

BOOK REVIEWS

Ambrose, Merlin Rengith, *Right of Defence in Marriage Nullity Trials: A Study based on CIC 1983, DC and MIDI*, LIT Verlag, Germany, 2022, Pp. 360.

Right of Defence in Marriage Nullity Trials: A Study based on CIC 1983, DC and MIDI, a book by Merlin Rengith Ambrose with three chapters, a preface, a general introduction and a general conclusion is worth reading especially by those who are working in the field of tribunals in the Catholic Church. First, the author dealt with the subject as his doctoral thesis and later he furthered the study through the jurisprudence of the Apostolic Tribunals on marriage. The right to self-defence is a fundamental right of every person and it goes along with his right to privacy. The Codes of Canon Law of the Catholic Church function and operates respecting these fundamental rights of the individuals. Merlin circumscribes himself the right of defence to the world of trials and tribunals of the Catholic Church.

“Let the other side be heard as well” is a general principle that runs through the procedural law of the Catholic Church. It means that no person should be judged without a fair hearing and without being given the opportunity to respond to the claims and evidence against them. It is a principle of equity and of natural justice that runs through every legal system of the world. One realizes the right of defence mainly through the right to information and the right to a judicial hearing. The Church should administer justice tempering with mercy (equity). The research author attempts to present an in-depth study of the right of defence of the parties throughout the entire matrimonial nullity process at the level of the first instance in a tribunal structure of the Catholic Church.

The first chapter is titled “Preliminary Considerations and Evolution of Right of Defence in Trials”. In the first part of the chapter, the author emphasises the conceptual clarification of the right of defence. It narrates the various explanations of the right of defence by renowned canonists and the Rotal judges reiterating its significance in the tribunal to arrive at the end of the procedure, i.e., establishing truth to make a decision.

In the second part of the chapter, the author takes us to the panoramic view of the evolution of the right of defence. This historical overview intends to bring out a strong background to present his arguments. Hence, it begins with Roman law and concludes with the *MIDI*. In *CIC* 1983, canons 221, 1598, 1620, and 7^o, deal with the importance of the right of defence. All these are explicit provisions for the protection of the right of defence in the Code of Canon Law. Later, *Dignitas Connubii* (*DC*), a *vademecum* for the matrimonial nullity process, has also clarified considerably about the right of defence based on the evolution of the Rotal jurisprudential principles. Finally, the changes and the new canons introduced by *Mitis Iudex Dominus Iesus* (*MIDI*) have several implications for the right of defence. The author has critically analyzed all these teachings that have come after the Code of Canon Law of 1983.

The Second Chapter deals with the Right of Defence at Various Phases of the Marriage Nullity Process. The dynamic stage is further divided into the introductory, instructional, discussional, decisional and post-decisional phases. There are various canonical provisions in *CIC* 1983 which would guarantee the parties' rights to defend themselves in the introductory phase. The publication of the acts has a phenomenal significance for the right of defence and it takes place at the end of the instruction. This is significant for the exercise of the right of defence. In the discussional phase, the parties are given the faculty to present their defence and observations. The decision and its publication concern the right of defence.

The third chapter describes "The Right of Defence in the Rotal Jurisprudence and the Changes after *Mitis Iudex Dominus Iesus*." According to the Rotal jurisprudence, the right of defence is regarded as essential to a canonical trial. The Rotal jurisprudence categorically says that what is important for the right of defence is the faculty granted to the parties in the trial and certainly not the concrete exercise of the faculties by the party.

The negation of the right of defence would take place when the judge denies a party the right to an advocate. The right of defence belongs to the respondent and not to the defender of the bond. Hence the sentence is irremediably null due to the denial of the right of defence to a respondent, despite the intervention of the defender of the bond in the case. Therefore, the failure to communicate the formula of doubt to the parties would infringe on the right of the parties and violate

their right of defence since the parties do not know what they are contesting.

The reform introduced by *MIDI* has been implemented at various phases of the matrimonial nullity process. According to the new can. 1676 §1, the judicial vicar fixes the ground. As a result, the judges, after being handed the case with a ground fixed by the judicial vicar, may find that they disagree with the judicial vicar's choice of grounds. However, the reply from the Pontifical Council for the Legislative Text clarifies that the faculty of the judge to change the doubt or add another is not affected by the modification. The reform effected by *MIDI* underscores the need for attending to the poor through free legal aid or reducing the expenses of the process for the parties.

The changes after *MIDI* seem to have set a tone of suspicion against the decision one may make to appeal against a definitive sentence. The revised can. 1680 §2 should be very carefully and discretely applied by the collegiate tribunals when an appeal is made by the aggrieved party as this prescript for the appeal concerns the right of defence.

The canonical requisite of obtaining consent from the other party for the *processus brevior* also has some elements of the right of defence. It implies that the right of defence of the other party has been categorically protected even before the beginning of the trial. The other party, if he/she feels that his/her exercise of the rights to defend himself/herself will be infringed, can always negate the possibility of *processus brevior* by his/her non-consent. This consent of both parties required to convert from the ordinary process to a briefer process is an essential condition. The absence of the provision for the publication of the acts and omission of the decree of the conclusion of the case seems to overlook the significance of the right of defence.

In conclusion of the book, the author reminds us that most of the trials concern the doubt regarding the nullity of marriage. The canonical provisions for the right of defence enable the tribunal personnel and the parties to achieve this end. Pope Francis, in his address to the judges of the Roman Rota in 2018, demanded that the exercise of justice should not be reduced to a mere bureaucratic implementation.

The study reveals to us that this right, based on human dignity and natural law, is *essential* in the marriage nullity process. Since the right of defence is integral and essential to the whole system of procedural law, it is incumbent upon the tribunal personnel to become

increasingly aware of this institute's substantive and procedural elements.

The author systematically and comprehensively presents through this book the fundamental topics relating to the right of defence in marriage nullity trials. It is a detailed and rigorously updated analysis of the right of defence found in the *Code of Canon Law* (1983), the Instruction *Dignitas connubii* and Pope Francis's Motu proprio *Mitis Iudex Dominus Iesus* and finally the Rotal Jurisprudence on the exercise of the same right in the matrimonial nullity process. This work will be of great use to tribunal personnel, professionals in the ecclesiastical forum, and everyone who stands for justice in the Church. The book proves a valuable source of information on the right of defence in marriage nullity trials.

Varghese Koluthara, CMI
Institute of Oriental Canon Law
Dharmaram Vidya Kshetram
Bangalore