softened this indirect expression of disfavour by abolishing the category of prohibitive impediments entirely and by simplifying the requirements for mixed marriages. However, the participation of the bishop's authority in the entering of these marriages was fully retained.⁷ *Matrimonia mixta* remained an impediment and required a dispensation.⁸ On the other hand, the current legislations suppressed the impediment and retained only a prohibition on mixed marriages celebrated without "prior permission of the competent authority" (Eastern code) and "express permission of the competent authority" (Latin code).

³Pontifical Council for Promoting Christian Unity, "Directorium oecumenicum noviter compositum," 25 March 1993, no. 143, in *AAS*, 85 (1993), pp. 1039-1119; English trans. "Directory for the Application of Principles and Norms on Ecumenism," in *L'Osservatore romano*, Weekly Edition in English, 26 (16 June 1993) 24, p. I (= *DAPNE*).

⁴See, L. Örsy, *Marriage in Canon Law: Text and Comments, Reflections and Questions* (Wilmington, Delaware: Michael Glazier, 1986) p. 180 (= Örsy, *Marriage in Canon Law*).

⁵*Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritatae promulgatus* (= *CIC/17*), (Typis polyglottis Vaticanis, 1917); English trans. E. N. Peters (ed.), *The 1917 or Pio-Benedictine Code of Canon Law* (San Francisco: Ignatius Press, 2001).

⁶Pius XII, *Motu proprio, Crebrae allatae sunt* (= *CA*), 22 February 1949, in *AAS*, 41 (1949), pp. 89-119; English trans. in V. J. Pospishil, *Code of Oriental Canon Law: The Law on Marriage* (Chicago: Universe Editionis, 1962) p. 61.

⁷See, V.J. Pospishil, *Eastern Catholic Marriage Law According to the Code of Canons of the Eastern Churches* (Brooklyn: Saint Maron Publications, 1990) p. 314 (= Pospishil, *Eastern Catholic Marriage Law*).

⁸See, *MM*, p. 134.

1.1. Permission for Mixed Marriages

Permission is not a dispensation of law but a requirement for its fulfilment.⁹ The legislator requires it when he is well disposed towards an act, but wishes to delay it until he can verify that all the necessary conditions or requirements have been fulfilled. Permission must be distinguished from dispensation, which is a “wound on the law.” Therefore, dispensation should be given for an adequate justifying reason only; the wound on the law should be balanced by some other value to be obtained through the dispensation.¹⁰ Prohibition on mixed marriages is based on the fact that marriage, as a communion of life (CCEO, c. 776 §1; CIC, c. 1055 §1), presupposes common faith and religious practice between the spouses. Fulfilling marital obligations, e.g., baptizing and raising children in the Catholic faith, could be difficult when parents do not have a common faith and practice. Such a situation could result in parents becoming indifferent to their obligation of educating their children in the Catholic faith, or just abandoning it altogether.¹¹ So, the law requires permission in order to help the Catholic party to fulfill the divine obligation to live the Catholic faith and to pass it on to his or her children.

1.1.1. A Just and Reasonable Cause

A Catholic party must petition the eparchial or diocesan curia for permission to enter a mixed marriage. This petition is usually drawn up with the help of the parish priest or his delegate, and it is to be endorsed by the same. To obtain this permission there should be “a just cause” in CCEO, c. 814 and “a just and reasonable cause” in CIC, c. 1125. The honest desire of the parties to marry is itself a just and reasonable cause; no more is required.¹² In deciding on the petitioner, the circumstances of the person, time, and place are to be taken into consideration.

⁹See C. K. Lwanga, *Mixed Marriages in Uganda: Canonical Challenges Involved* (Cann. 1124-1129), *Dissertatio ad doctoratum in Iure Canonico* (Romae: Pontificia Universitas Urbaniana, 1994) p. 18 (= Lwanga, *Mixed Marriages in Uganda*).

¹⁰See, Örsy, *Marriage in Canon Law*, p. 185.

¹¹See, Lwanga, *Mixed Marriages in Uganda*, p. 18.

¹²See, Örsy, *Marriage in Canon Law*, p. 186.

1.1.2. Competent Authority

With due respect to the conditions prescribed by law (CCEO, c. 814; CIC, c. 1125), the local hierarch (CCEO, c. 984 §2) or local ordinary (CIC, c. 134 §2) has competence to grant permission for a mixed marriage. Therefore, the Catholic party must obtain the permission of his local hierarch/ordinary or the one where the marriage is to take place.

2. The Conditions to Be Fulfilled for the Permission for Mixed Marriages

CCEO, c. 814 (CIC, c. 1125) stipulates: "For a just reason the local hierarch can grant permission; however, he is not to grant it unless the following conditions are fulfilled: 1° the Catholic party declares that he or she is prepared to remove dangers of falling away from the faith and makes a sincere promise to do all in his or her power to have all the offspring baptized and educated in the Catholic Church; 2° the other party is to be informed at an appropriate time of these promises which the Catholic party has to make, so that it is clear that the other party is truly aware of the promise and obligation of the Catholic party; 3° both parties are to be instructed on the essential ends and properties of marriage, which are not to be excluded by either spouse." The present codes of canon law require only the Catholic party to make the declaration to safeguard, preserve, and profess his or her faith, and to baptize and educate all of his or her children in the Catholic faith. Regarding the non-Catholic party, the law requires only that the Catholic party inform him or her of these promises in good time. This is to ensure that the other party is truly aware of the promise and obligations of the Catholic party. Prior to 1983 Code's promulgation, the term used to express the "promise" required of the Catholic party was *cautio*.

2.1. The Understanding of Premarital "Promise" in Mixed Marriages

The word "promise" comes from the Latin verb *promittere*, which means "to undertake or to engage" by word or writing addressed to another person, "to do or refrain" from some specific act or "to give some specific thing." The noun form, "promise," denotes a declaration made to another person with respect to the future, stating that one will do or refrain from some specific act or give some specified thing.¹³

¹³See, C.T. Onions (rev. ed.), *The Shorter Oxford English Dictionary on Historical Principles*, 3rd ed., (Oxford: The Clarendon Press, 1965) p. 1597.

Hence, a promise is one's assurance that one will do, give, or refrain from something to the advantage of another. But, in the moral sense, a simple promise excludes mutual agreements and can mean only unilateral, gratuitous commitments that an individual may make to the benefit of another.¹⁴ When we speak of a marriage promise, the latter statement is more applicable than the former.¹⁵

2.2. *Cautio* as Promise

The 1917 code used the word *cautio*, not *promissio*. To understand mixed marriage before and after the 1917 code, one must understand the meaning of this term. What is *cautio*? It is derived from the Latin verb *cavere*, which means "to be one's own guard," "to take care," "beware," "guard against," etc. In the legal sense, *cautio* means that by which one places himself or another in safety, an obligation, security, bond, warranty, bail,¹⁶ etc. A commonly accepted legal meaning of *cautio* is a promise guaranteeing the fulfillment of an obligation.¹⁷

In the previous codes, the word *cautio* meant guarantees understood as promises. Some responses of the Holy Office¹⁸ identified these *cautiones* with prenuptial guarantees or matrimonial promises. This definition originates from an inquiry about the meaning of "*cautio opportuna*," to which the Holy Office on 30 June 1842 responded that prenuptial guarantees were promises.¹⁹ They are not mere promises or proposals made which persons make without formally assuring the obligation to accomplish them. Rather, matrimonial guarantees like promises are means of ensuring that certain divine law mandates will be fulfilled. Matrimonial guarantees also demand an obligation to do

¹⁴See, P.K. Meagher, "Promise, Moral Obligation of a" in *New Catholic Encyclopaedia*, 2nd ed., Detroit, Thomson/Gale (Washington, DC: The Catholic University of America, 2003) p. 746.

¹⁵See, M. Thundathil, *Mixed Marriage Promises and Religious Liberty in the Light of the New Code*, JCD diss., (Romae: Pontificia Universitas Urbaniana, 1986) p. 2.

¹⁶See, C.T. Lewis and C. Short, *A Latin Dictionary, Founded on Andrew's Edition of Freund's Latin Dictionary* (Oxford: Clarendon Press, 1969) p. 305.

¹⁷See, R.G. Wessellmann, "The Mixed Marriage Promises-Argument for Retaining the *cautiones*," *The Jurist*, 25 (1965) p. 93.

¹⁸From 1965 onwards referred to as the Congregation of the Doctrine of Faith.

¹⁹See, P. Gasparri-J. Seredi (Cura), *Codicis Iuris Canonici Fontes*, vol. 4, no. 890 (Romae: Typis Polyglottis Vaticanis, 1951) p. 167.

something. They are not just sheer hopes based on the good will of the parties alone.²⁰

In the former codes, dispensation from the impediment of mixed religion required the non-Catholic party to promise to remove all dangers of perversion from the Catholic party, and for both parties to guarantee that they would baptize and educate all children in the Catholic faith alone. Moral certainty that the guarantees would be fulfilled was necessary (*CIC/17*, c. 1061, §1, 2^o, 3^o; *CA*, c. 51, §1, 2^o, 3^o).

Matrimonia mixta of Paul VI established new norms for mixed marriages in light of the religious freedom declared by Second Vatican Council.²¹ The present codes of canon law have incorporated almost all the norms established by *Matrimonia mixta*. Neither the *motu proprio* nor the codes use the word *cautio*, but *promissio* (Cfr. *CCEO*, c. 814; *CIC*, c. 1125). From the meaning of the words *cautio* and *promissio* certain elements of difference can be drawn. *Cautio* is negative in its sense, i.e., to guard against, beware of, etc., whereas *promissio* is more positive, i.e., to engage, to give, to procure or to commit oneself for the benefit of the other.

2.3. The Premarital Conditions Necessarily to Be Fulfilled

The former codes (*CA*, c. 51; *CIC/17* c. 1061) used the expression "guarantees" (*cautiones*) while treating the conditions required for a dispensation to enter a mixed marriage. Following the line begun by the instruction on mixed marriage *Matrimonii sacramentum*²² and the *motu proprio*, *Matrimonia mixta*, the new codes set certain "conditions"

²⁰See, J. William, *The Nullity for Exclusion of Indissolubility in a Marriage of which one Party is Baptized non-Catholic*, Dissertatio ad doctoratum in Facultate Iuris Canonici, (Romae: Pontificia Universita Urbaniana, 2001) p. 127 (= William, *The Nullity for Exclusion of Indissolubility in a Marriage of which one Party is Baptized non-Catholic*).

²¹See, Vatican Council II, Declaration on Religious Liberty, *Dignitatis Humanae*, 7 December 1965, in *AAS*, 58 (1966), pp. 931-946; English trans. in A. Flannery (gen. ed.), *Vatican Council II: The Conciliar and Post-Conciliar Documents*, vol. I, new rev. ed., (Northport, NY: Costello Pub. Co., 1998) pp. 802-803.

²²See, *Sacra Congregatio pro Doctrina Fide*, Instruction on the Mixed Marriages, "Matrimonii sacramentum," 18 March 1966, in *AAS*, 58 (1966), pp. 235-239; English trans. in A. Flannery (gen. ed.), *Vatican Council II: More Postconciliar Documents*, (Grand Rapids, MI: William B. Eerdmans Publishing Co., 1982) pp. 427-431.

(*condiciones*) for the licit celebration of a mixed marriage (CCEO, c. 814; CIC, c. 1125). The permission for a mixed marriage cannot be granted *nisi impletis conditionibus*, which means that the granting of permission depends on the prior fulfilment of the conditions in the canons. The term *nisi* in these canons and the phrase *quae semper requiruntur* in the following canons (CCEO, c. 815; CIC, c. 1126) express the necessity of fulfilling the conditions. The law also requires a just and reasonable cause before the local hierarch or the local ordinary grants the permission. Moreover, even if the conditions are fulfilled, the local hierarch or the local ordinary should determine whether such permission will better serve the parties or be a danger to the Catholic party's faith.²³

Canon law requires that three conditions be fulfilled before seeking permission for a mixed marriage from competent authority.

2.3.1. Declaration and a Sincere Promise of the Catholic Party

The first condition to be fulfilled before seeking permission is the Catholic party's declaration and sincere promise to preserve his or her Catholic faith and to raise all offspring in the same faith. Following the path blazed in *Matrimonia mixta*, the revised codes require no promise of the non-Catholic party. Instead, they place on the Catholic party the burden to preserve his or her Catholic faith and practice, and to seeing to the Catholic formation of children.²⁴ Thus, two obligations are required of the Catholic party, namely, a "declaration" of the intention to remove danger of defecting from the Catholic faith, and a "sincere promise" to baptize and raise the children in the Catholic faith (CCEO, c. 814, 1^o; CIC, c. 1125, 1^o).

2.3.1.1. Obligation of the Catholic Spouse to Preserve His or Her Faith

Matrimonii sacramentum and *Matrimonia mixta* emphasized the need for the Catholic party to preserve his or her faith. This is a requirement of divine law from which no one can dispense. This faith is, however, nourished and preserved with the Word of God, works of charity, the grace of God, abounding in hope, prayer, and especially vigilance of

²³See, B.A Siegle, *Marriage According to the New Code of Canon Law* (New York: Alba House, 1986) p. 150.

²⁴See, Beal, J.P., J.A. Coriden, and T.J. Green (eds.), *New Commentary on the Code of Canon Law*, Commissioned by CLSA, (New York and Mahwah: NJ, Paulist Press, 2000) p. 1345 (= *New Commentary on the Code of Canon Law*).

the heart. Through these the Catholic person becomes rooted in the faith of the Church.²⁵ Conscience itself demands the removal of any dangers against the faith arising from common life with one who does not share the same beliefs. Positively, this declaration means that the Catholic is willing to profess and practice his or her faith in a mixed marriage. Thus, the law intends to protect the religious freedom of the Catholic party. Beal comments:

An anti-Catholic attitude on the part of the non-Catholic or his or her family, lack of respect for the Catholic's religious convictions or practice, and differences of attitude about the frequency of religious practice or church support are issues that should be discussed and resolved prior to the marriage in a manner consonant with the parties' conscience. If the non-Catholic is absolutely indifferent to matters religious, the Catholic should be aware of how difficult it will be to maintain religious observance and see to the religious formation of children without the support of his or her spouse.²⁶

2.3.1.2. Catholic Baptism and Education of Children

The Catholic party makes a sincere promise "to do all in his or her power" so that all children ("offspring" in *CIC*) are baptized and educated ("brought up" alone in *CIC*) in the Catholic Church. In addition to preserving one's own Catholic faith, one must also be able to pass on the faith to one's children through baptism and religious education.²⁷ Marriage is ordered to the procreation and education of children (*CCEO*, c. 776, §1; *CIC*, c. 1055, §1). Since they have given life to their children, parents have a most grave obligation and possess the right to educate them (*CCEO*, c. 627, §1; *CIC*, c. 226, §2). They are bound to baptize their infant children as soon as possible according to the legitimate custom (*CCEO*, c. 686, §1; *CIC*, c. 867, §1), and to form them in faith and Christian living by their own word and example (*CCEO*, c. 618; *CIC*, c. 774, §2). Also, it is the duty of parents to make available to their children opportunities for further Catholic formation, even outside their home (Cfr. *CCEO*, c. 627, §§1, 2; *CIC*, c. 793, §1). The Catholic party must promise to make a sincere effort to fulfill these

²⁵See, *Catechismus catholicae Ecclesiae* (Città del Vaticano: Libreria editrice Vaticana, 1997); English trans. *Catechism of the Catholic Church*, no. 6, (New York, Toronto: Doubleday, 2003) p. 10.

²⁶See, *New Commentary on the Code of Canon Law*, pp. 1345-1346.

²⁷See, William, *The Nullity for Exclusion of Indissolubility in a Marriage of which one Party is Baptized non-Catholic*, p. 137.

obligations. In this “sincere promise,” the internal element is important, i.e., the intention of the Catholic party to fulfill the obligations of baptizing and bringing up the children in the Catholic faith. Without this intent, the promise is not sincere. Sincerity is presumed unless the contrary is proved.²⁸

The promise extends to all children who will be born of the marriage. So, it is not permissible to agree in advance to raise the first born child in the father’s Church or the second born child in the mother’s Church or to raise the children in both Churches (or neither) and allow them to choose for themselves when they are of age. In its strict sense, the promise refers only to children to be born after the proposed marriage.²⁹

The revised codes have omitted the former codes’ requirements that the competent authority have moral certainty that the promises would be fulfilled before he granted Dispensation (Cfr. *CIC/17*, c. 1061, §1, 3^o; *CA*, c. 51, §1, 3^o). Instead, we notice in the present codes that the Catholic party must promise “to do all in his or her power” to see to the Catholic baptism and the education of the children, not to guarantee that these efforts will be successful. In fact, he or she may foresee that his or her efforts will be probably ineffective due to the strong convictions of his or her non-Catholic partner. The canonical and pastoral problems are whether a Catholic can, in good faith, promise “to do all that he or she can” to see to the Catholic baptism and education of children while realizing the futility of these efforts, and whether a promise made under such conditions is sufficient basis for granting permission for the mixed marriage.³⁰

The phrase “to do all in his or her power,” is a key expression taken from *Matrimonia mixta*. The Latin phrase for this is *pro viribus*, which means “as far as one’s strength goes” or “as far as one is able to do it.” Örsy observes that the law mandates the Catholic “to do no more” and “no less” for the Catholic baptism and education of the children than what is feasible and fitting, without doing violence to the right hierarchy of values which together makeup the fabric of a happy union. The spouses together must make the correct judgment.

²⁸See, A. Pinheiro, *Marriage Law in the Latin Code & in the Eastern Code* (Alwaye, India: S.H. League, 1995) p. 131 (= Pinheiro, *Marriage Law in the Latin Code & in the Eastern Code*).

²⁹See, *New Commentary on the Code of Canon Law*, p. 1346.

³⁰See, *Ibid.*

Therefore, a Catholic party must not imperil the peace and harmony of the marriage in trying to fulfil his or her promise; one party must not violate the other's freedom of conscience; and one must not hamper the other in practicing his religion and speaking of it to their children.³¹ The Catholic party is limited by the duty to respect the religious freedom and conscience of his or her spouse.³² Örsy is of the opinion that the Catholic education of children is not of supreme value in the current code, which highly values the stability of the marriage. The Catholic spouse is expected to fulfil the obligation to raise his or her children in the Catholic faith, but this duty is contextualized with other values that are also part of such determinations and actions.³³

The expression "to do all in his or her power" implicitly acknowledges that efforts to baptize and bring up the children in the Catholic faith will not always and everywhere be easy and successful. Difficulties may arise, such as the non-Catholic party standing by his or her right and duty to bring up the children in his or her own faith. Such a conflict requires mutual understanding and compromise. In this regard, the sincerity, attitude, and intention of the Catholic are more important for obtaining the permission than the actual fulfilment of the obligation. Whatever is necessary is only a "sincere promise" from the Catholic party "to do all in his or her power" to assure the Catholic formation of children. Due to the unique challenges of the mixed marriage, i.e., fulfilling the promises made by the Catholic party in the actual life, the 1993 ecumenical directory has a provision regarding the "promises:" "If, notwithstanding the Catholic's best efforts, the children are not baptized and brought up in the Catholic Church, the Catholic parent does not fall subject to the censure of canon law."³⁴

2.3.1.3. The Declarations and Promises as Necessary Requirements

CCEO, c. 815 (Cfr. CIC, c. 1126) articulates: "The particular law of each Church *sui iuris* is to establish the manner in which these declarations or promises, which are always required, are to be made, what proof of them there should be in the external forum and how they are to be brought to the attention of the non-Catholic party." Hence, the

³¹See, Örsy, *Marriage in Canon Law*, p. 187.

³²See, A.B.C Chiegboka, "Sanctions to Parents in Inter-Faith Marriages: A Reflection on the Nigerian Local Church Praxis," *Studia canonica*, 39 (2005), p. 229.

³³See, Örsy, *Marriage in Canon Law*, p. 182.

³⁴DAPNE, no. 151, p. X.

“declaration and promise” is “always required” and a *sine qua non* for receiving the permission. The manner of this “declaration and promise” can be determined either by the particular law of each Church *sui iuris* or by the episcopal conference (CCEO, c. 815; CIC, c. 1126). As in the previous codes, the current codes do not mention a strict written promise. However, it is more reasonable to give it in writing.³⁵ The particular law of each Church *sui iuris* or the episcopal conference can also decide whether it can be oral, written, or before two witnesses or before a public notary.

Since permission for a mixed marriage always requires the declaration and the promise by the Catholic party and the notification of the non-Catholic party, a written documentation as proof is necessary.³⁶ This requirement is specifically indicated in the particular law of the Syro-Malabar Church,³⁷ art. 175, §§1, 2: “For mixed marriage, with due regard for cases mentioned in Articles 174 §2 and 183, the parties shall submit a written petition together with the endorsement of the parish priest of the Catholic party to the local hierarch requesting permission for mixed marriage (§1). Together with this petition, the Catholic party shall submit a written declaration regarding the promises and obligations mentioned in Article 175, 1^o (c. 814 §1) (§2).” We find a slight difference in the corresponding particular law of the Syro-Malankara Catholic Church.³⁸ Canon 549, 1^o and 2^o stipulate:

In order for the eparchial Bishop to grant permission for mixed marriage, the following conditions shall be fulfilled: 1^o the parties shall submit a written request addressed to the eparchial Bishop with the endorsement of the parish priest of the Catholic party; 2^o every eparchial curia shall have a form in which the Catholic party can make the promise and declaration that he or she is prepared to remove dangers of falling away from the faith and that he or she will do all in his or her power to have all the offspring baptized and educated in the Catholic faith. The same form will have a second

³⁵See, Örsy, *Marriage in Canon Law*, pp. 184-185.

³⁶See, S. Payyappilly, *Mixed Marriage in the Code of Canons of the Eastern Churches and the Particular law of the Syro-Malabar Church* (Bangalore: Dharmaram Publications, 2014) p. 149. (= Payyappilly, *Mixed Marriage*).

³⁷*Code of Particular Law of the Syro-Malabar Church* (Mount St. Thomas, Kochi: Syro-Malabar Major Archiepiscopal Curia, 2013) pp. 34-35 (= CPL).

³⁸*The Code of Particular Canons of the Syro-Malankara Catholic Church* (Trivandrum: Catholicate Centre, Major Archiepiscopal Curia, 2012) p. 83 (= CPC).

part in which the other party can declare that he or she is informed of the promises that the Catholic party has made and that he or she is truly aware of the promise and obligation of the Catholic party. This duly filled and signed form is attached with the written request mentioned in 1^o.

According to the above norm, the request for permission is to be addressed to the eparchial bishop, who alone is competent to grant it. Whereas, according to *CCEO*, *CIC*, and *CPL* the local hierarch or local ordinary – i.e., the eparchial bishop, protosyncellus/vicar general, and syncellus/episcopal vicar – can grant this permission. According to *CPC*, it looks as if this permission is reserved to the eparchial bishop. Also, *CPC* requires that every eparchial curia have a printed form on which (1) the Catholic party can make the promise and declaration and (2) the other party can declare that he or she has been informed and is truly aware of this promise and obligation. A desire for uniform wording of the promise/declaration made by Catholic parties may have served as motive for the *CPC* norm.

2.3.2. Informing the Non-Catholic Party about the Promises Made

The second condition to be fulfilled before requesting permission for a mixed marriage is that the other party be informed at an appropriate time of the promises incumbent on the Catholic party (see, *CCEO*, c. 814, 2^o; *CIC*, c. 1125, 2^o). In keeping with the conciliar teaching and the subsequent evolution of canonical legislation, no promises or undertakings are required of the non-Catholic party. The law demands that “the other party is to be informed at an appropriate time” of the promises which the Catholic party has to make. This means that this must be done before the marriage so that the spouses have ample time to discuss and learn the canonical implications involved.³⁹ This is a further acknowledgement of the non-Catholic party’s equal rights and the religious freedom within the mixed marriage. Before such a marriage takes place, the non-Catholic party must have no doubt about the undertakings given by the Catholic party and the obligations entailed.⁴⁰ In this regard, the law seems to assume that the non-Catholic partner will be agreeable or at least not oppose it.

³⁹See, Lwanga, *Mixed Marriages in Uganda: Canonical Challenges Involved*, p. 123.

⁴⁰See, G. Sheehy, et al., (eds.), *The Canon Law, Letter & Spirit: A Practical Guide to The Code of Canon Law*, Prepared by The Canon Law Society of Great

The law does not specify what is to be done if the non-Catholic party opposes such promises. Each partner is obliged to obey his or her conscience in such an important matter. If they cannot agree on this point, there can be no marriage, since the preservation of one's religious faith and that of one's children must be of paramount importance in one's own life. However, if the local hierarch or local ordinary judges that the assurance of the Catholic party "to do everything for keeping his or her promises" is sincere, he can consider the couple qualified to receive the permission for a mixed marriage despite the opposition voiced by the non-Catholic partner.⁴¹

CPL, art. 175, §3 states: "Before endorsing the petition for permission for mixed marriage, the parish priest of the Catholic party shall inform the non-Catholic partner about the above said declaration of the Catholic party and shall notify the matter in the petition. If the non-Catholic party has no objection, he or she may be invited to countersign the declaration of the Catholic party to the effect that he or she is aware of the promises of the Catholic party." Thus, before endorsing the petition, the Catholic party's parish priest must inform the non-Catholic partner about the declaration and the promise of the Catholic party and note this in the petition as well. Also, if the non-Catholic party does not object to the declaration, the same priest is to invite this party to countersign the declaration, indicating therein that he or she is aware of Catholic party's promises. But, in *CPC* it is not clear whether the parish priest of the Catholic party is obliged to inform the non-Catholic party about the declaration and the promises of the Catholic party.⁴²

CPL requires the parish priest of the Catholic party to give both parties sufficient pastoral guidelines regarding the promises, especially the Catholic baptism and education of the children.⁴³ *CPL*, art. 175, §4 says: "The parties should, in the course of the contacts in this connection, be invited and encouraged to discuss the Catholic baptism and education of the children they will have, and when possible come to a decision on this question before marriage." The notification, endorsement, and discussion with the parish priest establish the promises in the external

Britain and Ireland in association with The Canadian Canon Law Society (Dublin: Veritas, 1995) p. 634.

⁴¹See, Pinheiro, *Marriage Law in the Latin Code & in the Eastern Code*, p. 130.

⁴²See, *CPC*, c. 549, 2^o. (p. 83).

⁴³See, Payyappilly, *Mixed Marriage*, p. 151.

forum. Such approval and discussion regarding the pre-marital agreement help to avoid future misunderstanding and confusion apropos the faith practice of the Catholic spouse and their kids.⁴⁴

2.3.3. Instruction on the Essential Ends and Properties of Marriage

The third condition to be fulfilled before seeking permission to enter a mixed marriage is that both parties are to be instructed on the essential ends and properties of marriage, which neither spouse is to exclude (CCEO, c. 814, 3^o; CIC, c. 1125, 3^o). Both spouses are to be instructed about the ends and properties of marriage (see, CCEO, c. 776, §1 and §3; CIC, c. 1055, §1 and c. 1056). Although the law does not explicitly specify who is to carry out this instruction, in our opinion it is implicit that it is those in charge of preparing people for marriage, i.e., parish priest, parochial vicar, or others as stipulated in CCEO, c. 783 (CIC, c. 1063).

The law intends to ensure that both parties know the Catholic doctrine on marriage. The parties are to be catechized about the ends and properties of marriage. This catechesis should be positive in tone and highlight common views on marriage in the couples' respective traditions. This instruction should establish a context for ascertaining that neither party excludes an essential property or element of marriage from his or her consent.⁴⁵ However, this presents theological and practical difficulties. If the non-Catholic's beliefs concerning marriage are different from the Catholic party's, for instance, if he or she does not admit that the marriage is indissoluble (suppose he or she is an Orthodox Christian and holds to the tradition of his or her Church concerning divorce in a case of adultery), should the Catholic partner ask him or her to change and to conform to his or her teaching? There is the dilemma: after the Catholic position has been explained, must the non-Catholic be left free to marry according to his or her convictions, or must he or she accept those of the Catholic Church in order to secure the permission to marry? Örsy suggests that the classical, although not very satisfactory, answer is that the non-Catholic may be left in his or her convictions.⁴⁶ The marriage will be valid, provided he or she does not exclude one of its properties or ends of marriage. Regarding the above mentioned condition the CPL is repeating what is stated in CCEO, c. 814, 3^o (see CPL, art. 173, 3^o).

⁴⁴See, *Ibid.*, p. 152.

⁴⁵See, *Ibid.*

⁴⁶See, Örsy, *Marriage in Canon Law*, p. 188.

However, *CPC* is silent on this third condition except for stating that “in granting permission for a mixed marriage with due regard for all provisions of common law, norms regarding mixed marriage agreed upon by concerned authority of Catholic Church and non-Catholic Church shall be observed” (*CPC*, c. 548).

For mixed marriages in general, *CPL* and *CPC* demand the observance of the prenuptial conditions. However, they are silent on marriage between a Catholic and a Syrian Orthodox Christian is in question, especially regarding to the Catholic baptism and education of children. It does not mean that these particular laws intend the children of such marriages to be treated differently from those of other mixed marriages.⁴⁷ Conversely, the particular laws say the following with regard to the pastoral care of such families: “The Catholic partner is to be reminded that he or she has to commit himself or herself to imparting to their children proper Catholic formation, to the extent possible in agreement with his or her partner. Such a formation should be fully in harmony with the Catholic tradition to which he or she belongs” (*CPL*, art. 181, §4, 1^o; *CPC*, c. 555, 1^o).

When there is a just and reasonable cause and the above conditions are fulfilled, the local hierarch or ordinary has to give the Catholic the permission necessary for a mixed marriage. Any Christian has a right to receive a permission or dispensation if his or her request is in accordance with the rules of the Church. The local hierarch or local ordinary cannot arbitrarily refuse the permission or dispensation.⁴⁸

Conclusion

Mixed marriage is no longer considered an impediment requiring dispensation. The current codes of canon law have retained a prohibition on celebrating mixed marriages without “prior permission of the competent authority.” This permission from the local hierarch or the local ordinary depends on the “declaration” of the Catholic party to fulfill his or her obligation to remove the danger of falling away from the faith, and a “sincere promise” to do all in his or her power to have all offspring baptized and educated in the Catholic Church. But such a promise does not negate the Catholic’s duty to respect his or her spouse’s conscience and to maintain stability and harmony in the marriage. This permission is needed for the liceity only, not validity.

⁴⁷See, Payyappilly, *Mixed Marriage*, p. 153.

⁴⁸See, Poshpishil, *Eastern Catholic Marriage Laws*, p. 318.

The non-Catholic party is to be informed in due time of the Catholic's promises. Implied in the law is that he or she too should respect the conscience of the other and make an effort to reach balanced solutions in religious matters, keeping in mind the right hierarchy of values. Also, both parties are to be instructed on the essential ends and properties of marriage.

Mixed marriages are becoming common among Catholics all over the world. This special pastoral challenge requires the particular attention of bishops, pastors, and other Church leaders. Canon law is at the service of the faithful. Experience shows that strong opposition from or non-cooperation of the non-Catholic party has at times prevented the Catholic from fulfilling the promises made to enter a mixed marriage. The bishop or the parish priest cannot implement the declaration and promises of the Catholic party by force. We understand that the Catholic baptism and the upbringing of the children in Catholic faith as promised by the Catholic party are left to the practice and tradition of the Eastern Churches. This is especially true in Kerala, where children are generally baptized and brought up in the faith of the father (Catholic/Syrian Orthodox Christian) unless both parents decide otherwise. This happens also because of the male domination in the families in Kerala.

However, because the Church respects the right of each person not prohibited by law to marry, Church authorities cannot deny the demands of the faithful to enter into mixed marriages. From the analysis of the relevant canonical norms, especially regarding the conditions to be fulfilled for granting the permission for mixed marriage, it is clear that the present codes of canon law view mixed marriages more positively. The agreement made between the Catholic Church and the Syrian Orthodox Church of Antioch exemplifies this view, as it signifies the integrity of the movement towards Christian unity. However, we must keep in mind Pope Paul VI's warning in *Matrimonia mixta* that mixed marriages do not necessarily advance the restoration of unity among Christians. So, Catholics are to be strongly advised to marry other Catholics only. The 1993 ecumenical directory gives the same directive:

The perfect union of persons and full sharing of life which constitutes the married state are more easily assured when both partners belong to the same faith community...the mixed marriages frequently present difficulties for the couples themselves, and for

the children born to them, in maintaining their Christian faith and the commitment for the harmony of family lie. For all these reasons, marriage between persons of the same ecclesial community remains the objective to be recommended and encouraged.⁴⁹

At the same time, the above referred document also says, “these marriages, even if they have their own particular difficulties, contain numerous elements that could well be made use of and develop both for their intrinsic value and for the contribution that can make to the ecumenical movement.”⁵⁰ Mixed marriages remain a challenge for all Christians; however, they make us all aware in a very concrete way that ecumenical efforts must be unfailingly pursued so that greater harmony and a fuller degree of communion can be achieved among Christians in accord with the Lord’s desire (Jn 17: 20-23).

⁴⁹*DAPNE*, no. 144, p. IX.

⁵⁰*Ibid.*, no. 145, p. IX.