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PERPETUAL AND EXCLUSIVE BOND AS EFFECT OF A VALID MARRIAGE CONSECRATING THE SPOUSES FOR THE DUITIES AND DIGNITY OF THEIR STATE (CANON 1134) WITH REFERENCE TO THE ARCHDIOCESE OF WINDHOEK –NAMIBIA

A Thesis Submitted to the Institute of Canon Law in Partial Fulfillment of the Requirements for the Licentiate Degree in Canon Law

By

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I, the undersigned, declare that this is my original work. It has never been submitted to any academic institution or University for any academic accredit. All the sources consulted during the research are duly acknowledged.

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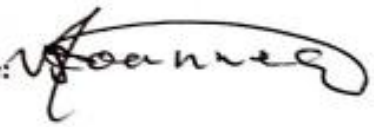
Signature: 

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DEDICATION

To the Catholic faithful of the of the Catholic Archdiocese of Windhoek in Namibia

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I thank God for protecting me and granting me good health throughout these years of my studies for the Licentiate in Canon Law.

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ABBREVIATIONS

ASS.	*Acta Apostolicae Sedis*
ASS.	*Acta Sanctae Sedis*
Can.	Canon
Cann.	Canons
CCC.	Catechism of the Catholic Church
CCEO/ 1990.	*Codex Canonum Ecclesiarum Orintalium* of 1990
Cf.	Confer
CIC/1917.	*Codex Iuris Canonici* of 1917
CIC/1983.	*Codex Iuris Canonici* of 1983
CLSA.	Canon Law Society of America
Cor.	Corinthians
Deut.	Deutronomy
DG.	*Decretum Gratiani*
Eph.	Ephesians
Gen.	Genesis
Mal.	Malachi
Pr.	Proverbs
Vol	volume

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GENERAL INTRODUCTION

The term "matrimonial bond" designates the juridical obligation by which two validly married persons are bound to each other for life (can. 1110/CIC1917). This bond, says, "can. 1134/CIC1983, is by its very nature perpetual and exclusive"[1]. This nature has serious consequences. Unity and indissolubility are two essential properties of marriage; they belong to it as a natural institution, outside any religious consideration. The existence of the marriage bond deprives those it binds of the right to contract another marriage. The difficulty in upholding this reality in the Catholic Archdiocese of Windhoek has contributed to a severe problem of irregular unions and infidelity among many couples, making it a serious pastoral problem and challenge for the Church, the Christian communities, and pastors of souls to adequately encourage the Christian faithful to the sacramental life, especially the Eucharist. It has created a manner of living for those who have celebrated valid marriage at a certain point but now find it so difficult to uphold their marital status according to the teachings of the Church.

Though many Christ's faithful celebrate valid Christian marriage in the Catholic Archdiocese of Windhoek, very often, they do not preserve their married state or protect the matrimonial covenant by leading holier and fuller lives in their families (can. 1063, 4°). Breakdowns and, eventually, civil divorce have become rampant, creating a severe concern just in the early years of marital life. The problem is more visible as one is engaged in pastoral ministry in the parish, where many couples who have filed a civil divorce find out that their ecclesial communion is somehow wounded and considered by the Church as irregular because, after filing a civil divorce, one if not each party, contracts another civil marriage. This practice makes the situation more complicated for them. The good thing

[1] CIC/1983, Can. 1134, *Ex valido matrimonio enascitur inter coniuges vinculum natura sua perpetuum et exclusivum; in matrimonio praeterea christiano coniuges ad sui status officia et dignitatem peculiari sacramento roborantur et veluti consecrantur.*

however, is that some parties come back to the Church to seek help. Since the ecclesiastical province has no marriage tribunal, it becomes difficult and time-consuming because cases must be sent to the Interdiocesan tribunal in South Africa for the tribunal process.

The problem is, however, puzzling because, despite 90 percent of the country's population being Christian and couples having clear conviction that their marriages receive special grace through the sacrament, people find it challenging to come to Church for help; instead, they seek remedy to different forums which eventually complicate the situation further. Although marriage preparation is mandatory for those who decide to get married, and although they all attend, this effort seems to yield lesser results for couples and does not give them adequate input to live out their married state. It is for this reason that this thesis intends to offer canonical insights and reflections on the perpetual and exclusive nature of the matrimonial bond and address the challenges facing marriage in the Archdiocese of Windhoek.

1.Purpose of the Thesis

This thesis aims to explore a historical development of canon 1134, to deepen the understanding of the nature of marriage bond as effect of a valid marriage. The thesis intends to propose some canonical reflections of a practical nature to help remedy the situation, especially in the area of pastoral care, and create awareness in the people of God on how the Church as a Mother is more concerned about her children who have responded to the call of marriage, yet cannot effectively live their married state as expected. This challenge is the result of the fact that many among Christ's faithful opt to abandon their conjugal life on the pretext that the Church does not have doors open for those who struggle with their married life. This thesis aims to help couples create more awareness of the beauty, fidelity, and sacredness of the sacrament of marriage, which is validly celebrated and raises a perpetual

and exclusive bond. The research will focus on the second sentence of the canon without degrading the whole canon.

The purpose of this thesis is also to help priests in their pastoral ministry as pastors of souls understand the dynamics of married life, cultivate a sense of sensitivity, and enlarge their knowledge in handling marriages to be prudent pastoral agents, especially in trying to help couples reconcile, or find ways of educating couples about the nobility of their vocation to marriage, and where necessary, provide platforms that eventually lead to their marriage situations being pastorally and canonically cared for.

Finally, the purpose of this research is to sensitize pastors to the importance of marriage in order to render adequate pastoral care, especially education, pastoral accompaniment, and the creation of relevant offices in the ecclesiastical province, especially the tribunal, in order to avoid the normalization of irregular unions due to a lack of awareness and structures for recourse.

2.Rationale of the Thesis

The Catholic Archdiocese of Windhoek lacks proper structures to handle marriage cases. There are not particular laws or pastoral exhortations on marriage. Marriage preparation courses are not uniform due to the lack of sufficient guidelines. A more contextualized analysis of marriage information and formation needs to be conducted. As much as the code of canon law offers general guidelines on marriage, a more contextualized and applicable study will significantly help in this regard. There needs to be a more proper understanding of what constitutes a valid marriage, and therefore, perpetual and exclusive matrimonial bond, and adequate respect for marriage as a sacrament that is not just subject to any human power for its existence. Since this bond also comes with duties and an inherent dignity of the spouse, it is of utmost importance that its effects are clearly understood.

It is for these reasons that this thesis wishes to provide more insightful and canonical knowledge on a valid matrimonial bond and its effects within the context of the Catholic Archdiocese of Windhoek to both pastors of souls who are engaged daily in marriage cases and are faced with ever-changing dynamics of marriage realities in their ministry. The thesis also considers Christ's faithful, who need to understand more deeply the demands of a valid canonical marriage and the Church's teachings on this natural and sacramental institution of marriage. It wishes to clarify the importance of the essential properties of marriage, which are unity and indissolubility, and the legal and pastoral challenges it faces in upholding the perpetuity and exclusiveness of the bond.

3.Central Question of Investigation

Why does a portion of Christ’s faithful in the Archdiocese of Windhoek find it challenging to uphold valid marriages, from which arises between the spouses a bond which, by its nature, is perpetual and exclusive?

4.Working Hypotheses

Perhaps the time for marriage preparation offered to couples is not enough to provide more solid and extensive information to prepare them for this commitment.

Perhaps the scarcity of priests as both teachers and pastors of souls has made it difficult for them to dedicate ample time to this important pastoral issue; hence, the laity and other experts need to be involved in the preparation and formation of married life.

Maybe the lack of particular laws on marriage have deprived the Christian faithful of knowledge related to the matrimonial bond.

Maybe searching for justice for their marriages seems to be time-consuming due to lack of ecclesiastical tribunal.

Perhaps the Archdiocese of Windhoek does not provide creative ways to help couples, and those preparing for marriage to have a more solid and relevant formation.

5.Methodological Considerations

1.1Methods of Approach

This thesis uses the historical canonical method to study the question of matrimonial bond in the canonical tradition, especially analyzing the sources and development of Canon 1134 through its different stages of its formation.

This thesis also uses the exegetical method to study the canon juridically: its meaning, scope, and relevance in the life of Christ's faithful. This analysis will also include the related canon in the 1983 code and the Code of Canons of Eastern Church.

The prospective approach will give more canonical recommendations on how the Archdiocese of Windhoek can enforce the Church's teaching on the sacrament of marriage, its perpetuity, challenges and the way forward.

1.2 Structure of the Thesis

The thesis will have three chapters:

Chapter One: **Perpetual and Exclusive Bond of Marriage in the Canonical Tradition.**

This chapter is dedicated to the study of the biblical foundations of perpetual and exclusive matrimonial bond, the teachings of the Fathers of the Church, the provisions of the *Decretum Gratiani*, the indissolubility of marriage in the council of Florence, the matrimonial bond in the Council of Trent, papal teachings on the matrimonial bond since the council of

Trent, the *Codex Iuris Canonici* of 1917, from the 1917 Code to the Second Vatican Council, and from the Second Vatican Council to the *Codex Iuris Canonici* of 1983.

Chapter Two: **The Juridical Study of Canon 1134 on the Matrimonial Bond and its effects**

The chapter delves into the canonical sources of canon 1134, its development and formation. This is through the consideration of various schemas until the final promulgation of can.1134 in the 1983 Code of Canon Law. The chapter makes an exegetical analysis of canon 1134 that is the perpetual and exclusive nature of the matrimonial bond, the sacramental consecration, the duties and rights of spouses, the dignity of the married state and the related canons. Parallel canons in the *Codex Canonum Ecclesiarum Orientalium* (CCEO) is also be taken into consideration in this chapter.

Chapter Three: The Practical Considerations Regarding the Matrimonial Bond and its effect in the Catholic Archdiocese of Windhoek

In this chapter, the focus is on the importance of understanding the matrimonial bond within the context of the Archdiocese of Windhoek in accordance with can.1134, practical considerations in assessing valid marriage, juridical realities and responsibilities, and Challenges and Considerations specific to the Archdiocese of Windhoek. The researcher considers particular laws that the Catholic Archdiocese of Windhoek has that are aimed at addressing the perpetual and exclusive bond of marriage. The research also considers the gaps in particular laws. Finally, the researcher offers recommendations and suggestions on regarding can. 1134.

CHAPTER ONE

PERPETUAL AND EXCLUSIVE BOND OF MARRIAGE IN THE CANONICAL TRADITION

Introduction

From the very beginning of creation, marriage has been part of the man. This is because God the Creator has envisioned it and willed that it becomes part of man's existence, and how man envisions it in the eyes of the Creator. Man is called to be in relation with the other, and in a unique way, enter into an exclusive bond drawn from the creation of man and woman. This shows that God had had a unique plan. At the heart of God's plan is love, because he himself is love, and those created in His image and likeness cannot but transmit this same love. Love binds a particular relationship; it makes it firm, genuine and stable. Those called to love each other establish a profound affection among themselves.

1.1 Biblical Foundations of Perpetual and Exclusive Matrimonial Bond

Marriage is presented in the initial texts of the Bible, especially Genesis where there is "a command to the first human to "be fruitful and multiple" (Gen.1,28) and the statement that a husband and a wife become "one flesh" (Gen 2.24)"[2]. The scripture serves as a basis on this study as an ecclesiological and theological discipline. This foundation that offers the divine truths of our Christian faith and discipline. Although it does not offer systematic approach, it however offers us a theological – juridical comparative approach of the Christian understanding of the notion of marriage. From the Old Testament, the Sacred Scripture offers scared passages that allude to the reality of the Israelites called and their covenant with God. This covenant comes with the promises that God makes with this chosen race through which His blessings flow as a realization of that promise.

[2] S.V "Marriage in W.J. Collinge, (eds), *Historical Dictionary of Catholicism*, Scarecrow Press, New York 1997, "Marriage", p.257.

1.1.1 The Old Testament on Marriage

Although the Old Testament does not directly talk of marriage as a sacrament, it offers some grounds on which marriage is to be traced. It talks of the creation of a man and a woman, created as male and female, diverse in their persons yet, capable of establishing a natural relationship among themselves, and in the diversity of their persons they are able to encounter each other, and through their sexuality they are profoundly drawn to each other as one flesh. In this encounter, the creation of man and woman is fully realized.

The book of Genesis narrates two creation stories. In Genesis 1:27, the specific focus is drawn on the creation of a male and female. So God created humankind, in his image, in the image of God he created them; male and female he created them (Genesis 1:27). The verse indicates the diversity in the creation of mankind; drawing the attention to the notion of complementarity of a male and female persons. In their diversity, their unity is also realized. Being in the image of God does not allude to being identical, and their likeness expresses both what they will share as a common thing, belonging to humanity as an interconnectedness, and yet an illustration of their distinctiveness. "It is also noted that the words male and female is not used in reference to other animals, which indicates that both their sexuality and procreation are involved"[3]. The verse that follows becomes therefore relevant to express this reality. God blessed them so that they are fruitful and multiply, fill the earth and subdue it [...] (Gen. 28*).* This is given as a command to them, demonstrating a share in the divine plan of God.

The two diverse persons are called to remain united, faithful to each other and to their Creator as they observe His command in order to bring about the creative process. They are therefore to establish a partnership of life, a relationship that is life-long. And in their

[3] L.N. KECK *et al* (eds), *The New Interpreter's Bible, A commentary in Twelve Volumes*, Vol.1, Abingdom Press, Nashvile 1994, p.345.

command to fill the earth and subdue it, "they constitute a sharing of the exercise of power (dominion)"[4].

The second account of creation is that of Genesis 2. It offers a general creation story compared to that of Genesis 1. Although in verse 7 of the second account only gives an indication of a man formed from dust, and then placed in the garden as alluded to in verses 8 and 15, God however saw that it is not good that a man should be alone; He decided to give him a helper as his partner who is fit for him (Gen 2, 18*)*. The formation of a helper comes from the man himself and brings the woman to him of whom the man exclaimed in embracing the woman as finally having a perfect partner. "This at last is bone of my bones and flesh of my flesh; this one shall be called a woman, for out of the man this one was taken" (Gen 2, 23).This formation expresses the strong bond and unitive force that is to exist between them. The word helper designates the mutual responsibility they are to exercise without any expression of hierarchy. In this reality, God opens up the notion of relationship, companionship and an intimate life of partnership. By naming the woman, a man embraces her as a real partner, a companion, and not an impression of subordination. "The rib from which a woman was created does not in any way give an indication to subordination, just as a man form in the dust or soil gives an indication that he is subordinate to it [...] it rather points to the equality that exist in their differences as well as the original source from which all are coming from, which is God"[5]. This has created a new and whole conception of a human person in relation to the other in whose existence the other person realizes and complements the other.

Deuteronomy 24:1-4, opens up a new phenomenon in the reality of marriage in the Old Testament. The text brought about the possibility of divorce foreseen in circumstance where a

[4] L.N. KECK *et al* (ed.), . *The New Interpreter's Bible*, p.345.
[5] L.N. KECK *et al* (ed.), . *The New Interpreter's Bible*, p.353.

husband dismisses his wife on the basis that he does no longer find favor in her. “It is however not a new law of divorce, but rather a stipulation that a husband who divorces his wife may not take her back after she has remarried, whether her second husband has also divorced her or is deceased”[6]. This would lead to what is prohibited in the book of Exodus on the sixth command of the Decalogue ‘Thou shall not commit adultery (Exodus 20:14). And in the book of Malachi, a man is exhorted not to be faithless to his wife with whom he has made a covenant (Malachi 2:14-15). It is not so clear of what would constitute a reason for this action, commentators refers to an act of indecency, a physical rather than a moral defect, and certainly not adultery which was punishable by death[7]. There was a challenge in laying out the grounds of divorce that would threaten unity of spouses.

1.1.2 Marriage in the Design of the Creator

The Old Testament contains two accounts of the creation story of which God creates male and female in his image, that completes God’s creation by seeing that it was “very good” (Gen 1:31). Both accounts of creation end with a scene which gives a basis for the institution of marriage”[8] Through this account, the equality and dignity of a man and woman is affirmed. The second creation account reflect how both sexes are necessary for God’s plan, after creating the first man, God realized that, “It is not good for a man to be alone” (Gen 2:18). God gave Adam a helper (*ezer*), but in fact, it is God who presents Himself as a helper. And for their life to last forever, God provides “the suitable helper for the man” (Gen 2:20). “With these words, the divine purpose is made explicit[...]. This is why, leaving father and mother, he attaches himself to her by love and they become but one flesh”[9] Adam and Eve become one reality for their entire life, faithful to each other just as God will be faithful to

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[6] R.E. BROWN *et al*, (eds.)., *The New Jerome Biblical Commentary*, Prentice Hall Inc, New Jersy1990,p.105.

[7] R.E. BROWN *et al*,(eds.), *The New Jerome Biblical Commentary*, p.105.

[8] L. D. XAVIER, *Dictionary of Biblical Theology*, Desclée Co. New York 1964, p. 294.

[9] L. D. XAVIER, *Dictionary of Biblical Theology*, Desclée Co. New York 1964, p. 294.

them. They become one in the diversity of their sexes, and for a bond unique, exclusive and perpetual (Gen 2:24).

Conjugal love, which is the love proper to marriage, is present in the commitment to the complete and total gift of self between husband and wife. It establishes a unique communion of persons through the relationship of mutual self-giving and receiving between husband and wife, a relationship by which "a man leaves his father and mother and clings to his wife, and the two of them become one body (flesh)" (Gen 2:24).

Stability and the fidelity of spouses was considered as something meant to counter repudiation. "After exile, the wise men sang of fidelity toward "the wife of one's youth (Pr. 5-15-19), and they eulogized conjugal stability (Si 36, 25)"[10]. From this reality, "marriage was compared to a contract (*berith*) with the covenant of Yahweh with Israel"[11].

1.1.3 Stability of Marriage and Fidelity of Spouses

Several texts of the Old Testament indicate that God is not pleased with divorce. One of the texts is found in Malachi that states that God hates repudiation (Mal 2,14) Conjugal fidelity was to be upheld and the custom of concerning conjugal fidelity be preserved avoiding any form of prostitution (Gen 38,24). This was "sanctioned by the written Law (Dt 22,22); Lv. 20,10), punished by death every woman guilty of adultery, as well as her accomplice"[12]. The practice of adultery was "severely denounced by the prophets (Ez 18,6) even on the side of man, even when the guilty party was King David himself (2 Sol,12)"[13] Therefore, the element of stability and fidelity has been present and manifested in the spouses becoming one flesh (*Genesis 2, 24*). This reality expresses both the design of the Creator as rooted in the scripture which is "the supernatural revelation which attempts to penetrate

[10] L. D. XAVIER, *Dictionary of Biblical Theology*, p. 294.
[11] L. D. XAVIER, *Dictionary of Biblical Theology*, p. 295.
[12] L. D. XAVIER, *Dictionary of Biblical Theology*, p. 295.
[13] L. D. XAVIER, *Dictionary of Biblical Theology*, p. 294.

profoundly in the natural, creation dimension marriage and the family [...] and the reality of that unity between a man and a woman in their natural dimension of masculinity and feminine".[14] God called them to this reality mindful of what they are to be in relation to Him.

1.1.4 Religious Ideal of Marriage

Marriage, throughout the history of the Israelites "has been considered above all as a matter of civil law and although the ancient texts make no allusion to a religious rite, the Israelite knew well that God led him in the choice of a spouse (Gen 24, 42-52) and that God assumed under the name of the covenant the precepts which regulate marriage"[15]. For this reason, the religious ideal of marriage came as a result of the expression biblical rites. "The Decalogue, the fundamental law of Israel, guarantees the sanctity of the institution of marriage (Ex 20,14):[16].

The element of the family which constitutes a secured force of every tribe in which the God's blessing finds root expressed in the abundance of the offspring and other fortunes of crops, animals and land (*Deuteronomy 28:4*) which will serve as continuous survival and assurance for generations and the reality of the covenant that God established with the people of Israel. Through this rites, God is perceived not only as creator of man and woman and makes them a gift to each other, but it is also understood that God placed structure of laws that dominate and guide marriage as a religious reality. Marriage eventually became a religious reality "in the biblical ideal which surpassed the imperfection which were provisionally sanctioned by the Mosaic Law" [17].

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[14] J. HERVADA, *Studi sull'Essenza del Matrimonio*, Giuffre Editore, Milano, 2000, p. XVI.
[15] L. D. XAVIER, *Dictionary of Biblical Theology*, p. 295.
[16] L. D. XAVIER, *Dictionary of Biblical Theology*, p. 295.
[17] L. D. XAVIER, *Dictionary of Biblical Theology*, p. 294.

1.2 Marriage in the New Testament

In the New Testament, it is "Jesus who gives witness to a value superior to marriage"[18]. The Old Testament describes marriage as a natural institution under God's plan, in the New Testament, the natural institution of marriage is now raised to a new reality that goes beyond the law of Moses.

In offering the teachings on marriage, Jesus does not abandon the reality of creation of man offered in Genesis, in fact, He begins with creation, of which he emphasizes the equality that now exists between a man and a woman, an ideal God had from the beginning. Marriage in the New Testament still constitutes its social element, but with a new emphasis of being elevated to the dignity of a sacrament, and to a union that is likened to Christ and his Church (Ephesians 5:22-33). "It is a union that is obviously to be realized only in faith"[19]. Marriage is no longer just a social reality, but it now takes another Christological aspect.

1.2.1 Jesus and the New Law on Marriage

In the New Testament, Jesus does not entertain the idea proposed in the book of Deuteronomy where Moses allowed a man to issue a certificate of divorce to his wife. The Pharisees wanted to use it to justify themselves and their justification was targeting the properties of marriage. In the New Testament, Jesus affirmed the absolute character of marriage and its indissolubility (Mt 19 , 1-9). "God himself has joined together man and woman, bestowing upon their free choice a consecration which goes beyond them. They are "one flesh" in His eyes"[20]. Therefore, the New Law does not allow any permission of repudiation. "Even repudiation, which had been tolerated "because of the hardness of heart, must be excluded from the Kingdom of God in which the world returns to its original

[18] L. D. XAVIER, *Dictionary of Biblical Theology*, p. 295.

[19] P.A. BONNET, - C. GULLO, a cura di, *Sacramentalità e validità del Matrimonio nella Giurisprudenza del Tribunale della Rota Romana: Giurisprudenza canonica Commentata*, in Studi Giuridice XXXVI, Vol. IV, Libreria Editrice vaticana, Città del Vaticano 1995, p.119.

[20] L. D. XAVIER, *Dictionary of Biblical Theology*, p. 296.

perfection"[21]. The New Law has reinforced fidelity and stability to the point of stating that "even the exception of the "case of fornication" (Mt 19,9), surely does not envisage a justification of divorce. It is concerned either with the dismissal of an illegitimate spouse, or else with a separation which cannot be followed by another marriage"[22]. The New Law brought an element of consecration that goes beyond the free choice of the spouses.

It is the same Lord Jesus Christ "who sanctified and consecrate this state of life"[23], and by this act of consecration, "he also included within the mystery of love, which unites him as redeemer to his Church"[24]. The two concepts, personal and social are drawn together to form one reality that will exist between the couple, which will find a new reality in the person of Christ.

1.2.2 The Sacrament of Marriage

In the new law, marriage as a natural institution is renewed and elevated to the dignity of the sacrament. It has become the reality of the new covenant, a mystery in relation to His Church that forms part of redemption, and therefore a sacred reality. It is important to note that the whole scripture does not use the word sacrament, at least explicitly. "Although the Old Testament does not talk of marriage *per se,* however, through the creation of man and woman, a natural relationship is established among themselves"[25] The Scripture uses rather the Greek term *mysterion.* St. Paul speaks of the in Christ for centuries (*Romans 16: 25-26, 1Cor. 2, 6-7, Colossians 1:26-27*), and in the letter to the Ephesians, Paul bring the term mystery into something of grandeur, great and profound, of which the plan of God is to be fulfilled. This mystery is Christ who is revealed and sent by the Father, (*Heb 1:2*). God has

[21] L. D. XAVIER, *Dictionary of Biblical Theology*, p. 296.
[22] L. D. XAVIER, *Dictionary of Biblical Theology*, p. 296.
[23] Gaudium et Spes 48, 2.
[24] INTERNATIONAL THEOLOGICAL COMMISSION: *Propositions on the Doctrine of Christian Marriage*, Vatican Press, Vatican City 1977, p.1.
[25] Cf. P. A BONNET *et al*., *Sacramentalità e Validità del Matrimonio nella giurisprudenza della Rota Romana: Giurisprudenza canonica Commentata*, in Studi Giuridice XXXVI, Vol. IV, Libreria Editrice vaticana, Città del Vaticano 1995, p.118

revealed this mystery in Christ through the Holy Spirit (*Eph 1, 3-14*). "For Paul, Christ is the first and great sacrament, because it is in his Person and work that the synthesis of revelation of the actualization of the eternal plan of salvation is willed by the Father who offers salvation [...] In the sacrament of marriage, it is Christ who realizes in his Person the encounter of God with man and man with God"[26]. God remains faithful to the covenant he established with man, and for this reason,

> Marriage constituted by God the Creator becomes a sign of this fidelity of God [...] in this same sense, the human fidelity of the spouses is assumed in the orbit of the fidelity of God, they are to remain faithful to the promise they exchanged among themselves as spouses and to be so for each other during their whole arch of existence[27].

Marriage is only to be seen as a sacrament that is signified in the covenant and fidelity of God with His people by those who have embraced the Christian faith. "It is seen in some perspectives that this covenant of God with His people and the fidelity of the spouse as reason for which indissolubility and unity of marriage are perceived in Christianity"[28].

Taking the passage of St. Paul's Epistle to the Ephesians, which likeness marriage to a union of Christ and his Church as a mystery, Augustine uses the same word to mean *sacramentum*. "Augustine was still a bit careful on using the word sacrament because of the platonic influence that was still at the back of his mind, but we see him trying to make an attempt of seeing marriage as a sacrament"[29].

The letter to the Ephesians affirms this reality by stating that "this mystery is great" (*Eph 5, 32*) for it makes reference to the union between Christ and His Church. "The letter to the Ephesians, by stating that it is a great mystery that makes comparison to Christ and His

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[26] Cf. P.A. BONNET, - C. GULLO, a cura di, *Sacramentalità e validità del Matrimonio nella Giurisprudenza del Tribunale della Rota Romana: Giurisprudenza canonica Commentata*, p.123.

[27] Cf. P.A. BONNET, - C. GULLO, a cura di, *Sacramentalità e validità del Matrimonio nella Giurisprudenza del Tribunale della Rota Romana: Giurisprudenza canonica Commentata*, p.123.

[28] Cf. W. KASPER, *Die Verwirklichung der Kirke in Ehe und Familie*, Mainz 1970, p.334.

[29] D.M.THOMAS, *What makes Marriage as Sacrament*, in Christian Marriage, Liturgical Press, Collegeville 2007, p.6.

Church gives an indication that the New Testament alludes to Christian marriages to be a sacrament"[30]. Although the biblical text cited does not make reference to the sacramentality of Christian marriage directly, but rather to the mystery of salvation, it serves as an indication to the reality of marriage as a comparison of a union of a couple and a union between Christ ad His Church when read as a whole. "The sacrament is therefore not something added to the institution of marriage that will otherwise make it separable"[31].

1.3 Perpetual and Exclusive Bond of Marriage According to the Fathers of the Church

The Church Fathers embraced a continuation of the biblical understanding, enriching it with their scholarly insights and offering a new and profound vision of marriage in order to formulate a sound doctrine and understanding of the institution of marriage. They took up the teachings of Jesus and that of St. Paul in order to have some biblical foundation of their reflections. These teachings brings a *novitas* to the doctrine of marriage as a sacred reality among the baptized who have the conception that marriage has to be celebrated before the representative of the Church in order to bring out this reality evidently. They offered a more dignified moral approach compared to that of the pagan world, offering more clarity at the time where there were divergence of practices during that epoch, putting in evidence the original orientation of sexuality at the service of creation[32]. It is however important to note that, having the biblical source as an inspired Word of God did not directly give an indication that some of the biblical texts that seem to suggest an insight into marriage were seen as clearly pointing to marriage teachings, rather, the tridentine fathers were leaning more on the

[30] Cf. THOMAS AQUINAS, STH *Suppl*,q.42 a.1.

[31] J. HERVADA, Il sacramento è lo stesso matrimonio celebrato tra battezzati; ipse contractus, ipsa institution matrimonialis, ipsum coniugium. Questo significa che 'e lo stesso matrimonio ciò che, essendo stato constituito come segno dell'unione di Cristo con la Chiesa, ha ricevuto per istituzione di Cristo, una dimensione soprannaturale di grazia. Questa elevazione soprannaturale non è una qualcosa che si aggiunge ad ogni matrimonio in forza di circostanze o di fatti che incidano sui singoli matrimoni (celebrazione davanti al sacerdote, benedizione, riti liturgici, ecc.), ma è un fatto che riguarda l'istituzione stessa, ossia la sua istituzione da parte di Dio; l'azione elevatrice e santificatrice di Cristo incide sulla radice stessa, sull'origine, sull'istituzione, p.349-350.

[32] L. SABBARESE*, Il Matrimonio Canonico nell'ordine della Natura e della Grazia*, Urbanian University, Rome 2006, p.54.

foundation of defining this sacramental institution of marriage in order to enrich what is called the Church tradition.

The Church Fathers and other Christian authors in their endeavor were preoccupied with transmitting the sound universal tradition of the Church, and through the divine truths, pass on the pure deposit of faith rooted in scripture. These two realities of scripture and tradition, which all have a divine origin, and are directed to the same end, remained therefore as guiding lights for the Church Fathers to formulate a sure teaching on marriage. Both of them affirm the *novitas* brought by Christ concerning marriage of which they had to bring harmony in their reflection in order to come up with a unified teaching. Their role was to analyze "what Christ taught and established relatively to conjugal life"[33]. Their role was to transmit integrally the Word of God which through the Holy Spirit was handed over to the apostles, and their successors that through their teaching and preaching, they may faithfully observe it.

1.3.1 Conjugal Fidelity According to Hermas

The early Church had a clear understanding of marriage as a permanent union of a man and a woman, and no one could break this bond except death. Those who engaged in marriage were understood to have engaged themselves in a lifelong union of love and fidelity to each other, and eventually fidelity to God. The early Church could not reconcile divorce and remarriage as part of their societal makeup; they saw it as a threat to the well-being of any community. Anyone who would enter into another marriage after divorce is understood to be engaging in polygamy, because the Church considers that person still married in the eyes of the Lord even if they have undergone some legal procedures for divorce. Far from being sin, it is more of a reality that the person is still married. Engaging in a remarriage situation would simply contribute to multiple adulterous situations that would ruin the

[33] L. SABBARESE, *Il matrimonio Canonico nell'ordine della Natura e della Grazia*, p.85.

community's existential order. The community upheld the teachings of the New Testament that states that "whoever divorces his wife, except for sexual immorality, makes her a victim of adultery, and anyone who marries a divorced woman, commits adultery" (*Matthew 5:32*). St. Paul adds to this by stating that "but if she departs, let her remain unmarried, or be reconciled to the husband (*1 Corinthians 7:11*).

The Shepherd of Hermas, through his writings became a source of inspiration of the early Christian teachings on marriage and divorce. This book of the first half of the second century contributed more as a Christian literally work to the life of the early Christians. In some part of his work, he is considered to be in dialogue with his master discussing matters concerning the consequences of adulterous behavior of one of the parties who are married in the Lord that would lead to a divorce. Upon questioning, the master if for the idea that any man who has a wife and are married in the Lord, and the wife engages in adulterous behavior, as much as the husband does not detect that, the wife is considered to have not sinned, but if the husband detects that, and upon correction the wife does not repent of her sin, and the husband continues living with her, the husband is leading her into sin and is an accomplice in her sin. The solution is therefore for the husband to divorce her. But if upon divorce, the husband marries another, he likewise commits adultery. What is recommended is therefore that the husband abides alone. But if the wife repents and returns to her husband, the husband is to receive her, and if not, the husband brings sin upon himself.

From the dialogue, we see that Hermas allowed divorce only in a case of one of the parties involved in fornication and adultery, of which both parties are to abide alone in order not to fall into committing sin. Upon repentance of the other party, the other one is to receive the partner and begin anew their journey.

1.3.2 Unity of Marriage According to Tertullian

Tertullian indicates that in order to present a Christian teaching on marriage, it is very important to go to the original plan of God in whose authority man has origin. When God created Adam and Eve, He willed that they become 'one flesh', and they are to grow together in unity. They are to share in the spiritual nuptials of Christ and his Church. "From one marriage do we deliver our origin in each case; carnally in Adam, spiritually in Christ. The two births combine in laying down one perspective rule of monogamy"[34]. The Teachings of Tertullian are still rooted in the mystery of analogy of Christ and his Church, which has its origin in the plan of the Creator. It is the teaching that upholds the unity of marriage through a monogamous marriage. The two who are called to live the vocation of marriage are to be chaste in their dealings with one another, by avoiding the plurality of wives. Their sanctity as spouse is the fruit of their continence and fidelity to each other, for they are married in the new law of God. This new law of God establishes that nothing else should separate those whom He joined together, except the author of the same law, and only by the reality of death. In addition, marriage of Christians by Tertullian is seen as a "beautiful thing, whereby the two are one in hope, one in desire, one in the way of life they follow, and one in the religion they follow"[35]

1.3.3 Second Marriages Discouraged in the East

The early Church has always upheld the teachings of Christ and the apostles that marriage is indissoluble. The Church Fathers build on this teachings and tradition, and in for this reason, they nourished with their teachings and theological reflections the early Christian community as they were confronted by questions of marriage, divorce and remarriage. Some Church Fathers dedicated ample time to the subject of marriage, by which they tried to offer a

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[34] A. ROBERTS, *et al*, (eds.), *From Ante-Nicene Fathers, On Exhortation to Chastity by Augustine*,Vol.4, Christian Literature Publishing, New York 1885, pp.24-32.

[35] TERTULLIAN, *Ad Uxorem*, On the Beauty of Christian Marriage, Book 1, pp.35-36.

different approach to that which was offered by "civil authority of the Roman Empire that considered marriage as a private matter of which divorce could be obtained easily"[36]. Inspired by the text on the wedding feast at Cana of Galilee (*Jan 2: 1-11*), which has a significance that feast gives that marriage continues and finds its perfection in heaven. It is in this line that the Fathers offered the faithful direction on how to witness to a moral and spiritual, Christian life in against the disordered legal society[37]. Their teachings, being inspired by that of Christ and the Apostle, emphasized the Christian marriage that in marriage, "the two become one of which some Fathers taught that this oneness is an eternal bond"[38].

1.3.3.1 *Athenagoras*

In his defense of the Catholic Faith, Athenagoras took a "more apologetic approach in his writings, choosing to explain the Catholic Faith"[39]. Inspired and guided by the teachings of Justin Martyr, through his writings entitled *A Plea for Christians,* Athenagoras states that "second marriage is only a specious adultery and whoever puts away his wife, and marries commits adultery"[40].

1.3.3.2 Basil The Great

Inspired by Paul's letter to the Ephesians 5: 25, Basil in his VII homily encourages that husband and wife are to be in communion of which marriage unites them. They should never be separated but always seek out each other. Reflecting on the reality of creation, "he ends by saying that in nature, mankind is taught by example as to God's order of things[41]. Therefore, for Basil, the wife is to remain united to the husband, for they have become one body, and if they are to separate, she is to remain unmarried.

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[36] D.A. FISHER, *Early Church Fathers on Marriage*, Ethereal Classic Library, New Brunswick, p.1.
[37] D.A. FISHER, *Early Church Fathers on Marriage*, p.2.
[38] D.A. FISHEr, *Early Church Fathers on Marriage*, *p.*.3.
[39] D.A. FISHERS, *Early Church Fathers on Marriage*, p.3.
[40] P. KIRBY, "A Plea for the Christians*"*, in *Early Christian Writings* (2001), p. 131.
[41] BASILl OF CAESARA, *Nicene and Post Nicene Fathers*, Grand Rapids: Christian Classics Ethereal Library, New York 1899, pp.329-330.

1.3.3.3 St. Gregory of Nazianza

St. Gregory joins others who uphold the sanctity of marriage in the sense that it symbolizes the relationship of Christ with his Church. He describes marriage in a form of companionship.

> Through marriage we become one another's hands, ears, and feet. Marriage doubles what had been weak. It is a great joy to our friends, a distress to our enemies. Sorrows shared hurt less; joys shared are sweeter for both; wealth brings greater joy to those who are like-minded. To those who are in need, being like-minded brings greater joy than wealth. Marriage supplies a lock of self-control over desires and sets a seal on our natural need for friendship... It is not a drink from the household spring from which strangers cannot taste; it does not flow forth outside nor can another collect it from outside. The mutual love of those who are united in the flesh and are of one soul sharpens their piety to a fine point[42].

1.3.3.4 St. John Chrysostom

For John Chrysostom, marriage is a spiritual journey for the husband and the wife. It reflects the heavenly reality of the communion of the Trinity of which the spouses are called to holiness, through which they attain the joys of heaven and to be truly fruitful.

On second marriage, Chrysostom in one of his homily states that "to take a second husband is in truth fornication,"[43] this therefore makes the second marriage unlawful. In this regard, the person will be under the impulse of concupiscence, therefore, lacking honor in the significance where the husband and wife signify Christ and his Church.

1.3.3.5 St. Augustine

St. Augustine, offering his teachings from the western perspective of the Romans as a great influential Christian writes, offered his reflection with the title 'The Good of Marriage'.

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[42] St. GREGORY OF NAZIANZUS, CARMINA 1.2.1.262-275, *in Everett Ferguson, Inheriting Wisdom*: Readings *for Today from Ancient Christian Writers*, Peabody: Hendrickson Publishers, Massachusetts 2004, p. 5.

[43] JOHN CHRYSOSTOM, On Marriage and Family life, Homily XXXII, *in Opus Imperfectum*, pp. 74-47.

With this good, Augustine builds a concept that marriage is "a true good, not merely the lesser of two evils"[44].

The doctrine of Augustine, who was called the *doctor matrimonii christiani*, on marriage focused on the affirmation that he makes that marriage is good, and further goes on to focus on the three goods of marriage (*bonum tripartitum*) which are the *bonum prolis, bonum fidei et bonum sacramenti,* for he never used the expression of *finis martimonii*, which in real sense is the *bonum prolis*. With this formulation, Augustine synthesizes the reasons of the good of marriage, with its procreative finalities, with its essential properties of unity and indissolubility and with it assuming the image of the union of Christ and his Church[45]. In this good of marriage, constitutes the creative blessing that the Creator willed by creating them man and woman. Although he seems to emphasize on of the value of marriage which is procreation, in his work *De bono coniugali,* the Doctor of Hippo praises the two essential properties on which the good of marriage is realized. The two persons unite in a perfect bond of love that is lived for life, which is an expression of mutual goodness lived in reciprocal fidelity and self-giving. It is in the good of marriage that both the human values and the divine blessings unite, characterizing beauty, nobility and attractiveness of marriage[46].

From this expression, Augustine points out the exclusiveness of a marriage bond, which is a union of a man and woman ordered for life and love, and the uniqueness of and fidelity of this bond. The mutual fidelity makes marriage more fruitful and firm because the spouses have accepted each other through a definitive personal and fruitful and unitive commitment that is born out of goodness and pure conjugal love of the spouses that are called to be faithful companions of the same love that has roots in the Love of Christ. Marriage is

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[44] D. G. HUNTER, *Marriage in the Early Church*, Sources of Early Christian Thought, Fortress Press, Minneapolis 1992, p. 6.

[45] L. SABBARESE, *Il Matrimonio Canonico nell'ordine della Natura e della Grazia*. p. 54.

[46] C. BURKE, "St. Augustine: a View on Marriage and Sexuality in today's World" , in *Angelicum*, Vol. 89, 2 (2012), P.380

good: a deep and demanding good to be faithful to, not a superficial experience to be tried and discarded as soon as its first demands make their appearance[47].

For Augustine, the natural society that is made of a man and woman, which finds its realization in procreation extends itself to a "mutual and reciprocal responsibilities that the two are called to live out as the also establish a conjugal society which the share their whole life as personal, familiar and social reality"[48]. This is how God willed this natural institution of marriage to be from His plan of creation of humanity, that they are able to meet each other as a man and woman in their diversity in order to complement each other in a union that constitute reciprocal affection. "This is the only union that is truly necessary to establish marriage and together as a cause and end of all its good which is the whole expression of God's creation made new in Christ"[49] . For this reason, the spouses are not only to remain closed in themselves, and limit themselves to their own good, but the nuptials reflect a wide societal reality in which the experience of marriage is lived and witnessed and through which they attain their own perfection. They are to be engaged in the responsibilities which come through the gift of the offspring which they have to care for and educate in love, especially in a religious way.

Through this understanding, Augustine sees the good of marriage as a *remedium concupsientiae* that attempts to avoid the infidelity which affects one of the *bona* of marriage by ordering people to a moderate and real good that marriage expresses. Since marriage is a reality based on love, and from love draws its strength, it will only find its true strength and meaning in the faithful love of Christ who loves his Church and united, and gave himself up for her. This is where the *bonum sacramenti* emerges.

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[47] C. BURKE, "St. Augustine: a View on Marriage and Sexuality in today's World", in *Angelicum*, Vol. 89, 2 (2012), P.380

[48] L. SABBARES, *Il Matrimonio Canonico nell'ordine della Natura e della Grazia*, p.55.

[49] L. SABBARESE, *Il Matrimonio Canonico nell'ordine della Natura e della Grazia*, p.55.

1.4 St. Thomas Aquinas on Marriage Bond

Considered as the Doctor of the Church, Thomas Aquinas offered a firm response to those who argue that the permanent nature of the bond of marriage is an artificial human invention. He argued that "marriage is in fact a natural union [...], it is natural in the sense that any man beginning a family naturally desires and seeks out a permanent union between him and his wife"[50]. In this way, Aquinas sees marriage as of divine origin, willed by God from the beginning as a natural and sacred union. He also underscores that "marriage creates a bond that is perpetual and permanent that is exclusive between a man and a woman with its proper end of the mutual service of the spouses, the good of the offspring, which includes their existence, nourishment and education"[51].

Marriage is therefore considered in Aquinas writings as permanent and indissoluble by nature. Through this permanence, the spouses are able to realize fully the ends of marriage, live together inseparably an lead a happy life together. Hence, "indissolubility of marriage is of natural law. The perpetual nature of marriage serves as a sign of perpetual union of Christ with the Church"[52].

1.5 Perpetual and Exclusive Bond of Marriage According to *Decretum Gratiani*

On the part treating marriage, the *Decretum Gratiani* indicates that in every Christian parent who is united in marriage, there is a threefold good in that marriage. There are the good of offspring as gifts from the Lord, fidelity because adultery is not permitted, and sacred that make a permanent union that excludes divorce. Since it is the will that makes marriage

[50] THOMAS AQUINAS, *Summa Theologiae*: Treaties on the Sacrament of Marriage, I-II, q. 41. a.1.,
[51] THOMAS AQUINAS, *Summa Theologiae, Suppl* III, q. 41.a. 1.
[52] THOMAS AQUINAS, *Summa Theologiae*, I-II, q. 64. a. 1.

and not intercourse, marriage cannot be dissolved by the separation of the body[53]. In this regard, the threefold good work together to form a unique bond that is perpetual.

In the thirteenth number of the same cause, it allows a husband to lawfully marry another wife, if the one he was betrothed to dies. He can however not take the one repudiated or betrothed[54]. This gives an indication that only the death of a spouse can dissolve the bond of marriage, of which both the wife and husband can contract marriage with a free man or woman.

The *Decretum* also treat the scenario where "divorce is advanced on the pretext of religion. It states that although human law may permit divorce based on one's religion, divine law prohibits it"[55]. Citing the Gospel of Matthew which states that what God has joined together, let not man put asunder (Mt. 19.6). The spouses are exhorted to live a life of continence for they have become one flesh. It is through their oblation that they restrain from any form of selfishness.

1.6 Matrimonial Bond from the Council of Trent (Session XXIV, Can. 1, 5)

The session XXIV of 11 November 1563 deals particularly with the canons and decrees on the doctrine of the sacrament of matrimony, "affirming that already from the beginning of the existence of human race, especially with the first person of the human race under the instruction of the Holy Spirit, marriage by which two persons, a man and a woman, are joined together, was perceived as perpetual and indissoluble"[56]. The session, relying heaving on the sacred scripture, and from it makes reference, affirms its teaching of indissolubility where those united by this bond are no longer two but one flesh, and it is God

[53] DECRETUM GRATIANI, *Emendatum et nontationibus illustratum una cumglossis*, Romae, Causa 27, Cap, Questio 2; (C.XXVII, C X, q.1.).

[54] Cf. c.XXVII,c.XI, q2.

[55] Cf. c. XXVII, c.XIX, q.2.

[56] COUNCIL OF TRRENT, Sessio XXIV, De matrimonio in J. Alberigo *et al*, (eds.), in Conciliorum Oecumenicorum Decreta, Intituto per le Scienze Religiose, Bologna 1972, p. 753.

who unites them and establishes this bond. For what God has united, no man should separate (Mark 10:9). This bond is strengthened by "the grace that it receives from the sacrament, which symbolizes the mystery of Christ who has united Himself to His Church, and from which this marriage forms part of the new evangelical law by Christ, conferring grace and thus raising it to the dignity of the sacrament[57]. This is the doctrine that the Council upheld, on which it expanded through canons.

Two canons are considered important concerning the sacrament of marriage. The first canon of the council condemns those who do not perceive marriage as not truly and properly one of the seven sacraments[58]. The second canon condemns those who see it licit to have many wives which is already prohibited by divine law. Canon seven is equally important, and can be directly linked to the perpetual nature of marriage. It deals with the aspect of adultery in relation to the marriage bond, and asserts that "adultery cannot be a ground for the dissolution of marriage, and prohibit even the innocent party from contraction another marriage. Both of them will be implicated in the same sin of adultery"[59].

Clarity was also given in relation to using the Ephesians 5, 32, to describe Christian marriages, that

> The words of St. Paul should not be understood to mean that marriage signifies the union of Christ with his Church, but rather, *quod regula Ecclesiae sit exemplum coniugatis, ut, sicut Ecclesia obedit Christo,ita uxor obediat viro etc, et denique ut discant coniuges, quid faciendum sit a Christo cum Ecclesia*. This means that marriage is not indissoluble because it represents the union of Christ and his Church, which would not be enough to describe it, because the representation is not the represented, but rather because it contains the divine mysteries and is a *divinus nexus* (divine connection)[60].
>
> Therefore, marriage as a sacrament draws its force and strength from this divine connection as a fountain of its grace. It is also noted that the sacramentality of marriage is not so much of the blessing from the priest, but rather the consent and the indissolubility, which St. Augustine calls the sanctity of the sacrament. The ministers are the spouses, "it is therefore the duty of

[57]COUNCIL OF TRRENT, Sessio XXIV, *De matrimonio* , p. 753.

[58] Cf. J. ALBERIGO, *et al*, Si quis dixerit, matrimonium non esse vere et proprie unum ex septem legis evangelicae sacraments, a Christo domino institutum, sed ab hominibus in ecclesia inventum, neque gratiam conferre: a.s. p.754.

[59] Cf. J. ALBERIGO *et al*, (eds.), *De Matrimonio*, pp. 754-755

[60] A. C. JEMOLO, *Il Matrimonio nel Diritto Canonico. Dal Concilio di Trento al Codice del 1917*, p.45.

> the minister of the sacrament to unite the matter with the form, of which only the contractants can effect it"[61].

God has already blessed them as individuals, and by uniting themselves in marriage, God blesses in a special way what is already united. It is the spouses that bring about the bond of marriage that the priest blesses.

1.7 Matrimonial Bond from the Council of Trent to the CIC/1917

Marriage forms part of the human race as a natural institution, which by God the author of this institution pronounced perpetual and indissoluble. Man and woman are called to come together to establish the matrimonial bond that is not only considered perpetual but also exclusive. Through this bond, a man and woman join themselves to each other for a union that acquires firmness and stability for life.

1.7.1 Gregory XIII, *Constitutio. Sanctissimus*", a. 1575

In this constitution, the Roman Pontiff, in paragraph 9, declares that in the Holy Roman Church, there exists truly the seven sacraments, which are of "the new law, which are instituted by Jesus Christ our Lord, and are for the salvation of the human race, which are baptism, confirmation, Eucharist, Penance, Extreme Unction, Orders and Matrimony, and from them grace is conferred"[62] . The Roman Pontiff by declaring this indicates therefore that marriage forms part of the seven sacraments that Christ instituted in the New Law.

1.7.2 Clement VIII, *Instructiones Sanctissimus,* 31 aug. 1595, § 5

The Pontiff ordered that local ordinaries translate the decree of the Sacred General Council of Trent on the reformation of marriage into the Greek vernacular languages and be published in Greek for the Albanian Parish localities. The decree orders the Local Ordinaries

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[61] Op. cit., t. IX, Actorum parte VI (Congregazioni dei teologi del 10-13 Febbraio 1563), pp. 386,395,399.

[62] GREGORY XIII, Const. *Sanctissimus*,a.1575,§9, in P. GASPARRI, (ed.), *Codicis Iuris Canonici Fontes*, Vol.I, Typis Polyglottis Vaticanis, Romae, 1945, p.258.

not to allow marriages between Greek spouses to be dissolved, and to order them not to permit divorce in any way, and the bond is to be preferred and maintain rather than divorce [63].

1.7.3 Benedict XIV, Epistula Encyclica. "Matrimonii" , 11 apr. 1741

The Encyclical, mainly addressed to the Church in Poland, "reinforces and affirms the perpetual and indissoluble nature of marriage as something that God had already pronounced from the very beginning of the creation of the first person Adam 'what God has joined together, man shall not separate"[64]. It also points out the sacramental grace that God has imparted upon it, and by this fact, nor natural law, neither divine, nor ecclesiastical precepts and canonical sanction can dissolve it. The Pope addresses the situation where plurality of women was a conceived reality, and sees divorce as an offense to the good of marriage.

1.7.4 Benedict XIV, Constitutio. "Dei miseratione", 3 Nov. 1741, § 1

In this constitution, Benedict affirms that:

> The covenant of marriage is instituted by God, and from it, comes the natural duty of educating children and the responsibility to preserve the other goods of marriage, for this reason, it is agreed that this covenant is to be perpetual and indissoluble, and in so far as it forms part of the sacraments of the Catholic Church, cannot be dissolved by human presumption, for the savior himself declared with his mouth, saying: what God has joined together, let not man separate: The constitution also pointed some Ecclesiastical courts, who unconsulting, broke some bonds with ease, therefore, calling for nullity, breaking the scared bond of matrimony, which remains indissoluble of which it is said, this is now bone of my bones, and flesh of my flesh, wherefore a man shall leave his father and mother, and shall cleave to his wife, and the two shall be in one flesh[65].

While Benedict indicates the duty of educating the Children that comes from the bond of marriage, and the goods in it, he also emphasizes that this bond is both perpetual and indissoluble. No one has power to prescribe any other way that would suggest its separation.

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[63] CLEMENT VIII, Instr. "*Sanctissimus"*, 30 aug.1595, §5, in P. GASPARRI, (ed.), *Codicis Iuris Canonici Fontes,* Vol.I. p.345.

[64] Cf. BENEDICTUS XIV, Epistula Encyclica *Matrimonii*, 11 apr. 1741, §1 in P. GASPARRI, (ed.), *Codicis Iuris Canonici Fontes*, Vol.1, Typis Polyglottis Vaticanis, Romae , p.677.

[65] Cf. BENEDICTUS XIV, *Constitutio Dei miseratione*, 3 Nov.1741,§1, in P. GASPARRI, (ed.), *Codicis Iuris canonici Fontes*, Vol.1, Typis Polyglottis Vaticanis, Romae 1741 , p.695.

1.7.5 Benedict XIV, Constitutio. *Etsi pastoralis*, 26 maii 1742, § VIII, n. II

Benedict XIV emphasizes that marriages between Greek spouses must in no way be allowed or tolerated to be dissolved or divorced, as regards the bond. And if they have preceded by any deed, they shall declare it null and void. Benedict was emphasizing fidelity of the Greek spouses, and being aware of their culture of polytheistic religion, and as they begun to embrace Christianity, it was of importance that they adapt slowly to a new lifestyle.

1.7.6 Benedict XIV, Epistula. "Nuper ad nos", 16 mart. 1743

The Apostolic letter, written to the Antiochiean Patriarchs, was dedicated to the profession of faith for the Maronites Catholics. Among other matters concerning the faith, "the letter affirms the in the Catholic Church, there exists seven sacraments of the new law, which are instituted by Christ our Lord for the salvation of human kind"[66]. The letter further enumerates the seven sacraments, and on marriage, as the seventh sacrament it states:

> Item Sacramenti Matrimonii vinculum indissolubile esse, et quamvis propter adulterium, haeresim, aut alias causas possit inter coniuges Thori, et cohabitationis separation fieri, non tamen illis aliud matrimonium contrahere fas esse[67].

The letter stress the teaching on the indissolubility of marriage, and bearing in mind the possibility of heresy that may arise among them, the letter sees it not right to contract another marriage.

1.7.7 Gregory XIV, Ep. Encycl. Mirari vos", 15 aug. 1832

In this Encyclical, Pope wrote on Liberalism and Religious indifferentism, reminding the Shepherds of the Church of the crisis that has fallen upon her. On the indissolubility of Christian marriage, of which the Pope cites the Letter to the Hebrews calling it 'a great

[66] BENEDICTUS XIV, Epistula *Nuper ad Nos*, 16 mart. 174,§ 5, in P. GASPARRI, (ed.), Vol.1, Typis Polyglottis Vaticanis, Romae 1743, p.786.

[67] BENEDICTUS XIV, Epistula *Nuper ad Nos*, ,§ 5, p. 786.

sacrament in Christ and the Church' (Heb 13.4.), demands a shared concern lest anything contrary to its sanctity and indissolubility is proposed"[68]. The Pope offers an affirmation despite the attacks marriage was going through stating that: "The people therefore must be zealously taught that marriage rightly entered upon cannot be dissolved, for those joined in matrimony God has ordained a perpetual companionship for life and a knot of necessity which cannot be loosed except by death"[69]. He continued to emphasize and bring to their memories that:

> Matrimony is a sacrament and therefore subject to the Church, let them consider and observe the laws of the Church concerning it[...] they should be aware that those marriages will have an unhappy end which are entered upon contrary to the discipline of the Church or without God's favor or because of concupiscence alone, with no thought of the sacrament and of the mysteries signified by it[70].

1.7.8 Pius IX Allocutio *Acerbissimum*, 27 sept. 1852

In this document, Pius IX laments of the afflicted and tormented Church in the Neogranatan Republic which has been going on for long, and of which the Apostolic See has been pursuing in securing the religious and spiritual good of the nation and trying to tighten the bond of mutual friendship, Such a concern came about because of the damage inflicted upon the Catholic religion through unjust laws, of which civil power had a great impact on the life of the faithful compromising the nature of the Church as a divine institution of which her own rights and freedom are to be safeguarded.

One of the issues that the allocution had to address is the sacrament of matrimony. The Allocution states:

> We say nothing of that other decree, by which the sacramental mystery, dignity, and sanctity of matrimony were utterly despised, and its institution and nature were totally unknown, and overthrown, and the Church in the same sacrament was utterly despised by the power of it. That marriage should be regarded as a civil contract only, and that in various cases divorce

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[68] Cf. GREGORY XVI, Littera. Encyclica. *Mirari Vos*, ,§ 12, p.237.

[69] GREGORY XVI, Ep. Encycl. *Mirari Vos*, 15. Aug. 1832, ,§ 12 in C. CARLEN, *The Papal Encyclicals* (1740- 1878) n., p.237.

[70]GREGORY XVI, Ep. Encycl. *Mirari Vos*, § 12 , p. 237.

> should be duly sanctioned, and that all matrimonial cases should be referred to lay tribunals, and by them should be judged, when no one of the Catholics is ignorant, that marriage is truly, and properly, one of the seven sacraments instituted by Christ the lord, and therefore that marriage cannot be given between the faithful without it being a sacrament at one and the same time, and therefore any other among a Christian man and a woman, apart from the sacrament, that the union of any kind, even any force of civil law, is nothing else but a vile and fatal cohabitation, so condemned by the Church, and consequently by the conjugal covenant, the sacrament can never be separated, and to look entirely to the power of the Church to decide all those things which may in any way pertain to the same marriage[71]. .

The allocution rejected all the civil laws that the council of deputies were trying to propose, of which some of the deputies and senators had already rejected, for the laws were meant to inflict new wounds upon the many grave wounds already inflicted upon the Church

1.7.9 Epistola *Verbis exprimere*, 15 aug. 1859

The letter encourages the bishops to educate the faithful in the Catholic doctrine, so that they are able to hold to it, and avoid whatever is reject by her. The focus was given specifically to the teaching of the church regarding marriage of which the Pope states :

> And, among other things, do not neglect to deliver to the faithful entrusted with you vigilance, constantly and accurately, and to emphasize the teaching of the catholic Church on the sacrament of marriage, and on the indissoluble bond of marriage. For you not to hide from anyone that, according to the teaching of the catholic Church, a faithful marriage can be dissolved before consummation by a solemn profession of one of the spouses in some approved religion, or by a canonical dispensation, which can only be granted by the roman pontiff and which is rarely indulged in except for the most serious reasons. The Church, according to evangelical and Apostolic doctrine, should clearly teach that the bond of marriage is broken because of adultery of the other spouse, or because of vexation. Cohabitation or an affected absence from the spouse, can never be dissolved, but is always firm and indissoluble, from the well-known inspired of Adam and from the words of Christ the Lord and Apostles and from the tradition of the Church, all of which you know very well. This perpetual and indissoluble firmness of the matrimonial bond, not flowing from ecclesiastical discipline, is so great in a marriage consummated, both by divine and natural law, that it can never be dissolved for any reason, not even the Roman pontiff himself, even if faith of both spouses even if conjugal life is broken by adultery.[72]

By this affirmation, the pope defends the marriage bond, and expresses that simple difficulties and challenges that may arises should not lead to a dissolution of a ratified and

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[71] PIUS IX, Allocutio "*Acerbissimum*, 27 sept. 1852, no. 2, in P. GASPARRI, (ed.), Vol. 2, MCMXXIII. 1946-1865, Typis Polyglottis Vaticanis, Romae, p.873.

[72] PIUS IX, Epistula " *Verbis exprimere*, 15 aug. 1859 , in P. GASPARRI, (ed.), *Codicis Iuris Canonici Fontes*, Vol.2, Typis Polyglottis Vaticanis, Romae, p.929.

consummated marriage, for no power can dissolve that which is dictated by both divine and natural law.

1.7.10 Syllabus *errorum, propositiones*. 1864

In writing to the Catholic Bishops of the whole world, being concerned of the sanity of the Christian souls and the doctrine of the Catholic faith because of the false doctrines spread, the Pope confronts and condemns errors that civil authority directed to the Church. Some of these "errors concern the Christian marriage, denying that marriage is raised to the dignity of sacrament, and that by nature, the marriage tie is not indissoluble, and many cases divorce properly so called may be decreed by civil authority "[73] of which the allocution *Acerbisssimum* responded to in 1852.

1.7.11 LEO XIII Epistula. *encyclica Inscrutabili Dei Consilio,* 21 apr. 1878

In this Encyclical on the evils of society, on which the battle was waged on behalf of the Church of God and the salvation of souls, the Pope claims the unique authority and right of the Church in matters concerning marriage. The state perceives marriage only as a contract and not a sacrament, and that all its effects fall under civil regulation. The Pope thus exhorts that :

> Our Lord Jesus Christ, by raising to the dignity of a sacrament the contract of matrimony, in which He would have his own union with the Church typified, not only made the marriage tie more holy, but, in addition, provided efficacious sources of aid for parents and children alike, so that, by the discharge of their duties one to another, they might with greater ease attain to happiness both in time and in eternity. But when impious laws, setting at naught the sanctity of this great sacrament, put it on the same footing of mere civil contracts, the lamentable result followed, that, outraging the dignity of Christian matrimony, citizens made use of legalized concubinage in place of marriage; husband and wife neglected their bounden duty to each other; children refused obedience and reverence to their parents; the bonds of domestic love were loosened; and alas! the worst scandal and of all the most ruinous to public morality, very frequently an unholy passion opened the door to disastrous and fatal separations[74].

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[73] PIUS IX, Littera Apostolica *Syllabus Errorum*, in P. GASPARRI, (ed.), *Codicis Iuris Canonici Fontes*, Vol.2, 8 Dec.1864, p. 1000.

[74] Cf.LEO XIII, Epistula Encyclica. *Inscrutabili Dei Consilio*, 21 apr. 1878, §14, in C. CARLEN, The Papal Encyclicals (1878- 1903) The Pierian Press, Raleigh 1990, p.9.

1.7.12 Epistula Encyclica *Arcanum*, 10 febr. 1880

This was his principal Encyclical on Christian marriage, instructing the Christians in the Truth of Christ and of his mysteries that defended the right of the Church on matrimonial matters. In narrating the biblical story of the creation of man, and later giving him a woman as the companion, the Pope states that in these two diverse persons, who have become a husband and wife, "in them is the beginning of the human race [...] and from this union of a man and woman we find a more fitting answer to the infinite wise counsels of God, of which from the very beginning is manifested chiefly two most excellent properties – deeply sealed, as it were, and signed upon it, namely, unity and perpetuity"[75]. The document further expound it as a doctrine rooted in and confirmed by the Gospel of Christ as his teaching as divine authority, through which he bore witness to the Jews and to His Apostles, "that marriage, from its institution, should exist between two only, that is, between one man and one woman, that of two they are made, so to say, one flesh, and that the marriage bond is by the will of God so closely and strongly made fast that no man may dissolve it or render it asunder"[76].

1.7.13 Allocutiones *Afferre iucundiora*, 16 dec. 1901

In this consistorial acts, Pope Leo XIII strongly writes to the faithful, cautioning them of those who propose laws of divorce, and urges them to protest against such laws that attack whatever is sacred. In this regard. He emphasizes that "the Christian matrimonial bond is holy, individual and eternal by divine law, and such a law cannot be abrogated, nor derogated from at any time by any human"[77]. The Roman Pontiff further argues that " it is a great and

[75] Cf. LEO XIII, Litt, Encycl. *Arcanum*, 10 Feb. 1880,§ 4, In C. CARLEN, *The Papal Encyclicals*, On Christian Marriages, (1878- 1903), The Pierian Press, Raleigh 1990, p.30.

[76] Cf. LEO XIII, Littera. Encyclica *Arcanum*, ,§ 4.

[77] LEO XIII, Allocutio.16 Decembris 1901, in P. GASPARRI, (ed.), *Codicis Iuris Canonici Fontes* , Vol. III, (1867-1917), Typis Polyglottis Vaticanis, MCMXXXIII, p.557.

pernicious error to ascribe Christian marriage to those things which are contracted and dissolved by civil law"[78].

> This is in fact because: The redeemer and restorer of human nature, Jesus Christ the Son of God, having destroyed the custom of divorce, restored marriage to the ancient power and system instituted by God himself from the beginning; and increased by the dignity and power of the sacrament , he exempted it from the general affairs and command of civil power, and even of ecclesiastical. Those marriage that that result in civil affairs, let the power of the republic decide about them: to proceed further. It is forbidden by the grace of God. Therefore, every law which commands divorce to be granted, commands both justices, and open with the injury of the Creator and Supreme lawgiver of God.[79]

1.8 Sacra Congregatio Sancta Officio Instructiones (ad Praef. Mission. Martinicae etc.), 6 iul. 1817

The Holy Office gave instruction on divorce by stating that :

> Divortium omne, dissolutionem coniugalis vinculi legitime contracti et confirmati, inter christianos adhuc viventes, importans, aliud no est quam ingens attentatio, sin contra ius naturale (de quo scholastici inter se dispunant), ast profecto contra ius divinum positivum scriptum, sicut perspicue S. Tridentium Concilium ostendit, (sess. 24, Doctr. De Sacr. Matr.)… immo corruptio legis est, cum supra rem divina institutione mere sacramento […][80]

The Instructions from this Holy Office was directed to judges on the matter of dissolving marriages. The judges ask for advice on how to conduct themselves with respect to judges and civil officials, who issues sentences and declaration dissolving legally contracted marriages. The judges were instructed to refrain from coercive force, and in matter of external forum, they are to use prudence and zeal, and rebuke of evil practices, and in matters of internal forum, they are to absolve those judges and their accomplices from censures as with remorse they admit faults and scandal by which they were offended[81].

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[78] LEO XIII, Allocutio. 16 Decembris 1901, in P. GASPARRI, (ed.), *Codicis Iuris Canonici Fontes* Vol. p. 557.

[79] Cf. LEO XIII Allocutio, p. 557.

[80] SACRA CONGREGATIONIS DE PROPAGANDA FIDE*: Decreta Instructiones Rescripta Pro Apostolicis Missionibus*, Vol. 1, Ex Typographia Polyglotta de S. C. De Propaganda Fide, Romae, MCMVII (1907) p. 426

[81] Cf. SACRA CONGREGATIONIS DE PROPAGANDA FIDE: *Decreta Instructiones Rescripta Pro Apostolicis Missionibus*, p.427.

1.9 Matrimonial Bond in the Period between the 1917 Code and Vatican II

During this period, XVI century, particular attention was given on the relationship between "indissolubility and sacramentality of marriage as two elements that characterize every valid marriage, which is also rooted in natural law"[82]. The post-tridentine theology assumed and reconfirmed the traditional doctrine in order not only to justify its position, but also as a common position that every marriage enjoys a certain natural indissolubility, but the absolute indissolubility the solely enjoyed by a ratified and consummated marriage[83]. Can. 1013 § 2 of the CIC/1917 upheld this traditional doctrine which in CIC/1983, specifically can. 1057 §2 remained as a fundamental canon adding unity as an essential property to affirm the natural indissolubility. Unity and indissolubility are therefore the essential properties of marriage that renders marriage stable and firm in relation to sacramentality. With these two properties, marriage is given a juridical character as a *foedus irrevocabile.*

1.10 Teaching of Vatican II on the Matrimonial Bond: *Gaudium et Spes* n. 48 and *Lumen Gentium*

Gaudium et Spes introduced a new concept of *intima communitas vitae et amoris coniugalis* which the spouses establish among themselves as a conjugal pact (*foedus coniugii*) to define marriage, as an irrevocable personal consent. This consent, which is personal and a human act is what brings about *the matrimonium in fieri,* which is an act that constitutes the union and relationship between the spouses, which is the *matrimonium in facto esse*[84]. The post conciliar document emphasizes the exclusive nature of the matrimonial bond that comes about through an irrevocable personal consent that the two parties establish. From this consent, arises a bond between a man and woman that constitute the as an intimate community of life and love for the whole life *(totius vitae consortium*), as a reality founded

[82] L.SABBARESE, *Il Matrimonio Canonico nell'Ordine della Natura e della Grazia,* p.126.
[83] L.SABBARESE, *Il Matrimonio Canonico nell'Ordine della Natura e della Grazia,* p.126.
[84] G. GHIRLANDA, *Il Diritto nella Chiesa Mystero di Communione,* p. 422.

by the Creator and structured with irrevocable laws, making it an institution established by divine law[85], which is ordained to the good of the spouses and procreation and education of offspring, which exists between the baptized as a sacrament.

1.11 Teaching of the Church on Matrimonial Bond after Vatican II and in the 1983 Code

The Church, after Vatican II has taken upon herself the responsibility to deepen the catholic doctrine on marriage both on the theological and juridical level on its nature by engaging in a deep study on the conjugal reality, especially on sacramental theology. Most of the theological and doctrinal principles came about as a result of Vatican II. The council has reshaped and enriched both the pastoral and juridical approach of the Church on marriage. As Mendonca has observed, "one of the areas of the ecclesiastical legislation which has undergone pastorally and juridically meaningful changes is the law on marriage contained in the Code of Canon Law of 1983"[86]. The two sources, namely, Vatican II and the 1983 Code tried to capture three major themes which are the goods of marriage, the two essential properties of marriage and ultimately, the ends and purposes of marriage and their historical development until this day"[87]. Vatican II offers a theological understanding of marriage as a sacrament, specifically through its through its Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes* of which the 1983 Code drew its juridical reality. In this important ecclesial documents, "marriage is not seen only as a natural institution but as a sacrament in the service of communion and holiness"[88]. From the biblical foundation to the

[85] G. GHIRLANDA, *Il Diritto nella Chiesa Mistero di Communione*, p. 423.

[86] A. MENDOCA, "*The Theological and Juridical aspects of Marriage*", *in Studia Canonica*, Vol.22., 2(1988),p. 265.

[87] R. FASTIGGI, *The Ends of Marriage according to the 1917 and the 1983 Codes of Canon Law in light of Vatican II*. Antiphon: A Journal for Liturgical Renewal, Vol. 18, no.1, 2014, The Catholic University of America Press, p.1.

[88] R. FASTIGGI, *The Ends of Marriage according to the 1917 and the 1983 Codes of Canon Law in light of Vatican II*, p.1.

Church fathers, Vatican II tried to build on these historical evolution in order to emphasis that marriage is a communion of love willed by God for the *tria bona*.

Conclusion

Although marriage is an institution that belongs to the natural order, rooted in that existential reality that human beings are relational beings by nature, and by their differences, complement each other for the purpose of continuing the human race, it is also an institution that is rooted in the mind of the Creator (*Gen 1: 26-28*), and He endows it with laws that regulate it in order to reflect a more different reality of His creation (*Gen 1:27,2:24, Mk 10:7, Mt 19: 5-6*). Human beings, who exist in their differences not only of sex, but of their mutual help, participate and cooperate with the Creator in order to bring His plan to fruition. It is for this reason that marriage is not only to be perceived as a human natural institution, but a divine institution. It finds itself in both the natural order and the grace of which the bond established constitute an inseparable permanent character, that between the baptized exits as a sacrament.

The Church, through her wise leaders offered a teaching, that stands as a guide to all her children in order not only to understand the concept of marriage, but to profoundly embrace it as an institution that God has given to humanity as a beautiful vocation to whom they are called.

Can 330 as it appears in the first draft on the effects of marriage, taken from the CIC/1917 can. 1110, states that from the strong and valid marriage there arises between the spouses a bond which by its nature is permanent and exclusive; Christian marriage also

CHAPTER TWO

THE JURIDICAL ANALYSIS OF CANON 1134 ON THE MATRIMONIAL BOND AS EFFECT OF A VALID MARRIAGE STRENGTHENING AND CONSECRATING THE SPOUSES FOR THE DUTIES AND DIGNITY OF THEIR STATE

Introduction

The chapter is dedicated to the effects that arise from a valid matrimonial bond. This matrimonial bond only arise from a validly exchanged consent, producing thereafter, the rights and duties of the spouses. The canon finds a link with other canons that are related to it in order to present a complete study of this chapter. The canon serves as a foundation to the understanding of a juridical effect of a valid marriage. For this reasons, the juridical analysis of this canon will help explore all the juridical principles, formation, context and the interpretation as well as the application of it within a canonical scope.

The canon under study deals particularly with the marriage bond and its juridic effects. Its special focus is on perpetuity and exclusivity of this bond, and by extension, the properties of marriage. These effects are important in protecting the dignity of marriage. It also presents the essential juridical aspects that are attached to this bond. As Beal notes, "while the first sentence of this canon speaks of all marriages, natural and sacramental, the second sentence speaks only of sacramental marriages, that is, those between the baptized persons"[89]. The study of the canon shall be achieved by tracing its sources, its formation, until its final form in the CIC/1983. Other related and supportive canons shall also be discussed, and finally, a comparative study of canons from the *Codex Canonum Ecclesiarum Orientalium* (CCEO) that are related to this canon.

[89] J.P.BEAL, *et al.*, (ed.), *New commentary on the Code of Canon Law*, Theological publications in India, Bangalore 2010, p. 1356.

2.1 Sources of Canon 1134

Canon 1134 of CIC/1983 addresses the effects of the marriage bond that arise between the Christian spouses from a validly contracted marriage, focusing on perpetual and exclusive nature of such a bond. This bond among the baptized, is considered to be a sacrament through which the Christian spouses are consecrated for their rights and duties of the spouses for their mutual relationship. "The spouses establish between themselves a conjugal covenant, or agreement. Free from any defect as a man and woman which will be a continuation of a lifelong commitment that establishes a reality of *matrimonium in facto esse*, the formal principle of which distinguishes marriage from other relationships that appear similar" [90].

The sources of canon 1134 are canon 1110 of the 1917 Code and the documents of the Second Vatican Councils : *Lumen Gentium* 41, *Gaudium et Spes* 48 and the Encyclical Letter of Paul VI , *Humanae Vitae* 25. Many authors have contributed to the "deepening and knowledge of the institution of marriage, from its natural dignity to the sacred value of the conjugal state as an inseparable bond that exist between the baptized"[91]. Those who are consecrated in this state are to carry out their special duty through which they safeguard the dignity of this institution.

2.1.1 The Juridical Effects of Marriage (Can 1110/ CIC 1917)

Canon 1110 of the CIC 1917 states from a valid marriage there arises between the spouse a bond that by its nature is perpetual and exclusive; moreover, Christian marriage confers grace on the spouses who do not oppose it. The canon, in the first part talks of marriage in general, by which the spouses are bound together by a perpetual and exclusive bond. The second part of the canon focuses on Christian marriage, that is, between the

[90] J. FORNE´S *et al.,* (eds.), *Exegetical Commentary on the Code of Canon Law*, Vol. III, Wilson & Lafleur, Montreal, 2004, p.1523.

[91] L. SABBARESE, *Il matrimonio canonico nell'ordine della natura e della grazia*, p.7.

baptized, by which upon the spouses is conferred grace. It is in this new reality that marriage acquire both a natural character and a sacramental grace giving it a new and special dignity of being permanent. By this fact, "other realities that express themselves as marriages, especially that of polygamy and divorce are abolished making it exclusive and permanent" [92].

2.1.2 Christian Couples, Christian Parents and their Call to Holiness (*Lumen Gentium* n. 41)

Article 41 of *Lumen Gentium* "examines the variety of forms in which the one Christian holiness is embodied"[93]. This means that a call to holiness is one, lived in different forms to which the Christian people are called according to the measure of grace given. "Since there is only one kind of Christian life, by which there is an inward road that lead a Christian to his or her salvation, this all depends on the gift of the Holy spirit and grace"[94].

Holiness is a Christian vocation that is rooted in fulfilling the will of God who is the source of holiness, and who alone is holy. "Through the universal call to holiness, each member of the Christ faithful has received the gift of grace necessary to pursue holiness by fulfilling the duties demanded by his status of life"[95]. The holiness of the Christian couples is particularly realized in the fidelity to mutual love. By living out their marital life with fidelity, raising children and educating them in both moral and social virtues and serving society with their daily labor, they pursue holiness in these ordinary commitments.

Christian Couples and Christian parents serve as sentinels for Christian virtues, and their role in promoting holiness is equally essential. They witness to holiness in the ambit of their homes and families contribute significantly to the holiness of the Church, and eventually

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[92] Cf. S. WOYWOD, *A Practical Commentary on the Code of Canon Law*, Vol. 1. Joseph F. Wagner Inc, New York 1948, p. 797.

[93] H. VORGRIMLER, *et al.*, (eds.), *Commentary on the documents of Vatican II*, Vol.1, Herder and Herder, New York 1967, p.267.

[94] H. VORGRIMLER *et al*., (eds.), *Commentary on the documents of Vatican II*, p.267.

[95] Cf. D.J. CASTELLANO, *Commentary on Lumen Gentium*, Independent Publishing Platform , New York 2011, p.102.

leads to the sanctification and salvation of mankind. Christian families are places where the initial Christian life begins.

The dogmatic constitution *Lumen Gentium* makes an exposition of the nature and mission of the Church in the world. In number 41 specifically, it enumerates the various charisms that Christian faithful embrace in accord with their status, namely; the laity, the clergy and the religious. Through their nuptial union, the Christian couple receive a special charism from the Holy Spirit. This charism is to promote the life of holiness and bear witness to the life of their children. "In following their proper path to holiness by the faithful love, they are to sustain one another in grace through the entire length of their lives"[96]. As they engage in the responsibilities and duties that are proper to their state, "they render a generous love; build up a culture of charity among other people, especially by imparting Christian doctrines and evangelical virtues to their offspring and are witnesses and cooperators in the life of the Church to which Christ as a Bride, has given his love"[97]. In doing this therefore, they contribute to their holiness and that of others.

2.1.3 Marriage as a Conjugal Covenant of Irrevocable Personal Consent (*Gaudium et Spes n. 48)*

The Second Vatican Council saw the question of marriage and family as one of the urgent concerns that the Church and society face. *Gaudium et Spes* treats "the subject of marriage in Chapter one, of which six articles numbered 47-52 are dedicated to it"[98]. The document therefore gave priority of marriage as a subject to be approached in dealing with the problems facing the world, for the reason that marriage gives rise to family which is the basic unit of society.

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[96] Cf. SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen Gentium*, 21 November 1964, in *AAS* 57 (1965) no.41. pp.5-75.

[97] *Lumen Gentium*, n.41.

[98] B. KILLEEN., *What brings a marriage into existence: A historical re-examination of the Canon Law of the Latin Church*, University of Scranton Press, London 2010, p. 268.

Gaudium et Spes, a Pastoral Constitution of the Church in the modern world was the document that embarked upon the question of marriage in part two, presenting its nature in n. 48, by which multiple values which characterize the conjugal love of the spouses are enumerated. This article will be the focus in this subtopic. On marriage and family, the document reinforces that marriage is a permanent covenant rooted in conjugal covenant of irrevocable personal consent[99]. For this reason, the permanence of marriage contributes in a good way to the health of society. *Casti Connubi* states:

> Thus a man and a woman, who by their compact of conjugal love "are no longer two, but one flesh" (Matt. 19), render mutual help and service to each other through an intimate union of their persons and of their actions. Through this union they experience the meaning of their oneness and attain to it with growing perfection day by day. As a mutual gift of two persons, this intimate union and the good of the children impose total fidelity on the spouses and argue for an unbreakable oneness between them[100].

In promoting the dignity of marriage and family, *Gaudium et Spes* talks of the multiple benefits, of which God has enriched the institution of marriage. These are the benefits of children (*bonum prolis*) which is realized through the generation of education of the children, the benefit of fidelity (*bonum fidei*) and the benefit of the sacrament and indissolubility (*bonum sacramenti*).

Article 48 of the document focuses on the sanctity of marriage and family. "Marriage as a divine institution is rooted in the covenant (*foedus*) of the couple, and brought into existence by their irrevocable consent through which they surrender themselves to each other for their own good, children and society"[101]. This means that the covenant established by the spouses through the manifestation of the consent also gives rise to the rights and duties proper to it. Consent emerges from the will of the parties, and it is irrevocable by nature because it establishes a covenant that reflects the divine origin of the institution of which God

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[99]Cf. *Gaudium et Spes*, n.48.

[100] Cf. PIO XI, Lett. enc. *Casti Connubii*, 31 dic. in *AAS* 22, (1930), pp. 546-547.

[101] B. KILLEEN., *What brings a marriage into existence: A historical re-examination of the Canon Law of the Latin Church*, p. 269.

is the source. In this sense, both the divine element (covenant) and human element (irrevocable consent) find embrace. The article further goes on to state that, "God is the author of marriage, and he continues to pour out his blessings upon married couples. He has given marriage various benefits and ends"[102]. The couples, through the bond of love to which they are united, participated in God's love, reflecting Christ's bond of love with his Church. This is not, however, to give an impression that once love ceases, marriage also ceases, but rather, marriage alludes to that unbreakable bond, which is indissoluble, perpetual and exclusive; between a man and a woman. *Gaudium et Spes*, as the Conciliar document that treated marriage, focused on "love as an important element at the center of marriage and sees marriage as a community of love ((*communitas amoris)*"[103]. The spouses are called to share in the love of God, and that of Christ and his Church through the intimate sharing of their marital life and love. The parties consent to a permanent and exclusive exchange of personal and conjugal complementary life, making the reciprocal gift of themselves as the very object of the matrimonial consent, through their personal will (*sese tradere et acceptare*).

2.1.4 Christian Couples (*Humanae Vitae* n. 25)

Paul VI in his encyclical addresses matters concerning human life, and specifically on regulating birth, directed to Christian spouses who are called in a special way to serve God in marriage. In this regard, "the church see it as her responsibility in proclaiming the exigencies of divine law, and through it, announces salvation, and through the sacraments open ways of salvation, which makes man a new creature, capable to correspond in love and in true freedom to the designs of his Creator and Savior [...]"[104]. Article 25, paragraph one of this Encyclical reminds "the Christian husbands and wives of their vocation to Christian life,

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[102] B. KILLEEN., *What brings a marriage into existence: A historical re-examination of the Canon Law of the Latin Church*, p. 271.

[103] *Sacrosanctum*, p.753

[104] Cf. PAUL VI, Encyclical Letter *Humanae Vitae*, in *EV*(1968-1970), (*a cura di)* Erminio Lora, Documento Ufficiali della Santa Sede, Edizioni Dehoniane Bologna, Bologna 1977, p.311.

avocation derived from baptism, which has been confirmed anew and made more explicit by the sacrament of matrimony"[105]. The article further explains that "by this sacrament, they are strengthened and, one might almost say, consecrated to the faithful fulfillment of their duties"[106]. In this sense, they realize to the full their calling and bears witness as becomes them, to Christ before the world. They are to assume "the task of making visible to men and women the holiness and joy of the law which united inseparably their love for one another and the cooperation they give to God's love"[107] [...].

2.2 Formation of Canon 1134

During the moment of the revision of the Code, the canon of study was handled by the *Coetus De matrimonio*. The study was first discussed by the mentioned *coetus* in the XIII session which was held between the 24th to the 29th of May 1971.during this session, the question of the effects of marriage was discussed.

2.2.1 *Coetus De matrimonio, Sessio* XIII (24-29 mai 1971) can.1110

The canon under study was first discussed on the 24th to the 29th by the c*oetus De matrimonio*. the canon in question was presented as canon 1110, which stated that from the valid marriage arises a bond that is perpetual and exclusive, upon which, for Christian marriage is conferred grace. The formulation of the canon goes as follows:

The discussion begun with the Relator intending to suppress can.1110, for the reason that it appeared tautological; specifically the part that said "*ex valido matrimonio (in fieri) oritur validum matrimonio (in facto esse)*"[108]. However, several consultors wanted to retain the canon, "*matrimonio, prae ceteris sacramentis, est institutum naturae et ideo bene est ut*

[105] *Humanae Vitae* n.25.
[106] *Humanae Vitae* n.25.
[107] PAUL VI, Encyclical letter on the regulation of birth, *Humanae Vitae*, 1 January 1968, n.25, Libreria Editrice Vaticana, Città del Vaticano 1968.
[108] COETUS DE MATRIMONIO, *Communicationes* 34 (2002), p.110.

declarentur quinam sint ipsius effectus"[109], before other sacraments, is an institution of nature and therefore it is good that they should declare what are its effects. The debate of the comma was that it was contained in other canons implicitly, while in the canon debated it is explicitly placed. The debate also focused on the theological and pastoral reasons, of which it was noted that the canon is not so much of theological importance but rather of juridical character. The voting took place on whether to retain the canon, and the outcome was six in favor, and one did not vote in favor.

The *coetus* was also to vote on the effect of the concept in can.1013 "*id est enascitur inter coniuges intima totius vitae coniuctio natura sua perpetua et exclusiva*, instead of *vinculum natura sua etc*..., the result was one in favor and eight not in favor"[110].

The other paragraph discussed the reality of the Christian sacrament of which grace is conferred: *matrimonium christianum confert paeterea sacramentalem gratiam qua coniuges ad sui status officia et dignitatem roborantur et veluti consecrantur.*

2.2.2 Synthesis on *Schema Canonum*

The Schema discussed the effects of a valid marriage bond of which it is established between the spouses, that is by its nature permanent and exclusive. "The observation was however made that the wording of the can.1110 is already contained in other canons; namely, cann. 1013§§ 1-2, 1081; and 1086, §2."[111]. Another observation was "the tautology that appeared in the statemet *ex valid matrimonio enascere validum matrimonium"*[112]. There was also a notable exception in the law contained in the second paragraph that treats Christian marriages: "*matrimonium praeterea Christianum coniugibus non ponentibus obicem gratiam*

[109] COETUS DE MATRIMONIO, C*ommunicationes* 34 (2002), p.110.
[110] COETUS DE MATRIMONIO, *Communicationes* 5 (1973) p.75.
[111] COETUS DE MATRIMONIO, *Communicationes* 5 (1973) p.75.
[112] COETUS DE MATRIMONIO, *Communicationes* 5 (1973) p.75.

confert"[113]. The exception made a difference between a merely natural marriage and a sacramental marriage contracted by Christians. Christian marriage confers grace to those who do not put an obstacle, giving therefore a theological effect of conferring grace, something which was not explained on other sacraments. The substance of can.1110 was retained, with the justification that: *matrimonium enim prae ceteris sacraments est institutum naturae ideo que convenit declarare quinam sint ipsius effectus*[114]. This also justified why the canon had to state explicitly what was implicitly in the canons mentioned above and point out clearly not soo much of theological and pastoral elements, but the juridical effect.

What was eventually retained was the wording: *ex valido matrimonio enascitur inter coniuges vinculum natura sua perpetuum et exclusivum; matrimonium christianum confert praeterea sacramentalem gratiam qua coniuges ad sui status officia et dignitatem roborantur et veluti consecrantur*[115].

2.2.3 Schema Canonum De *Sacramentis* 330 (CIC 1110)

This schema was the first draft that was sent for consultation to the whole world, including episcopal conferences, bishops, superiors and major universities on the 2nd of February 1975. The canon read as follows:

> Ex valido matrimonio enascitur inter coniuges vinculum natura sua perpetuum et excluivum; matrimonium christianum confert praeterea sacramentalem gratiam qua coniuges ad sui status officia et dignitatem roborantur et veluti consecrantur*"*[116].

[113] COETUS DE MATRIMONIO, *Communicationes* 5(1973)p.75.
[114] COETUS DE MATRIMONIO, C*ommunicationes* 5 (1973) p.75.
[115] COETUS DE MATRIMONIO, *Communicationes* 5 (1973) p.75.
[116] PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCEDO, *Schema Documenti Pontificii quo disciplina De sacramentis recognoscitur*, Typis Polyglottis Vaticanis MCMLXXV, Romae 1975, p.88.

2.2.4 Coetus De Matrimonii Sessio altera

After the consultation, the session that came after, to discuss what was proposed by various bodies is called *sessio altera*. The canon was discussed in *sessio altera*, session IV held between 17th -21st October 1977.

2.2.5 Coetus de Matrimonio, sessio altera, sessio IV 17-21 Oct. 1971 can. 330 (CIC 1110)

After the consultations, the session that came after to discuss what was proposed by various bodies is called the *sessio altera* which was discussed between the 17th -21st October 1977.

Two proposals were made by study groups, the first was to suppress the canon on two basis. First, "because it contained the doctrinal values only and not soo much juridical, and secondly, that same material is already treated in the preceding canons"[117] . The second proposal came from one of the consultants who admitted that the canon is in fact doctrinal, but since it enumerates the effects of which are important to marriage; on whether the canon is to be deleted, the enumeration of the effects which occurs in the following canons will be truncated of which other consultants had them same feeling"[118] .

It was proposed that the canon should be changed in this way: From a valid conjugal agreement is it born, rather than from a valid matrimonial bond, a proposal which was considered to be more clearly understood about the marriage to be made. The majority of the consultants did not like the suggestion. The vote was: 2 in favor, 4 did not like it, 1 abstained.

Another part of the canon which was part of the discussions proceedings of the commission was the wording sacramental grace of marriage, of which, some suggested that it be deleted in order to avoid superfluous doctrinal determination in the law; others, however,

[117] Cf. *Communicationes* 10 (1978), 104.
[118] Cf. *Communicationes* 10 (1978), 104.

demanded that the wordings be completed more by the addition of the words "not placing an obstacle". Finally, others said that another part of the canon should be redacted in a different way, otherwise one might think that in the first part of the canon marriage in general is being dealt with, while in another part it is about marriage of the Christians.

The consultants, paying attention to these suggestions, considered that the difficulties can be solved if the words of the Dogmatic Constitution *Gaudium et Spes*, n.48 are used more precisely. After a short discussion, the second part of the canon is thus reduced: "moreover", in Christian marriage, the spouses are strengthened and, as it were, consecrated, to the duties and dignity of their state by a special sacrament.

The *Sessio* dealt with many topics of which some canons were added to different topics, but for this discussion, we focus on the effects of marriage presented in chapter IX. During the debate on the canon, the *coetus de matrimonii* proposed that:

> that the canon be suppressed for reason that it had only a doctrinal value for the time being or because it was already contained in other previous canons, but one of the consultant, while acknowledging the doctrinal value, has however pointed out that the canon also enumerated the effect, something that is important of marriage, this therefore, would mean that if the canon were to be deleted, such effects would be completely truncated. This point was supported by other consultants[119] .

The change to the canon was proposed to appear as follows: "*Ex valido pacto coniugali enascitur*....,"[120] , to mean that marriage is born out of a valid conjugal agreement or contract. This suggestion was however, not accepted by the majority of consultants. The outcome was that two liked it, four did not like it and one abstained.

The another point discussed was "the words "*natura sua*" of which others suggested that they should be deleted, but other consultant did not go for the idea of deleting them, since

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[119] Cf. COETUS DE MATRIMONIO, *Sessio altera, sessio IV (dd.17-21 Oct. a.1971),* in *Communicationes* 10 (1978),104.

[120] Cf. COETUS DE MATRIMONIO, *Sessio altera, sessio IV (dd.17-21 Oct. a.1971),* in *Communicationes* 10 (1978),104

they are also found in the CIC, which would give an impression of deciding the question of prejudging it"[121]. The other part of the debate focused on

> The sacramental grace, of which, some have suggested that it be completely deleted in order to avoid superfluous doctrinal determinations in law, others, however demanded that it should be completed by the addition of the words: "*non ponentibus obcem*" (not placing an obstacle), others, finally, said that another part of the canon should be redacted in a different way, in order not to give an impression that in the first part of the canon, marriage is dealt with in general, while in another part, the canon deals with marriage of Christians[122].

Finally, the consultants, paying attention to these suggestions, considered that the difficulties can be solved if the words of the Council (cf. *Gaudium et Spes* n.48) are used more precisely. There was a short discussion, after which, the second part of the canon was reduced to: *in matrimonio praeterea christiano coniuges ad sui status officia et dignitatem peculiari sacramento roborantur et veluti consecrantur.*

2.2.6 1980 *Schema Codicis* can.1088

In the 1980 *Schema Codicis* this canon was drafted as canon 1088, and it read as follows:

> Ex valido matrimonio enascitur inter coniuges vinculum natura sua perpetuum et exclusivum; in matrimonio prraeterea christiano coniuges ad sui status officia et dignitatem peculiari sacramento roborantur et veluti consecrantur.

In the plenary session that discussed the Schema, the focus on the synthesis of the observations proposed by the commission and the response from the secretariat of the consultants. Therefore, the plenary presented all the four questions of the material of marriage.

In the *Schema Codicis* of 1981, which was discussed in the Plenary 480-485, produced a now revised canon which incorporated the changes made in the proceedings of the Commission. In the Schema, the number of the canon has changes as well, it is now can.1088. the wording *"matrimonium christianum confert praeterea sacramentalem gratia*

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[121] Cf. COETUS DE MATRIMONIO, *Sessio altera, sessio IV (dd.17-21 Oct. a.1971),* in *Communicationes* 10 (1978),104-105.

[122] Cf. COETUS DE MATRIMONIO, *Sessio altera, sessio IV (dd.17-21 Oct. a.1971),* in *Communicationes* 10 (1978),105.

qua disappeared in this canon, and is now replaced with a shorter wording *matrimonio praeterea christiano [...]*. Another change was the addition of the words *peculiari sacramento*. It can therefore be observed that the change only affected the second part of the canon that deals with Christian marriages. The first part on marriage as a natural institution remains unaffected.

2.2.7 1982 *Schema novissimum* can. 1134

In the 1982 *Schema novissimum* which was forwarded to the Holy Father, the canon changed from canon 1088 to canon 1134, which now read as follows:

> Ex valido matrimonio enascitur inter coniuges vinclum natura sua perpetuum et exclusivum; in matrimonio praeterea christiano coniuges ad sui status officia et dignitatem peculiari sacramento roborantur et veluti consecrantur[123].

In the 1982 Schema, the Commission did not change the wording of the canon, only the number of the canon changed to *Codicis* 1134.

2.2.8 The Promulgated Text of Can. 1134 of the 1983 Code

The CIC/1983 was finally promulgated with the same wording as in the 1982 Schema as:

> *"Ex valido matrimonio enascitur inter coniuges vinculum natura sua perpetuum et exclusivum; in matrimonio praeterea christiano coniuges ad sui status officia et dignitatem peculiari sacramento roborantur et veluti consecrantur"*[124].

The canon did not change, from that of the *Schema novissimum*.

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[123] PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, CODEX IURIS CANONICI , SCHEMA NOVISSIMUM, *post consultationem S.R.E Cardinalium, Episcoporum conferentiarumtiarum, Dicasteriorum Curiae Curiae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutorum vitae consecratae recognitum, iuxta placita Patrum Commissionis deinde emendatum. atque SUMMO PONTIFICI praesentatum*, Libreria Editrice Vaticana, Civitate Vaticana, 25 martii 1982, can.1134, p. 202.

[124] COETUS DE MATRIMONII, in E.N. PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, Wilson and Lafluer Limitee, Montreal 2010, p. 1013.

2.3 Exegetical Analysis of Canon 1134

Canon 1134 deals with the effects of a matrimonial bond that are considered to be essential and constitute a valid marriage. "This bond, which is by its nature perpetual and exclusive, recalls the properties of marriage enumerated in can.1056"[125]. established by the spouses is considered to be perpetual and exclusive, born from a validly manifested consent by those who are considered legally capable. Since it captures a broader spectrum, some canons are also considered related to it in order to offer a more comprehensive analysis.

2.3.1 A Valid Marriage

The canon gives an exposition of what constitutes a valid marriage. The valid marriage is brought about by a man and a woman, through their mutual consent, who establish between themselves a partnership of the life, which is ordered by its nature to the good of the spouses and the procreation and education of offspring (can.1055). In this sense, a valid marriage is that which is contracted with the reason of establishing a community of life between the spouses. For it to be properly called a valid marriage, it has to be brought about by a validly manifested consent by qualified persons, of which no human power can supply this consent (can.1057). Once the consent is given, with the intention of establishing a community of life and love, the marriage is considered indissoluble and the doctrine of inseparability applies. "Once matrimonial consent has been formulated in the mind and exchanged externally using the prescribed form, there is a valid marriage"[126]. This valid marriage brought about by the exchange of consent gives rise to juridical consequences that are proper to marriage.

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[125] J.P. BEAL., *et al*, (ed.,) *New commentary of the Code of Canon Law*, Theological Publication in India, Bangalore 2010, p.1356.

[126] B. KILLEEN., *What brings a marriage into existence? An Historical re-examination of the Canon Law of the Latin Church*, .p.413.

2.3.2 The Nature of Matrimonial bond (Perpetual and Exclusive)

By its very nature, marriage is understood to be a union between two persons, who through their validly exchanged consent, establishes a community of the whole life. Orsy described it as "the act of initial commitment, the exchange of promises, the very act of creating a lifelong right and duty situation, natural and sacramental"[127]. Therefore, marriage comes into existence through the exchange of promises which is considered as *matrimonium in fieri*. A matrimonial bond has three elements proper to it; the natural element that man and woman are called to live together, and the sacramental element that enforces a redemptive act of Christ. This components are all expressed in can. 1055. Orsy further emphasized that:

> The difference between the natural and sacramental marriage is the effects they produce of which can.1056 makes reference to unity which also entails exclusiveness, that marriage is between a man and one woman, therefore, monogamous, and indissolubility, which refers to the perpetual nature of marriage that excludes the possibility of dissolution, and therefore, creating a particular firmness in Christian union[128].

By the bond, "it is meant that in each partner, a set of new obligations arises"[129]. This therefore means that, "the spouses through their mutual commitment to each other, give a new orientation to their life. They choose the values that marriage represents and they make their decisions and direct their actions accordingly"[130]. Therefore, from their commitment and decisions, there arises their duties and rights as well. They all pursue those things that bind them together and promote and protect the bond established.

The bond is considered perpetual, "referring to its firmness that expresses a totality within the context of human relationships. By perpetuity is excluded terms of years and

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[127] L. ORSY, *Marriage in canon law: Text and comments, Reflection and questions*, Dominican Publication, Dublin 1988, p.202.

[128] Cf. L. ORSY, *Marriage in canon law: Text and comments, Reflection and questions*, pp.202-203.

[129] L. ORSY, *Marriage in canon law: Text and comments, Reflection and questions*, p.203.

[130] L. ORSY, *Marriage in canon law: Text and comments, Reflection and questions*, p.203.

conditioned permanence based on some future things"[131]. The party should intent to stay together form the time they contract their marriage.

The bond is also considered to be exclusive, excluding a situation where one person is bound to several persons creating several unions simultaneously as either referred to as polygamy or polyandry. This reality would give rise to "a situation where a new marriage is contracted while the bond of the previous one is still in existence"[132]. Orsy further states that: "a total commitment for life, as marriage requires it, can be only to one person; apart from any other reason, our human nature is too limited to carry more than one relationship with the intensity that true marriage demands"[133].

2.3.3 Sacramental Character of Christian Marriage

Canon 1055 introduces the concept of marriage in a descriptive form. It singled out two elements, that of contract and that of sacrament. Orsy observed that " in the sacrament the secular and the temporal meet the sacred and the eternal"[134]. As a sacrament therefore, marriage is considered to be an institution ordered by God. The spouses are strengthened by the special grace received in the sacrament.

Paragraph one of this can.1055 focuses on the nature of marriage and it reads: The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized, while paragraph two of the same canon focuses on the sacramentality of marriage:. For this reason, a valid matrimonial contract cannot exist between the baptized without it being by that fact a sacrament (can. 1055,§ 2). The paragraph

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[131] L. ORSY, *Marriage in canon law: Text and comments, Reflection and questions*, p.204
[132] L. ORSY, *Marriage in canon law: Text and comments, Reflection and questions*, p.205.
[133] L. ORSY, *Marriage in canon law: Text and comments, Reflection and questions*, p.205.
[134]L. ORSY, *Marriage in canon law: Text and comments, Reflection and questions*, p.205.

of this canon is drawn from the teaching of the Second Vatican Council, particularly paragraph 48 of *Gaudium et Spes* that reads: Matrimonial covenant, by which a man and woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized [...][135].

Paolo Bianchi observed that "marriage is unique, there does not exist objectively two models of marriage with essential requisite, and therefore *ad validitatem*, diverse from one and the other: one on the level of creation (for the non-baptized) and the one on the level of redemption (for the baptized)"[136]. This therefore, means that there is a relationship between the natural and supernatural order, for as a sacrament, it already belongs to the economy of creation. For this reason, paragraph two of canon 1055 makes this reality of a contract-sacrament evident of which paragraph one qualifies it to have been raised by Christ the Lord to the dignity of the sacrament between the baptized. The element of the dignity of the sacrament is considered only as a state or quality but not so much of an essential element. M. A Ortiz observed that "the dignity of the sacrament is not a quality that marriage has, however, it is an aspect, a dimension of that which marriage is; therefore, ultimately coherent with its essence"[137].

Velasio de Paolis commended on these two dimensions by stating that the natural reality (*foedus*) and supernatural (*sacramentum*) are profoundly inseparable to the point that between the baptized there cannot exist a valid marriage that cannot be a sacrament[138]. He further stated that, "the two realities meet of the *foedus* and sacrament meet in the same

[135] VATICAN COUNCIL II, Pastoral Constitution *Gaudium et Spes*, December 7, 1965, *AAS* 58 (1966), 1025-1115, n. 48.

[136] Cf. P. BIANCHI., " Esclusione della sacramentalita del matrimonio: Aspetti sostanziali e probatori", in *Ephemerides Iuris Canonici*, 53 (2013), pp.55-78.

[137] Cf. M.A. ORTIZ, "L'esclusione della dignità sacramentale: La retta intenzione e la disposizione per credere", 17 Giugno 2010, Vol. 22, n.1, in *Ius Ecclesiae* (2010), pp.122-124.

[138] Cf.V. PAOLIS, "Fede e matrimonio – foedus e sacramento": L'allocuzione del Papa Benedetto XVI alla Rota Romana, 26 Gennaio 2013, *in Periodica* 106 (2017), pp.269-300.

reality and strengthen each other in an indivisible manner, at the point that the one and the other cannot be considered separable, when dealing with marriage between the baptized"[139]. The Roman Pontiff further stated that " this natural reality acquires in faith a certain firmness more profound and significant, for the fact that between the baptized, the natural reality is elevated to the dignity of the sacrament"[140]. There arose the doctrine of inseparability which explains how the two dimensions are related to one another, and therefore, their application to marriage and yet their difference. Pope Benedict observed that "the Code of Canon Law calls marriage a *foedus,* the vocabulary that designates the natural reality of marriage, as an irrevocable covenant between a man and a woman. It is the reciprocal entrusting to one another, in fact, it is non- renounceable basis of every pact or covenant"[141]. It is also of importance to discuss how the two elements can be reflected in the reality of different kinds of marriages since canon 1055, §1 gives a general nature of marriage, indicating the different kinds of marriages that could exist.

The first one is *Matrimonuim Sacrum* which is a Sacred marriage that is contracted between both unbaptized persons. Although this marriage is not sacramental, it however has got natural effects and therefore, is considered to be a legitimate marriage according to can.1143, §1. According to this canon, this marriage, since it is not a sacrament, can be dissolved by means of the Pauline privilege in the favor the faith of the party who has received baptism by the very fact that a new marriage is contracted by the same party, provided that the non-baptized party departs. In this regard, this type of marriage also applies to a marriage between one baptized partner and the other unbaptized, it merely carries natural effects.

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[139] Cf.V. PAOLIS, "Fede e matrimonio – foedus e sacramento": L'allocuzione del Papa Benedetto XVI, p.274.

[140] Cf.V. PAOLIS, "Fede e matrimonio – *foedus* e sacramento": L'allocuzione del Papa Benedetto XVI, p.275.

[141] Cf. BENEDETTO XVI, Discorso alla Rota Romana, 26 gennaio 2013 (cf. nt. 7), n. 1

The second type of marriage is *Matrimonium Sacramentum tantum*, which is considered to be a sacramental marriage as such. This is a matrimonial covenant between baptized persons celebrated in the ritual Church without canonical form. This type of marriage is sanctioned by can.1127. to this type of marriage is also linked those civil marriages celebrated by a civil registrar considered as a contract in can.1055, §2. This type of marriage is considered as a material sacrament.

The third type of marriage is the *Matrimonium canonicum,* this is a canonical marriage celebrated *coram Ecclesia* with the prescribed canonical form and is sanctioned by cann.1108,1111,1112 and 1116. This marriage carries all the effects both natural and sacramental effects. Form these three types of marriage, which the Church considers legal and valid, the doctrine of inseparability applied to contract and sacrament seem to serve a purpose although there is need to offer more clarity to avoid seeing them as merely part of the same course.

2.3.4 The *Sacramentum Permanens* Strengthening of Spouses by special Sacrament

Through the sacrament, the spouse are strengthened as it were for their duties and rights. "This strength ultimately comes from God, who through the sacrament becomes the partner to the covenant, and in a grace filled world marriage too is redeemed and has a sanctifying role to play"[142] . The natural becomes perfected by the supernatural, and therefore, the spouses are consecrated "[...] the sacrament of marriage is indeed a consecration for a new state of life"[143] . in this regard, the two elements reflect some form of identity .

Through the grace received in the sacrament, the spouses are strengthened for the duties for the sake of stability of a matrimonial bond which is referred to as the *status*

[142] L. ORSY, *Marriage in canon law: Text and comments, Reflection and questions*, p.206.
[143] L. ORSY, *Marriage in canon law: Text and comments, Reflection and questions*, p.206.

coniugalis. The sacramental grace serves as a strengthening character for the spouses for the performance of their marital functions through the *consortium vitae coniugalis*. In the Christian marriage, the special grace of the sacrament consecrates the spouses "in such a way that they are able to love each other faithfully and always, with mutual donation, and in this way they are to attain their perfection and sanctification"[144]. Through their consecration, their sense of love remains uniquely exclusive and indissoluble, of which, if excluded, the bond is not established. By their duties is referred to those things that pertain to their state as mother and father or husband and wife of which they are called to fulfill their conjugal and family obligation, enlightened by the spirit of Christ through faith, hope and charity. Through their duties, their own perfection is realized and are led to the mutual sanctification. *Gravissimum Educationis* enumerates some of these duties, which produces juridic effects with regards to the offspring towards the integral formation or education of either those conceived or born from a valid marriage of putative, or those conceived or born before marriage that are then legitimized[145]. "Since parents have given children their life, they are bound by the most serious obligation to educate their offspring and therefore must be recognized as the primary and principal educators"[146]. The same document highlights that "parents who have the primary and inalienable rights and duties to educate their children must enjoy true liberty in their choice of school"[147]. These same duties are also contemplated in can. 226§§1.2. furthermore, "They are (duties) those gravely and primarily meant to procured by the spouses by all means of their energy to provide for physical, social, cultural, moral and religious education of the offspring"[148].

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[144] *Gaudium et Spes* n.48.

[145] L.SABBARESE, *Il matrimonio canonico nell'ordine della natura e della grazia: Commento al Codice Diritto Canonico*, pp.359-360.

[146] *Gravissimum Educationis,* n.3.

[147] *Gravissimum Educationis*,n.6.

[148] Cf. G. GHIRLANDA., *Il diritto nella Chiesa mistero di communione: Compendio di diritto ecclesiale*, p.477.

The dignity of their state refers to the equal conjugal rights, "indicating that there is equal dignity between the spouses that concern the *consortium vitae coniugalis*"[149], while can.208 gives an exposition of the equality between the faithful, can.1135 specifies the equality of duties and rights for the spouses in order of constitution an realization of the *consortium vitae coniugalis*[150]. The canon reads: Each spouse has an equal duty and right to those things which belong to the partnership of conjugal life (can.1135). Those things include the *bonum prolis* and the *bonum coniugum*, embracing in this regard the *totius vitae consortium*.

2.3.5 The Relational Nature of the Matrimonial Bond

Canon 1055 talks of the nature of marriage as a partnership of life as one of the juridical reality of marriage. The very aim of a matrimonial bond is to establish a partnership of life between a man and a woman. It gives rise to reciprocal duties and rights to the couple in order for them to live out the vocation in fidelity to each other. Marriage is considered both as a contract and a covenant. The two concepts serve to bring the nature of marriage as an intimate communion of the whole life, enriching marriage because they all apply to the same institution. The term contract would be properly applied at the time of bringing marriage into existence considered as *matrimonium in fieri*. While by covenant, it is referred to the *consortium totius vitae*, a conjugal life of the spouses which is the *matrimonium in facto esse*. For this reason, it is also a sacrament among the baptized. It can therefore be said that the term "contract" expresses the juridical reality of marriage, while the covenant, also referred to as a pact (*foedus*), having its origin from the scriptures, "expresses the most intimate reality of marriage that is founded on love as an intimate partnership of life and love that

[149] L. SABBARESE, *Il matrimonio canonico nell'ordine della natura e della grazia: Commento al Codice Diritto Canonico*, p.359.

[150] L. SABBARESE, *Il matrimonio canonico nell'ordine della natura e della grazia: Commento al Codice Diritto Canonico*, p.362.

constitute the married state which has been established by the creator and endowed by him with its own proper law"[151].

2.3.5.1 The Subjects of the Bond

The Subject of this bond are the spouses who consecrate themselves through a conjugal love. The bond is between the spouses who establishes this juridical relationship as man and woman. What they establish as a bond, unites them in a more stable manner as a community for life for their good. From this emerges therefore the essential properties of unity and indissolubility of which the *matrimonio in facto esse* is established. Through the exchange of the mutual consent, by which marriage is brought into existence, the parties establish a partnership of life and love, and the obligations and rights arise among them, and the obligations and rights arise among them. Canon 1104 §1 states that: to contract marriage validly, it is necessary that the contractants be together present at the same time, either in person or by proxy. This simultaneous presence highlights the importance for the exchange of the consent, that has to be expressed in words or signs as paragraph two of the same canon states. This therefore, means that the cause marriage and consent is the spouses themselves.

"The matrimonial bond arises as a result of the contracting action of the two parties. It imposes an obligation that is the consequence of their mutual living together in living out their rights and duties"[152]. This bond comes as a result of the will of the parties to give and accept each to constitute marriage.

2.3.5.2 The Object of the Bond

The Object , which is the "*ratio*" of the bond, considered to be the integral object, is the reciprocal donation of the spouses through which they reciprocate their duties and rights

[151] *Gaudium et Spes*, n. 48.

[152] C. A. SCHLECK, *The sacrament of Matrimony: A dogmatic Study*, The Bruce Publishing company, Milwaukee 1964, pp.2-3.

which form the content of the bond. “The object refers to the life in common characterized by the conjugal love,, which constitutes the acts proper to conjugal life”[153]. in this sense, the mutual giving and receiving of the spouses “is not only considered in the order of direct acts to procreation, but also to all those acts that expresses the intimate communion of the whole life and conjugal love”[154]. The mutual rights and obligations arise as well as the good of the spouses establish a *matrimonium in facto esse*. All this makes reference to the content of consent which is sufficient for the establishment of marriage. This same consent forms the juridical essence of marriage constituting the perpetual and exclusive bond.

2.3.6 Duties Proper to the Spouses

The duties and rights of the spouses come directly from their consecration. They are signified in their conjugal union which they have established through which their conjugal service is made manifest. The duties and rights are those things that pertain to the partnership of conjugal life as indicated by canon 1135. Canon 1095 §§ 2, 3, indicate that the duties and rights are connected to the matrimonial consent of which, if it is defective, it will compromise these duties and rights. These defects are grave defect of discretion of judgment concerning the essential matrimonial rights and duties which is to be handed over mutually, and the presence of the causes of psychic nature of which the parties are rendered not able to assume the essential obligations of marriage.

Mendonça however makes an important observation by stating that:

> The code does not clearly make specific mention of the duties of marriage, especially in canon 1095, and that in 1056 it only mentions the two essential properties of marriage which are unity and indissolubility, the essence of marriage is not limited to the properties, but it comprehends also the essential elements toward which the spouses have mutual rights and obligations. Therefore, we can legitimately say that those rights, duties or obligations are essential which are related either to properties or essential elements... of which the essential elements remain undetermined in the

[153] Cf. GHIRLANDA, *Il diritto nella Chiesa mistero di comunione: Compendio di diritto ecclesiale*, p.434.

[154] *Gaudium et Spes*, nn. 49-50.

> Code. However, the Legislator has provided the minimum required for a valid matrimonial consent that is, the content or object of consent from which the doctrine and jurisprudence can gradually identify the essential elements of marriage[155].

The essence of marriage therefore can be understood with another concept of the essential rights and duties of marriage which can only be indirectly drawn from canons 1055 §1; 1056; 1095; 1099; 1101§ 2; 1134; 1135; and 1136. Örsy makes an important comment of the phrase "... there arises between the spouses a bond [...]" His comment is that by this phrase, "it cannot mean that some kind of new physical entity or new substance is created, either in the material or in the spiritual. It can mean only that in each partner a set of new obligations arises"[156]. This means that the bond itself generates elements that bind the spouses, and gives a new orientation towards the partnership of life they have established, and therefore a commitment to this new bond for they are bound to each other.

2.3.6.1 Dignity of the Married State

Christ has raised marriage in its essence as a natural institution to the dignity of the sacrament between the baptized, and through this dignity, marriage acquired a special firmness. This is to give greater dignity of creation of a man and woman so that "by creation, man and woman could respond to the purpose and desire of a truly human love"[157]. Pope John Paul the second affirmed this reality more by stating that: "This is to say that the Creator from the very beginning ordered the marriage covenant between man and wife for their good and the good of their offspring (Mt. 19:4-8; Gn. 1:27, 2:24)"[158]. As the spouses try to realize their *status coniugalis*, their vocation as married spouses brings about the equal dignity

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[155] A. MENDONÇA, "The Theological and Juridical aspects of Marriage", in *Studia Canonica*, Vol. 22, 2, (1988), p.265.

[156] L. ÖRSY, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, p.203.

[157] JOHN PAUL II, Apostolic Exhortation *Familiaris consortio*, 22 November 1981, n.11, in *AAS*, 74 (1982), p. 91-92.

[158] JOHN PAUL II, Allocutio ad Romanae Rotae iudices et administros, 28 January 1991, in *AAS* 83 (1991), p. 948.

through their reciprocal donation to one another by a mutual consent and establish a permanent, unitive and procreative conjugal bond known as a marriage covenant and realize of their duties and rights. It can therefore, be rightly said, the dignity of the married state, specifically among Christians, is rooted in the sacramental dignity. Although it does not necessarily constitute the validity of marriage, the sacrament is necessary for the matrimonial fruitfulness. Fiore, in one of his Rotal decisions observes that:

> In that which regards marriage among the baptized [. . .], whether as believers or unbelievers, the only interest is what the contractants willed, and certainly what they intended by the words of exchanging and receiving the matrimonial rights. It is of no interest what they believed or thought of marriage or of its sacramental value, unless it is to what extent their errors, or their lack of faith, induced them to elicit an act of the will, by which the marriage consent was totally assailed.[159]

Since through the sacrament marriage is endowed with the supernatural dimension that creates firmness and stability, it also acquires not only a natural dignity but also the supernatural dignity since the supernatural dimension neither adds, replaces, suppresses or destroy the natural dimension but perfects it with grace. *Gaudium et Spes* states that the dignity of marriage (*dignitas matrimonii*), which is also the dignity of the family (*dignitas familiae*), therefore, embrace the whole theological, pastoral and canonical system and the whole ecclesial tradition, which between the baptized "is the image and participation in the covenant of love between Christ and the Church"[160]. This signifies a special dignity given by Christ himself to the institution of marriage through grace of which both the natural and divine qualities are united in the mutual donation effected by the spouses.

There is a closer relationship between the dignity of marriage and the dignity of family, as indicated also in *Dignitas Connubii* and as it is exposed by Jose M.S. Ruiz in the *studi giuridici on matrimonium et Ius*:

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[159] TRIBUNAL OF THE ROMAN ROTA, Rome, *Coram* FIORE, 17 July 1973, n.18, in *Studia Canonica*, 65 (1973), pp.591-599.

[160] VATICAN COUNCIL II, Constitution *Gaudium et Spes*, 7 December 1965, n.48, in *AAS*, 58, (1966), pp.1024-1115.

> For the dignity of family needs the dignity of marriage in order to establish, take root and identify its proper dignity. This is therefore the supreme source of the interpretation and application which we can say is generic of our document which need to put together matrimony and family, their dignity and importance, and all the two with values which are proper to them, on the *sollicitudo pastoralis* of the Church[161].

In this sense, *Dignitas Connubii* states that in promoting the dignity of marriage and family founded in marriage, we protect and defend it with all the means available[162].

2.3.6.2 The Doctrinal and Juridical importance of canon 1134

The doctrinal and juridical nature of canon 1134 express the whole sacramental nature of marriage as an exclusive bond that establishes unity among the spouses, as well as its perpetual nature that is rooted in the essential property of indissolubility**.** Its validity is rooted in its effects that arise from a valid matrimonial bond brought into existence by a validly manifested consent. Therefore, can.1134 stipulates that a valid matrimonial consent gives rise to a perpetual and exclusive bond between the spouses.

"The canon intendeds to indicate that marriage is a natural institution through which the love of God is reflected. On the other hand, marriage is an eminently human act that comes from a free will of two persons who are considered legally able"[163] . This means that marriage is firstly born from ablative will of the two persons. It is from this conjugal love established by the two persons through a valid marriage, emerges the fundamental duties and rights of which, from their union is properly linked to unity and indissolubility . Every valid marriage, gives rise to a bond that is by its nature perpetual and exclusive, invoking in this sense, a certain firmness and stability.

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[161] J. E.V. AVILA *et al.*, a cura di, *Matrimonium et Ius, in Studi Giuridici LXIX*, Libreria Editrice Vaticana, Citta del Vaticano 2006, p.75.

[162] *Dignitas Connubii*, n.1.

[163] Per questa ragion e perché é un atto eminentemente umano, diretto da persona a persona con un sentimento e un atto che nasce dalla volontà libera, l'amore coniugale unisce in sé valori umani a divini, che conducono gli sposi all'autentico, libero e mutuo dono di se stessi […] G. GHIRLANDA, p.426.

Marriage, properly considered from a juridical point of view, is a covenant and contract between a man and a woman who legally capable, and through a legitimately manifested consent that bind themselves into a perpetual and indissoluble union of life and love. Marriage therefore essentially and primarily a natural institution, of which the author is God who endows it with its laws making it a covenant established by the validly expressed consent of two parties. The consent determines its validity, for it entails components necessary for contracting a valid marriage as a conjugal relationship. As a contract, juridically speaking, it is also a sacrament doctrinally speaking. Therefore, the two elements are necessary for its existence and validity and dignity.

Secondly, the institution of marriage expresses as well the canonical institution of marriage, in the sense that this reality of marriage is seen as a reality of love between the baptized members of the Church, through which this natural union is strengthened by the special force of the sacrament realized in the exchange of a consent which is irrevocable. It is the spouses who bring about the bond, they are the protagonists of marriage through their free will, and they are the ones to fulfill the acts that are proper to marriage. “The consecration of the spouses as a source of their conjugal strength helps them in the manner that they are able to love each other faithfully and always through mutual dedication with the aim of attaining their perfect sanctification” . For this reason, a valid marriage cannot exist between the Christian spouses without the sacramental consecration.

2.4. Related Canons in the 1983 Code

The canonical legislation has expanded the perpetuity and exclusivity of the *consortium totius vitae* to other canons in order to present a complete understanding of the effects of marriage. The conjugal state embraces others elements that form part of the well-being of the spouses, and that of the children giving rise to the correlative obligations and

rights to the conjugal relationship. Since this relationship, which is exclusive by nature is lifelong, and therefore perpetual, it encompasses all the elements that necessarily belong to it.

2.4.1 *Ratum Tantum* and *Ratum et Consummatum* Marriages (Can. 1061)

Canon 1061 describes to forms of a valid marriage. The *Ratum Tantum* as a valid marriage between the baptized that is merely celebrates and therefore, a merely ratified marriage, and a *ratum et consummatum* marriage of which, after being ratified, the spouses have performed between themselves in a *humano modo* a conjugal act which is in itself is ordered to the procreation of offspring to which marriage is ordered by its nature and by which the spouses become one flesh (can. 1061 §1). Paragraph two gives a presumption of consummation that exists after the marriage has been celebrate and the spouses have lived together until the contrary is proven. Another marriage considered under this canon is a putative marriage which is an invalid marriage celebrated in good faith at least by one party. This marriage stands until both parties become certain of its nullity. To this marriage, canon 1060 applies that marriage enjoys the favor of law (*favor iuris*).

The *ratum tantum* sacrament between the baptized has its special categorization which distinguishes it radically from the *ratum et consumatum*. Prof. Gianfranco Ghirlanda makes a clear and descriptive definition between these two types of marriages by stating that:

> If marriage between the baptized is not consummated, even if it is validly contracted, therefore, already established as a sacrament, and has acquired the intrinsic indissolubility, has not reached the fullness of the sacramental sign, and therefore, does not enjoy the extrinsic indissolubility. For this reason, the Roman Pontiff, in virtue of the fullness of power (*potestas*) of which he is invested by Christ for his office of being the Supreme Pastor of the whole Church, for the good of souls, can dissolve this kind of marriage.[164]

This marriage is considered to have taken place between the baptized, not necessarily only Catholics, but certainly whose baptisms are recognized by the Catholic Church to be

[164] Cf. G. GHIRLANDA *Il Diritto nella Chiesa mistero di Communione: Compedio di diritto Ecclesiale*, p.478.

valid, therefore it is perceived to be a sacrament, and is considered to be validly contracted. As much as it enjoys the essential property of indissolubility, this indissolubility is considered only to be intrinsic, and not extrinsic, therefore subjecting it to the power of the Roman Pontiff to dissolve it. This is one of the situation that the intervention of the Church through the Roman Pontiff using his vicarious power. It is considered to be one of the just causes upon the request of both parties or one of the parties even against the will of the other through an administrative act. There should exist a just cause (can. 1698,§1) for this request. This means that the only fact of non-consummation is not sufficient for the dissolution.

Marriage is said to be ratified and consummated (*ratum et consumatum*), if after the valid celebration "*coram Ecclesia*", with the prescribed canonical form, the spouses have performed a conjugal act of becoming one flesh in a natural manner. In this sense, this marriage enjoys both intrinsic and extrinsic indissolubility, and no human power can dissolve it. The ratified and consummated marriage is brought about by two characters which are the physical element and the psychological element.

> Under the physical character there are two elements; the insertion of the virile organ in the vagina of the woman, of which is not only enough the *ad os vaginae* (from the mouth of the vagina), which will remain a mere external act, and the second element is the shedding of the seminal liquid in the vagina of a woman in a natural mode, even if there is no generation of an offspring. With semen deposited externally one does not consummated the marriage"[165].

This therefore, exclude all other forms that are contrary to these elements. Even contraceptives, although there might be some results of conception, they do not determine the act of consummation. This means that some elements of the anatomic and physiological nature are required.

The psychological elements is meant that there truly be a human act characterized by reason and freedom of the will of which there is a mutual element of giving and receiving of

[165] Cf. Congregazione per la Doctrina della Fede. *Decretum Sacra Congragatio*, 13 Mag.1977, in *AAS* 69 (1977), p.426.

the persons who are the objects of the consent given. Performed in *humano modo* (in a human manner). A manner that conforms to the dignity of the person, without any violence, or a state of unconsciousness which can be caused either by alcoholic drinks, or by drugs. All this exclude the *humanitas* of the conjugal act. Fear however, grave of unjust, does not form part of this category, for under this circumstances, there is a true conjugal act ordered to the consummation of marriage. Except fear inflicted to the partner is such to compromise the capacity of understanding and willing. Therefore, a ratified and consummated marriage between the baptized cannot be dissolved by any human power (*potestas*) and for any cause, if not by death (can. 1141).

2.4.2 Prior Marriage Bond (Can. 1085)

Every marriage contracted while the prior bond remains, is considered to be null. It compromises both the existential dimension, the sacramental dimension and the juridical dimension of a marriage bond and the matrimonial consent which is total and exclusive. Can. 1085,§1 stipulates that a person bound by the bond of a prior marriage, even if it was not consummated, invalidly attempts marriage. To that end, there are no effects produced by such an act. paragraph two further states that even if the prior marriage is invalid or dissolved for any reason, it is not on that account permitted to contract another marriage before the nullity or dissolution of the prior marriage is established legitimately and certainly.

The effect of exclusiveness of any marriage bond stands as an essential factor to counter the matter concerning the prior bond. The point emphasized by the exclusiveness of the marriage bond is that a person cannot be bound to several persons, either simultaneously through polygamy or polyandry, or successively.

2.4.3 Ignorance and Consent (Can. 1096)

Canon 1096 §1, states that for a matrimonial consent to exist, the contracting parties must be at least not ignorant that marriage is a permanent partnership between a man and woman ordered to the procreation of offspring by means of some sexual cooperation. Ignorance is defined as an absence of knowledge. The contracting parties are to be at least aware of what marriage constitute**s**. What is required is a minimum knowledge of the contracting parties. "They are to have that minimum knowledge that marriage is a permanent community of life between a man and woman, ordained to the procreation through a certain cooperation as indicated in paragraph one of this canon, not generically physical, but specifically sexual"[166]. Paragraph two gives a determination that after puberty, interpreted to mean that after the person has reached the legal age of marriage (14 for girls and 16 for boys) subject to specific legislation in different contexts, this ignorance is not presumed. It is also evident that the contractants need to know that marriage comports heterosexuality. If the contractants do not have the minimum knowledge towards the essence of marriage, of which the object of consent is lacking, this act is not validly fulfilled"[167].

The permanent consortium Örsy says; "a more than temporary association; something more than ordinary friendship, and since it's based on the consent, which is an act of the will, some knowledge about marriage is certainly required to set the will into motion, "should not be ignorant" could be translated simply and positively as must know"[168].

The sexual cooperation is another factor considered under this canon. On their side, the couple is to be aware of the fact of procreation; of which it involves generation of offspring; forming therefore a connection between the interaction of the sexual organs for

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[166] G. GHIRLANDA, *Il Diritto nella Chiesa mistero di Communione: Compedio di diritto Ecclesiale*, .p.458.

[167] G. GHIRLANDA, *Il Diritto nella Chiesa mistero di Communione: Compedio di diritto Ecclesiale*, p.458

[168] L. ÖRSY, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, p.133.

purpose of creation. The minimum knowledge therefore, is either singled out in the nature of marriage as *consortium permanens*, or in the heterosexual dimension, necessary in order that the consortium be naturally ordered to the procreation, through *cooperatione aliqua sexuali*, of which the latter is from the prevailing jurisprudence"[169]. This aspects would perhaps allude to the pastoral responsibility as well as professions systems to provide adequate insights on the subject matter.

2.4.4 Simulation of Consent (Can. 1101)

Canon 1101 gives an explanation of what is considered as a validly manifested consent. Paragraph one states that the internal consent of the mind is presumed to conform to the words and signs used in celebrating the marriage. Paragraph two of the same canon states that, if, however, either or both of the parties by a positive act of the will exclude marriage itself, some essential elements of marriage, or some essential property of marriage, the party contracts marriage invalidly. Therefore, Consent is said to be a positive act of the will that the parties are called to manifest of which by excluding any of the mentioned is considered simulation.

By simulation is referred to that which is the exclusion of this willful act and its effect. Taken literally, exclusion means an act rejection, meaning, a person who is aware of something decides to reject it, ignore it or choose otherwise. A positive act of the will in this sense is not opposed to any negation of the will, for such does not exist, but simply means an act of the will.

It would be important to indicate that in essence, simulation of marriage consent touches the essential properties of marriage, and by elaboration, other elements as well. The traditional jurisprudence of the Roman Rota explains simulation as a co-existence of two act

[169] CF. M.F. POMPEDDA, "Studi di diritto matrimoniale canonico", *in Ius Ecclesiale*. Vol.6, 1(1994) Pontificia Università della Santa Croce, Roma, pp.207-215.

of the will: the external which says “I will” and the internal which says “I won’t” to marriage. It is important to notice that the canon does not use the word simulation, which originates from the Latin s*imulare* or s*imulatio*, but rather it uses *exclusio* of marriage itself, some essential element of marriage or some essential property of marriage. This term of simulation however, is embraced by the Roman Rota since its canonical significance is rooted in the Roman Law in which the term was prevalent. Ewers gives a direct and simple explanation that “in simulation mind and will are out of agreement with the external manifestation”[170].

Simulation therefore means an act of intending or to will to positively exclude marriage or one of its essential properties of which both the 1917 Code and the 1983 Code uphold. “Simulation implies conscious deception: deception of the other party when it is unilateral (as where one, unknown to the other, excludes a permanent bond) or deception of the society, when it is bilateral (as when both by common agreement totally exclude children)”[171]. Although it hasn’t been an easy thing to bring about, the jurisprudence of the Roman Rota has issued some extensive guidance on simulation. Its work was made easier by focusing on what marked the substance of marriage; which are the three essential characteristics which are: the *bonum fidei, bonum sacramenti* and *bonum prolis*.

William H. Woestman observed that: “The person simulating can be unaware of the juridical effect of the simulation, but he can’t be unconscious of the fact that he has simulated”[172]. Three elements are considered to be attached the notion of simulation that will help us understand what really constitute it. The simulation implies not a mere lack of intention ("*non velle*") but a positive contrary intention ("*velle non*").

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[170] TRIBUNAL OF THE ROMAN ROTA, Rome, *Coram* EWERS, 5 May 1979, prot.n.3, in *RRD*, vol. 71, p.21,

[171]W.H. WOESTMAN, (*ed.*), *Simulation of marriage consent. Doctrine and Jurisprudence*, St. Pauls, Ottawa, p.3.

[172] W.H. WOESTMAN, (*ed.*), *Simulation of marriage consent*. *Doctrine and Jurisprudence*, p.3.

2.4.5 Legitimacy of Children (Cann. 1137-1140)

Three canons are dedicated to the question of the legitimacy of children. The effects to be considered are those regarding the juridic effect concerning the legitimacy of offspring (*prolis*). "It is the principle that renders the status of children, and is inspired by the dignity of the human person from his origin, and is linked to the legal and moral responsibility of parents. For this, the law is generous in admitting the juridical status for all children without considering their condition of birth"[173].

In the preparatory work of the Code, it was proposed a certain consultant that these canons be suppressed, however, it was objected. The legitimacy treated in these canons is in three categories; legitimate children, illegitimate children and legitimated children[174]. Can.1137 states: The children conceived or born of a valid or putative marriage are legitimate. The canon seems to indicate that only a valid marriage or putative (either natural non sacramental marriage or sacramental marriages or the marriage celebrated in good faith, by at least one of the parties, but invalid), can produce canonically legitimate children, other children out of this category are considered otherwise. Canon law in this regard, embraces the civil law and its effects and other laws concerning the rights of the person in order to create harmony.

Canon 1138 mentions that the father of the children is identified by a lawful marriage, unless contrary arguments exist, as proof to the legitimacy of children. The canon gives "presumptions of which if the contrary is the case, proper arguments are to be

[173] Cf. P.V.PINTO (*a cura di*), *Commento al Codice di Diritto Canonico*, Libreria Editrice Vaticana, Citta del Vaticano, p.674.

[174] L. SABARESSE, *Il matrimonio canonico nell'ordine della natura e della grazia: Commento al Codice di Diritto Canonico*, p.336.

demonstrated"[175]. The maternity of the wife on the other hand, "is obtained by demonstrating the fact of the delivery and the identity of the child"[176].

Canon 1139 talks of establishing the status of the illegitimate children that are legitimate by the subsequent marriage of their parents, whether valid or putative, or by the rescript of the Holy See. The canon embraces every child born in any situation and condition. And if marriage is impossible between the parents of the illegitimate child, of which legitimization by marriage is out of question, the canon provides the possibility of another form of legitimization, which is by the rescript of the Holy See[177]. Canon 1140 establishes the equality of both the legitimated and legitimate children, unless the law provides otherwise.

2.4.6 In the CCEO (Can. 777)

There is no equivalent canon relating to the Eastern Code. However, the corresponding canon in the Eastern Code is can.777 that introduces the canons on marriage which reads: from marriage each of the spouses has equal obligations and rights to those things which pertain to the partnership of conjugal life. the canon, without carry the whole content of can.1134 of the 1983 Code, only speaks of the equality of obligations and rights that are proper to the conjugal life without enumerating them.

Conclusion

The work contained in this chapter was primarily focusing on the formation of the canon1134 through the different stages of its development. Of great importance and consideration is the Dogmatic Constitution *Gaudium et Spes*, especially the elements

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[175] As a doctrine, to refrain from a general rule, gave an indication to what could constitute a clear argument by proposing merely clear examples: the absence of the father during the estimated time of conception, other circumstances which make one be certain that the husband was unable to have sexual relations with his wife at that time, impotence, adultery followed by pregnancy and concealed birth, etc. E. CAPARROS, *et al, (ed.), Code of Canon Law Annotated*, 6th edition,Wilson & Lafleur Limitée, Montréal 2004, p.886.

[176] E. CAPARROS, *et al,(ed)., Code of Canon Law Annotated*, 6th edition,Wilson & Lafleur Limitée, Montréal 2004, p.886.

[177] E. CAPARROS, *et al, ed, Code of Canon Law Annoted*, 6th edition,Wilson & Lafleur Limitée, Montréal 2004, p.887.

contained in number 48 that has brought about a wide interpretation of marriage. The chapter further tried to study other related canons that are central to the very essence of marriage; its theological and juridical importance as well as some reflections that helped to expand the proper understanding of the institution of marriage. The jurisprudence of the Roman Rota has been vital in the development of the doctrine of marriage and its juridical effects.

The canon focused principally on the effects of marriage, shedding more light on the perpetual and exclusiveness of the matrimonial bond in which the spouses are consecrated through the sacrament, and therefore acquiring equal rights and duties for that which concerns the *consortium totius vitae*.

The marriage effects also concern the children in establishing their legitimacy. The central study what provoked by the question of "what brings marriage into existence. To this effect, the matrimonial consent as an efficient cause plays a central role in marriage. This consent has to be free, total, exclusive and complete, devout of any defectiveness for the marriage bond to produce juridic effects. The major theme is the simulation of the same consent which renders it defective and therefore, incapable of producing any juridical effects. Those to contract marriage should principally will it, and their external act should correspond to their internal volition. This are to embrace the essential properties of marriage which are unity and indissolubility. At the same time, they are to consider other essential elements that are proper to the *consortium totius vitae*.

CHAPTER THREE

THE PRACTICAL CONSIDERATIONS REGARDING THE MATRIMONIAL BOND AS EFFECT OF VALID MARRIAGE IN THE CONTEXT OF THE CATHOLIC ARCHDIOCESE OF WINDHOEK

Introduction

The practical evaluation of the Catholic Archdiocese of Windhoek's conformity to the exhortation of CIC/1983, canon 1134 on the juridical effects of the matrimonial bond is by no means meant to undermine or underestimated the tireless efforts made by this Archdiocese through the diocesan Bishop and his predecessors and the many efforts done by the parish priests and all pastoral agents to address matrimonial challenges affecting the Christian faithful in the said Archdiocese.

The chapter deals with a short background of the Archdiocese of Windhoek, it demonstrates the efforts done by the diocesan bishop as chief legislator of particular laws in the Archdiocese of Windhoek, the general role of the local clergy, and the challenges that the Archdiocese of Windhoek face in addressing the Juridical effect of marriage.

3.1 Brief Background of the Catholic Archdiocese of Windhoek

The Catholic Archdiocese of Windhoek is the Metropolitan See for the ecclesiastical province of Namibia. It is the largest ecclesiastical jurisdiction that acts as the mother of other ecclesiastical jurisdictions which include the suffragan diocese of Keetmanshoop and the Apostolic Vicariate of Rundu. It was first established as the Apostolic Prefecture of Lower Cimbebasia from the Apostolic Prefecture of Cimbebasia in Angola on 1 August 1892 . "On 11 May 1926, it was promoted as Apostolic Vicariate of Windhoek"[178], and the current

[178] A.P.J. BERIS, *From Mission to Local Church: One hundred years of mission by the Catholic Church in Namibia, with special reference to the development of the Archdiocese of Windhoek and the Apostolic Vicariate of Rundu*, John Meinert Publisher, Windhoek 1996, p.3.

Archdiocese was fully erected in March 1994, currently under the guidance of Archbishop Liborius N. Nashenda OMI, as its diocesan bishop.

3.2 The Observance of the provision of canon 1134 in the Archdiocese of Windhoek

Canon 1134 stipulates that a valid matrimonial bond gives rise to a perpetual and exclusive bond between the spouses. This bond, among the baptized is considered to be a sacrament. There are however, other forms of matrimonial bond that are not considered as sacraments, but are considered valid with the unique effects either natural or civil effects. All these marriages, either sacraments or non-sacramental are witnessed in the Archdiocese of Windhoek.

3.2.1 Kinds of Valid Marriages witnessed in the Archdiocese of Windhoek

The Archdiocese of Windhoek witnesses a variety of marriages that are *per se* considered valid. These are either marriages celebrated in the ritual Churches without a canonical form, or those which are celebrated before a civil marriage registrar and are considered as civil marriages. Marriages celebrated before a civil marriage registrar though valid, it is not canonical but it merely acquires civil effects.

3.2.1.1 Canonical Marriage (*Matrimonium Canonicum*)

A canonical marriage refers to a matrimonial covenant celebrated between two Catholics in accordance with the norms of canon law. These norms are laid down in cann. 1108, 1111, 1112 and 1116. The parties contracting such a marriage are considered not to have any impediment either of mixed marriage or disparity of cult. This kind of marriage is encouraged in the Archdiocese of Windhoek because it guarantees the unity of Catholic faith among the couples because it maintains the unity of the , despite the freedom of the faithful to contract marriage with whoever they want. This kind of marriage is considered valid unless it encounters a diriment impediment, defective consent or a lack of canonical form.

3.2.1.2 Mixed Marriages

Although the Archdiocese of Windhoek witnesses a good number of canonical marriages, it is faced with an increasing number of Mixed Marriages, mainly between Catholics and Lutherans or Anglicans. Mixed marriages (*Matrimonia Mixta*) are those marriages celebrated between a baptized Catholic or the one received into it after baptism, and the baptized non catholic whose baptizing is recognized by the Catholic Church. These marriages are prohibited unless there is an express permission of the competent authority that grant dispensation to a Catholic party to marry a baptized non Catholic (can.1124). This gives an indication that "mixed marriages are subject Church's legislation"[179].

Can. 1125 states that the local ordinary can grant a permission of this kind if there is a just and reasonable causes, to which it is attached some conditions. These marriages however, posed challenges because those conditions are always not fulfilled in reality. The Archdiocese follows the norms of can. 1125 stating that those who find themselves with the impediment of mixed marriage "they are to be granted a dispensation from canonical form by the local Ordinary based on a just and reasonable cause and in accordance to the prescripts of can. 1125"[180] .

3.2.1.3 Marriage between Catholics and the non-baptized (Disparity of Cult)

This kind of marriage creates an impediment of disparity of cult. It is a marriage between a Catholic party and a non-baptized party. The celebration of this marriage without a dispensation from the competent ecclesiastical authority is considered invalid according to can. 1088 § 1. These forms of marriages a sanctioned by cann. 1088 and 1129 of the Code of Canon Law. A person can only be dispensed from this impediment if the conditions of cann. 1125 and 1126 are fulfilled.

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[179] M. PAL, "Mixed Marriages in the Canonical Legislation: A brief Survey", in *Iura Orientalia* , III (2007) pp. 119-139.

[180] B.HAUSHIKU, *Statutes of the Archdiocese of Windhoek*, 12 December 1996, Windhoek, p.13.

In the Archdiocese of Windhoek, marriages that posed this impediment have notably increased. Their existence require attention because sometimes a person may have been baptized either in the Catholic Church or in another Church or ecclesial community whose baptism is valid, but after sometime, and circumstances, the person might have either abandoned the faith and declares him or herself not a Christian, or he might have defected and join another Church whose baptism is considered not valid, or sometimes the person was baptized form his or her childhood in the Church whose baptism in just not considered valid at all.

Those that fall under disparity of cult, the Statutes states that "in order for a dispensation for a disparity of cult to be valid, it is required that the conditions of can.1125 and 1126 be fulfilled. Consequently, the petition to the local ordinary for a dispensation from disparity of cult is to be accompanied by he written promise and declaration of the Catholic party"[181].

3.2.1.4 Traditional Marriage

Another forms of marriages experienced in the Archdiocese of Windhoek is the traditional marriages. These forms of marriages are celebrated through ceremonies that incorporate local customs and traditions reflecting a certain culture. These forms of marriages do not necessary incorporate Christian practices. Sometimes such marriages take place between the baptized Christians, especially those baptized in other Churches or ecclesial communities, or those who are not baptized at all but without any Church involvement. These forms of marriages though valid, they are not sacramental, but have got natural effects and are subjected to can. 1143. The statutes of the Archdiocese of Windhoek did not make

[181] B.HAUSHIKU, *Statutes of the Archdiocese of Windhoek*, 12 December 1996, Windhoek, p.13.

provision on how these marriage, considered as only Sacred marriages (*Matrimonium Sacrum*) are to be handled.

3.2.1.5 Civil Marriage

This is a marriage celebrated before a civil registrar, and therefore acquiring merely civil effects. A number of those who have married civil normally come to Church to rectify their marriage through a canonical form. The Church however, has made it easier by selecting some deacons and Parish Priests as marriage officer that serve as a link between the Church and civil registration of marriages. The statutes of the Archdiocese of Windhoek however, "prohibits a priest or deacon to function solely as a civil marriage officer if a marriage could not be celebrated according to the norms of the Catholic Church"[182]. They are to only act on those marriages that are considered as canonical marriages.

A number of the Christian faithful choose to contract their marriages before civil therefore. These marriages are always at risk of breaking down through divorce if any challenge arise, since there are considered merely contracts that can be terminated. Such marriages happen normally because of some cultural expectations that marriages are costly, and therefore a private ceremony is a way to go, without knowing that the Church makes such provisions as well. Another reason attached to this is that people avoid scrutiny on the side of the Church, citing that the Church requires a longer and complicated process.

3.3 Married Catholics who are Separated

After considering those marriages that are considered valid in the Archdiocese of Windhoek, the reality on the ground presents numerous cases where these marriage experiences breakdown. These are cases that have rendered the perpetuity and exclusivity of the matrimonial bond not to be a reality always.

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[182] B.HAUSHIKU, *Statutes of the Archdiocese of Windhoek*, p.13.

The Archdiocese experiences a huge number of divorce that happens when the couple realized that conjugal life has become a burden due to misunderstanding or other reasons. This situation has become complicated especially when the parties are married in the Church. They decide to look for divorce at the magistrates without informing their Proper Pastor. This reality is only noticed when the spouses have separated and their sacramental life compromised. It is after a protracted period that one of them approaches their pastor either for the sacrament of baptism, or expressing the wish to contract another marriage while the original bond remains.

Another reality is that, although the couple choose not to divorce, in practice, they live as separated spouse without common conjugal life. This normally happens when the spouses, especially Catholic spouses, having experienced some difficulties, are aware that such difficulties do not amount to divorce, dissolution of the bond or even declaration of nullity. The danger here is always unfaithfulness and infidelity, of which one of the parties may secretly choose to have another partner leading to a situation where one is validly married but has other concubines.

Lastly, there are those who find themselves in polygamous situations, justified generally in African cultures sometimes as a means to get the offspring if one of the parties is nor fertile. " Polygamy in African is considered as a remedy for childlessness in marriage"[183] Therefore, the tendency is to get a second or third wife. *Familiaris Consortio* stated that "polygamy is contradicts the communion of love, given by the grace of Christ"[184]. Although there might be justification like that of offspring, "the unity of marriage, distinctly recognized by our Lord, is made clear in the equal personal dignity which must be accorded to man and

[183] M. MUONWE, "Polygamy in Africa in the light of the Catholic theological thinking on Marriage" in *Nigerian Journal of Arts and Humanities*, Vol, 4, 1(2024), pp.8-16.

[184] *Familiaris Consortio*, n,19.

woman in mutual and unreserved affection"[185]. Polygamy remains a challenge in the Archdiocese because it deprives the members from accessing sacramental life in the Church creating another scenario of people considered married but no sacrament.

3.4 Praxis of the Archdiocese of Windhoek

Having identified the reality of the ground that contradict the perpetuity and exclusiveness as effect of a matrimonial bond, it is also important to offer praxis that the Archdiocese uses to address such reality. Praxis are methods put in place to respond to specific situations that might either present a gap, non-effectiveness of the law or the absence of any law to address a situation. One the onset, it is important to state that the Archdiocese of Windhoek seems not to offer much on the praxis apart from the Archdiocesan Statutes that are also limited in nature.

3.4.1 Formation before Celebration of Marriage

The Archdiocese of Windhoek, through its Statues has emphasized the need for preparation of couples before marriage. This preparation is aimed at helping the couples to understand what they are undertaking, and more specifically to understand the nature of marriage as a sacrament. The Statutes of the Archdiocese states that "all couples intending to marry must attend a marriage preparation course at their earliest conveniences if it is possible"[186]. The preparation begins from the parish or community level until it reaches the office of the Parish Priest. The couples are then to attend a pre-marital workshop prepared on a weekend that covers diverse topics. This workshop is however, not enough to impart substance on the couple since it takes place within a limited time.

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[185] JOHN PAUL II, *Catechism of the Catholic Church*, (English Edition) n.1645, Doubleday, New York 1994, p.458.

[186] B.HAUSHIKU, *Statutes of the Archdiocese of Windhoek*, 12 December 1996, Windhoek,p.11.

3.4.2 Cases of Married Catholics who become Polygamous

The Church upholds the principle that marriage is monogamous, a union between one man and one woman. The catechism of the Catholic Church describes polygamy as "contrary to conjugal love which is undivided and exclusive."[187] According to CCC 1646, polygamy contravenes the principle of fidelity of conjugal love, for "by its very nature conjugal love requires the inviolable fidelity of the spouses. This is the consequence of the gift of themselves which they make to each other. Love seeks to be definitive; it cannot be an arrangement 'until further notice."[188]

However, cases of polygamy still exist in the Archdiocese of Windhoek, always challenging the Church's teaching of polygamy which is always considered as "a radical denial of God's original plan"[189], to which Pope John Paul II further commented: "because it is contrary to the equal personal dignity of men and women who in matrimony give themselves with a love that is total and therefore unique and exclusive"[190]. However, the Archdiocese of Windhoek has no particular legislation that address such challenges.

The challenge of polygamy is merely addressed on parish level through pastoral guidance that is mainly provided by pastors in order that individuals who find themselves in this situation are made to understand the implications of polygamy within the context of their faith, and are always encouraged to align their lives with the Catholic teachings of marriage

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[187] Cf. JOHN PAUL II, *Catechism of the Catholic Church*, (English Edition), n 1645, Doubleday, New York 1994, p.458.

[188] *CCC*, n 1646.

[189] The characteristic traits of marriage are: totality, by which the spouses give themselves to each other mutually in every aspect of their person, physical and spiritual; unity which makes them "one flesh" (Gen 2:24); indissolubility and fidelity which the definitive mutual giving of self requires; the fruitfulness to which this naturally opens itself[479]. God's wise plan for marriage — a plan accessible to human reason notwithstanding the difficulties arising from "hardness of heart" (cf. Mt 19:8; Mk 10:5) — cannot be evaluated exclusively in light of the de facto behaviour and concrete situations that are at divergence with it. A radical denial of God's original plan is found in polygamy, PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, Compendium of the Social Doctrine of the Church, n.217. Libreria Editrice Vaticana, Città del vaticana 2005.

[190] Cf. JOHN PAUL II, Encyclical Letter *Veritatis Splendor*, 6 August 1993, n.87, in *AAS*, 85(1993), pp.1202-1203.

at the same time providing support. To this reality, the Church can always find a well-coordinated approach that will respond more effectively with the truth of the gospel and the help of the Church's magisterium.

3.4.3 Married Catholics who are Separated

The Archdiocese is also faced with cases of married Catholics who are separated due to the breakdown of their marriages of which it has no proper pastoral approach. Many Catholics who end up being separated normally choose to distance themselves from the life of the Church. They distance themselves because most of the time they think that there is no remedy to their situation. Few of them come to Church after they have divorced civil. Unfortunately the Archdiocese does not have organized pastoral means on how to handle this case. Even some parish priests who are not well versed in Canon Law find it challenging to handle such cases. These couples are however exhorted to come together, without sometimes addressing proper what has resulted in breakdown of their marriage. These spouses often try to look for help and counseling from private individuals in society from whom they acquire diverse opinions, and sometimes are informed to let go of their marriages and sometimes to the point of being advised to divorce. Although most of them go for divorce, they reach a point where they discover that their problem still stands. They still want to live their faith, receive the sacraments and participate in the life of the Church, but unfortunately their status does not allow them to receive the Eucharist.

Those who have obtained civil divorce present themselves to the Church with the understanding that their marriage no longer exists. The Church normally begins an Preliminary inquiry to establish the facts surrounding that specific marriage, and to see if that will constitute an annulment process. What is mostly discovered is that the marriage was celebrated validly and consummated, and therefore, the bond cannot be dissolved. This has

created a situation whereby spouses are divorced civil, yet on the side of the Church their bond is still valid. It consequently created another scenario of the divorced and remarried couples. To this end, the Archdiocese of Windhoek does not have pastoral and doctrinal approach to respond to these challenges effectively.

3.5 Reflections of the Synod of Bishops

Some synod offered some reflections concerning matters affecting marriage and family. The Church, through these synods expressed her concerns on the institution of marriage, at the same time the hopes that marriage and Christian families can still offer to the Church and the world. The reflections of these synods help the Church to navigate complex challenges that are particularly posed by the changing world.

3.5.1 The Fifth General Assembly of the Synod of Bishops of 1980

The fifth Ordinary General Assembly of the Synod of Bishops of 1980, dealt with the question of family in the world, at the heart of the synod was the crisis of family with its multifaceted situation, of which one was the reality of divorce, which threatened family life.

In its 14th proposition, the synod perceived "the Church as an institution that is to lead all persons, especially the baptized to salvation, and therefore, she may not neglect those who, although they are still under the bond of sacramental marriage after civil divorce, attempt to enter a second marital union"[191]. The Church will always do her utmost to provide the means to salvation for all those to whom she is in service. With respect to those who are divorced and remarried, pastors should be able to distinguish between different situations.

The synod propositions go on to enumerate these situations into three categories:

> The first one is that of those who have been the victim of the breakdown of their marriage despite their attempt to save it. Secondly, there are those who destroyed a

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> valid marriage through their own serious fault, and lastly, there are still others who were convinced of the invalidity of a first marriage and enter into a second one for the sake of providing an atmosphere for the bringing of their children[192].

The proposition exhorts "both pastors and the community of the faithful to help these divorced persons and to take special care that they, as baptized, can and should participate in the life of the Church"[193]. On the other hand, the synod reaffirmed "basing itself on the scripture, that the divorced remarried could not be admitted to the Eucharist because their life situation contradicts the indissoluble covenant of love between Christ and His Church" . This refusal is also supported on the grounds of prudence. The synod however offered an alternative of "absolution that is only to be given after the persons have demonstrated their repentance, and establish a new way of life which is not in contradiction with the sacrament of marriage"[194] . The synod was trying to maintain the juridic effects of marriage, that marriage is perpetual and exclusive, but it was also attentive to pastoral challenges that face the institution of marriage, and tried to office pastoral guidance to the people of God.

3.5.2 The Third Extraordinary General Assembly of the Synod of Bishops 2014 -2015

This synod, which extended to 2015, had a theme called Pastoral Challenges of the Family in the Context of Evangelization. It eventually produced the Post-Synodal Apostolic Exhortation *Amoris Laetitia* in March 2016. The aim of the synod was to study the *status quaestionis* (current situation of pastoral care for marriages and families in the world). The second part of the synod held in 2015 was aimed at providing pastoral guidelines for the pastoral care of persons and families. In its first paragraph, *Amoris Laetitia* wishes to

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[192] G. JAN, *The 1980 Synod of Bishops "On the Role of the Family": An exposition of the event and an analysis of its text,* Leuven University Press, Leuven 1980, p.140.

[193] G. JAN, *The 1980 Synod of Bishops "On the Role of the Family": An exposition of the event and an analysis of its text,* p.140.

[194] G. JAN, *The 1980 Synod of Bishops "On the Role of the Family": An exposition of the event and an analysis of its text,* p.140.

proclaim "the joy of love experienced by families, which is also the joy of the Church. But the synod was also aware of the crisis that may weaken this joy."[195]

Citing Pope Benedict XVI encyclical *Deus Caritas Est*, who stressed that "marriage based on an exclusive and definitive (perpetual) love becomes an icon of the relationship between God and his people and vice versa."[196] Therefore, *Amoris Laetitia* reaffirms that marriage is exclusive and perpetual, reflecting the faith covenant of God and His people.

3.6 Challenges to the Matrimonial Bond posed by Catholic Couples

Every threat to the sacrament of marriage is a threat to family life, ecclesial family and society. Marriage has always been a subject at the heart of the Church. this shows how important such an institution is to her life. This is also due to the fact that marriage continues to face challenges, of which some are universal and some are particular challenges from particular situations. Therefore, it is of necessity that there be clear guidelines and particular laws that respond to these challenges.

3.6.1 Lack of Particular Law/ Diocesan Law and Pastoral Exhortations

From the time of Archbishop Bonifatius Haushiku to today, there is no particular law or legislation on marriage in the Archdiocese of Windhoek that is legislated. Therefore, one could immediately identify a legislative *lacuna* on marriage. The above mentioned Archbishop had issued the "Statutes of the Archdiocese of Windhoek", but they do not address the reality of perpetuity and exclusivity of a marriage bond, rather, "they only present how marriage should be celebrated"[197]. Therefore, there are no laws that directly bind on marriage in the Archdiocese of Windhoek.

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[195] FRANCIS, Post-Pynodal Apostolic Axhortation *Amoris Laetitia,* (English Edition), n.1, Vatican Press, Vatican City 2016, p.3.

[196] BENEDICT XVI, Encyclical Letter *Deus Caritas Est*, 25 December 2005, n.11, Libreria Editrice Vaticana, Vatican City, p.29.

[197] B. HAUSHIKU, *Statutes of the Archdiocese of Windhoek*, pp.11-12.

The absence of a particular law on marriage has rendered it difficult for the Christian faithful to know "what in concrete is their ecclesial position, and as a consequence, the clarification of their participation in the life of the Church"[198] . The existence of such law will not only address challenges facing perpetuity end exclusivity of marriage, but also offer guidelines on how the Christian faithful who find themselves in such situations can participate in the ecclesial life of the Church, not only about their reception of the Eucharist, but also "to make sure that they are not deprived of the love of Christ nor are they deprived from the care of the Church which manifests itself through the community to whom they belong, that is, the parish"[199] .

Particular law helps to respond to particular circumstances and addresses challenges faced. It also helps regulate the life of the Church in that particular diocese without prejudice to the universal law so that the members are aware of their duties and rights pertaining to a particular reality. This is because, they are rooted in a "particular and indigenous reality"[200], "so also her laws would be able to touch the way people live and organize their lives, the very culture in which the express their values and belief"[201]. This role is primarily entrusted to the diocesan Bishop to make laws in his diocese for the benefit of the faithful taking into consideration particular conditions and circumstances. In this regard, the existence of civil divorce and irregular unions would necessitate some particular laws and guidelines to address effectively such realities. Therefore, it can be noted that there is a *lacuna* in both the juridical and administrative structures of the Archdiocese of Windhoek.

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[198]Cf. L. SEBBARESE, *Il Matrimonio Canonico nell'Ordine della Natura e della Grazia*, p.409.

[199] Cf. L. SEBBARESE, *Il Matrimonio Canonico nell'Ordine della Natura e della Grazia*, p.409

[200] Cf. CONCILIO VATICANO II, Decreto sull'attivita' Missionaria della Chiesa *Ad Gentes*, 7 Dicembre 1965, n. 6, in *Enchiridion Vaticanum*, Vol.1 (1965),p.14.

[201] K .S. SEBASTIAN, "Legislative function of the Diocesan Bishop and its implications", in *Canon Law society of India*, 4 (2023), pp.123-145.

As a consequence of the lack of particular in the Archdiocese of Windhoek, which is considered to be the Metropolitan Archdiocese, there is also no legislation on the level of the Episcopal Conference which is relatively small, made up only of an Archdiocese, a Suffragan diocese and a Vicariate.

3.6.2 Lack of Proper Pastoral Care and Formation on Marriage Preparation

Another challenge that faces the Archdiocese in responding to some crisis of marriage, its perpetuity and exclusivity, is the lack of sufficient and efficient proper pastoral care and adequate formation on marriage preparation. The emphasis is on sufficient and efficient proper pastoral care that can effectively respond to such situations. Pastors have tried to respond to this challenge in their isolated contexts, however, a more common approach in the Archdiocese of Windhoek, with a canonical flavor could serve better. The Pastoral Care is a requisite for formation on marriage, specifically preparation towards marriage.

The challenge faced by the Archdiocese of Windhoek concerning this formation is that time given for this lifelong commitment takes place only on one of the weekends proving not sufficient to offer a proper content to the nature of marriage. Sometimes it proves difficult to gather parties being prepared for marriage at the same time due to the fact that often these people work at far distant places of which they find it hard to leave their working places to attend marriage preparation workshops. Through proper pastoral means, the Church presents herself as a mother that nurtures, educate and accompany with care all her children in truth and grace. If there is no proper pastoral care on marriage, especially preparation towards marriage, the spouses will have no stronger foundation of love, and therefore, will not have a

rooted understanding that marriage, born from the gift of love, is perpetual and exclusive. "Perfect love is love crucified. But love crucified as Francis of Assisi said, is perfect joy"[202].

Although each parish in the Archdiocese of Windhoek arranges for Marriage Preparation course which takes place on a certain weekend, often a times these courses present a risk of being superficial, focusing more only on secular aspects and dedicating a little portion on the true nature of marriage as a sacrament which will expose the couple to a more doctrinal and juridical reality of marriage. In this way, the spouses will be helped to united their human love to the divine love that does not change but remains forever, the love that is sacrificial and goes beyond their own human capacity of love. The spouse are able to understand that "marriage is a true sacrament in light of and fructified by baptism, which is a true and indissoluble marriage between God and his people"[203].

Without a proper marriage preparation, or a too much superficial preparation "the couples will end up to the real risk to celebrate a marriage that is null or with a weak foundation which can only last for a short period and will not be able to resist the first inevitable crisis"[204]. Proper pastoral care based on truth and charity will always help the Church to maintain its teaching of the perpetual and exclusive nature of marriage, in order to not to relegate marriage to merely human innovation. To this end, the then cardinal Ratzinger commented on the pastoral approach and permanence of marriage of which he seem to highlight that there should be no separation between doctrine, pastoral practice and discipline by stating that:

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[202] M. QUELLET, "Theological Perspective on marriage", in C*ommunio, International Catholic Review* 31 (2004), p.431.

[203] BENEDICT XVI, Post-Synodal Apostolic Exhortation *Sacramentum Caritatis*, 22 February 2007, n.21, in *AAS*, 99 (2007), pp.105-181.

[204]Cf. DICASTERO PER I LAICI, LA FAMIGLIA E LA VITA, *Itinerari Catecumenali per la vita matrimoniale: Orientamenti pastorali per le Chiese particola*r, Libreria Editrice Vaticana, p.8.

> Marriage is not simply about the relationship of two people to God, it is also a reality of the Church, a sacrament, and it is not for the individuals concerned to decide on its validity, but rather for the Church, into which the individuals are incorporated by faith and baptism. "If the prior marriage of two divorced and remarried members of the faithful was valid, under no circumstances can their new union be considered lawful, and therefore reception of the sacraments is intrinsically impossible. The conscience of the individual is bound to this norm without exception[205].

3.6.3 Culture versus Christian Principles

Another Challenge faced by the Archdiocese of Windhoek concerning perpetuity and exclusivity of marriage is cultural conflicts, where culture encounters Christian principles. Although marriage, either as a natural institution or sacramental is always an ideal in the Archdiocese of Windhoek, cultural norms may sometimes create conflicts with Christian principles, creating imbalances between tradition and Christian dogma. This normally manifest itself in form of polygamy, where a man, although validly married, finds himself having children outside marriage. This also manifest itself in situations where one of the parties is unable to conceive children. Some cultural ideas seem to dictate that stability of marriage is guaranteed by one's ability to bear children.

This reality risks causing instability between a valid marriage and the children born from extra marital relationship, creating a situation of concubinage of which the party has a natural obligation towards these children. Such incidences often disrupt the harmonious existence of marital life and threaten the exclusivity of marriage. Due to this situation, there has been an attitude created that has yielded to an increasing acceptance of divorce that eventually causes conflict with the Church's teachings on the permanence of marriage. In some communities, customary practices may not align with the Church's understanding of marriage, leading therefore to some tensions between the Church and cultural practices.

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[205] J. RATZINGER, "The Pastoral approach to Marriage must be founded on truth" in *L'Osservatore Romano*, English edition, 7 December 2011, pp. 4-10.

3.6.4 Lack of Catechesis and Pre-Marital Education

Another challenge that can be noted in the Archdiocese of Windhoek is the lack of understanding of what marriage is. Many Christian faithful may not fully understand the sacramental nature of marriage as defined by the Church. This may be caused by poor catechesis offered and adaptable specifically to the youth. It will be very challenging for the youth to uphold fidelity in marriage if there is no proper understanding of the sacramental nature of marriage.

Pope Francis expressed in many ways "a better and more profound preparation of young couples, insisting on a relatively wider itinerary [...] which allows young couples to live with more awareness the sacrament of marriage, from the experience of faith and encounter with Jesus"[206]. The lack of a proper and profound catechesis, especially for young engaged couple will deprive them of the disposition of faith towards the sacrament of marriage, and treat it as a merely human undertaking, influenced by peer pressure and contracted only for convenience sake. This will help as Pope Francis continued "to avoid the multiplication of the celebrations of marriages which are null and inconsistent"[207]. This is so true of the Archdiocese that has a high record of marriages but some end up in a situation of inconsistencies leading to breakdown of this marriages to the point of civil divorce.

3.6.5 Divorce and Annulment

In the Catholic Church, divorce and annulment are two distinct concepts. While divorce is practiced in civil *fora*, it is referred to ending a valid marriage bond. Therefore, it acknowledges that a bond that is legally binding existed, and by divorce, that bond comes to

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[206] Cf. FRANCESCO, *Discorso in occasione dell'Inaugurazione dell'Anno Giudiziario del Tribunale della Rota Romana,* Libreria Editrice Vaticana 21 gennaio 2017.

[207] Cf. FRANCESCO, *Discorso in occasione dell'Inaugurazione dell'Anno Giudiziario del Tribunale della Rota Romana*.

an end, while annulment, a concept used by the Church, refers to a process of determining whether marriage is valid in the eyes of the Church. if it is discovered that marriage was contracted invalidly, there is to happen a declaration of nullity.

The Archdioceses of Windhoek is faced with a serious challenge of divorce. Many people choose to even hide their divorce that it can only manifest after some years when there is a need for some services from the Church, or even perhaps when they want to contract another marriage, or when they have already contracted another civil marriage and therefore, which that such civil union be recognized in the Church. this situation presents itself to be complex because, those who divorced and have entered a civil union have often created a stable irregular union, living together, having children and acquired all civil rights. In this regard, the Church finds it challenging to address such a situation, of which the Church has to first consider if the initial bond, which is sacramental, is valid or not, before addressing the current situation. The challenge of divorce and annulment requires proper discernment of which Pope John Paul II stated that "Pastors must know that, for the sake of truth, they are obliged to exercise careful discernment of situations. There is in fact a difference between those who have sincerely tried to save their first marriage and have been unjustly abandoned, and those who through their own grave fault have destroyed a canonically valid marriage"[208].

Upon inspection, it is often found that the initial bond is valid, only some difficulties that emerged, and the spouses decided to request for a civil divorce without first seeking the Church's intervention and guidance. This situation was also created by the understanding of the Christian faithful that you will never find help in the catholic Church if you have a challenge with you marriage, an understanding that has arisen perhaps because of the lack

[208] *Familiaris Consortio*, n. 84.

of tribunal or simply due to lack of understanding on how the Church handles matrimonial issues.

Attached to the reality of why some Christian faithful in the Archdiocese of Windhoek choose civil divorce is the annulment process that sometimes present itself to be a complex reality, that often create stigma and for this reason deters individuals from seeking clarity on their marital status within the Church. But what is presents by annulment as a challenge is the lack of tribunal in the Archdiocese. The Archdiocese of Windhoek depends on the Interdiocesan tribunal of Cape Town in South Africa, presenting the challenge of a lengthy and protracted period of time and also often costly in offering clarity on marriage status of the faithful. People opt for civil divorce that can be granted within a limited time. But also attached to this, some Christian faithful go for civil divorce because the situation they face in their marriage does not constitute a declaration of nullity, and therefore the avoid seeking help from the Church.

3.7 Canonical and Pastoral Recommendations

The joy of love that is experienced is marriage needs to be nurtured so that the conjugal love is preserved. In this way, "husband and wife through that mutual gift of themselves, which is specific and exclusive to them alone, develop that union of two persons in which they perfect one another, cooperating with God in the generation and rearing of new lives"[209]. In order to protect valid matrimonial bond, considered by its very nature to be perpetual and exclusive, the church should always present herself as a mother who guides her children so that "the inseparable connection, established by God, which man on his own initiative may not break [...]"[210], will always be preserved.

[209] *Humanae Vitae*, n.8.
[210] *Humanae Vitae*, n.12.

The challenges affecting the perpetual and exclusive bond of marriage in the Archdiocese of Windhoek may be addressed if some measures are put in place to respond to the. This work require a commitment on the part of the Archdiocese to consider creative ways and methods that will help the Christians remain faithful to their conjugal love.

It is an undeniable fact that marriage dominates our everyday discourse, and specifically the Church's discourse. This is true because marriage is at the heart of society, and trough healthy marriage, health families are established. Throughout history, the reality of marriage has preoccupied the Church, and even today this reality is more evident and requests more attention than ever. The Church is called to her obligation of the *munus docendi* in order to proclaim the truth of faith, while also maintaining her role as a mother who accompanies all her children to eternal life. Through her *munus docendi,* she is to help the Christian faithful to have a well-founded understanding of ministry of conjugal love of which the Christian marriage is a sacrament through which the Christian spouses are consecrated to God, and on the other part, participate in the mission of the church. Marriage in itself forms part of the ecclesial ministry, which is the ministry of love, which renders visible on one part the gift of divine love, and on the other part, the responsibility that derives from the spouses[211]. Through the gift of faith, the Christian faithful are open to God's wonderful plan of love and fidelity.

3.7.1 Promulgation of Particular Laws

Canon 1063 gives norms of pastoral character that pastors and the ecclesial community are to implement as pastoral means to the Christian faithful. It states that Pastors of souls are obliged to ensure that their own Church community provides for Christ's faithful the assistance by which the married state is preserved in its Christian character and develops in perfection. Perhaps with the promulgation of particular laws and

[211] Cf. *Familiaris Consortio*,, n. 49.

pastoral exhortations, the Archdiocese of Windhoek will be at a better position to respond effectively to matters affecting the perpetual and exclusive nature of the matrimonial bond. The promulgation of particular laws will also help as a guide to pastors and all pastoral agents in guiding the faithful of the Archdiocese, and remind them of the nature, duties and obligations that come from a valid matrimonial bond. Particular laws may also help promote doctrine and avoid erroneous understanding of marriage. They can serve as a source of harmony in parishes and avoid arbitrariness and diverging teachings on marriage. The existence of particular law will help the Archdiocese of Windhoek to respond to practical realities that are peculiar to it.

As matter of fact, two of the guiding principles of the revision of the Latin Code emphasized the need for evolving particular laws. The fourth principle affirms that "the power of the diocesan bishop is to be placed in its proper light, reducing the number of issues reserved to universal authority and restoring the bishop as a pastor serving a particular Church with all the authority needed to do this"[212] . To this can also be added the fifth principle on subsidiarity. Canon 12 § 3 of the Code of Canon Law makes reference to particular laws by stating that laws established for a particular territory bind those for whom they were issued as well as those who have a domicile or quasi-domicile there and who at the same time are actually residing there, without prejudice to the prescript of can.13.

Although there is a universal law on perpetual and exclusive matrimonial bond, particular law (*ius particulare*), or a diocesan law is pertinent in complementing the universal law in order that it distinctively responds to diocesan pastoral needs and circumstances, and in this regard, marriage bond of which the diocesan bishop is vested

[212] K.S. SEBASTIAN, *Legislative function of the Diocesan Bishop and its implication*, pp. 123-145.

with this legislative power exercised within the provision of the Code of Canon Law. For he possesses this power as (*potestas plena*) in exercising his pastoral ministry in his diocese (can.381§ 3).

3.7.2 Proper Pastoral Care and Formation on Marriage

There is a need in the Archdiocese of Windhoek to have pastoral programs that are more effective, efficient prolonged and perhaps well planned, of canonical flavor, not only for those who have already registered their marriages through the Pre-nuptial inquiries, but focused on young people who feel called to married life. The Southern African Bishops Conference, to which the Archdiocese of Windhoek often relies, proposed that "a more intense preparation for marriage and accompaniment"[213]. Pastoral formation is "necessary to deepen an understanding of the positive aspects of conjugal"[214].

The Post-Synodal Apostolic Exhortation of Pope Francis *Amoris Laetitia* encourages the Preparation towards marriage by stating that "The timely preparation of engaged couples by the parish community should also assist them to recognize eventual problems and risks. In this way, they can come to realize the wisdom of breaking off a relationship whose failure and painful aftermath can be foreseen"[215]. The pastoral formation would entail both the short term, specifically for those who are already engaged, and a long term for those who already find themselves in marriage.

The Post-Synodal Exhortation of Pope Francis *Amoris Laetitia*, gave an indication that "both short-term and long-term marriage preparation should ensure that the couple do not view the wedding ceremony as the end of the road, but instead embark upon marriage as a

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[213] SOUTHERN AFRICAN CATHOLIC BISHOP'S CONFERENCE, *Pastoral Letter on Marriage and Family*, Cape Town 2017.

[214] PONTIFICAL COUNCIL FOR THE FAMILY, *Family, Marriage and "De Facto" Unions* , 26 July 2000, p. 40.

[215]FRANCIS, Post-Synodal Apostolic Exhortation *Amoris Laetitia*, p. 159.

lifelong calling based on a firm and realistic decision"[216]. This will help the couple understand the commitment to be made, and be ready to embrace the matrimonial bond. Francis further exhorted that "The pastoral care of engaged and married couples should be centered on the marriage bond, assisting couples not only to deepen their love but also to overcome problems and difficulties"[217]. This is so that because many instances effecting the perpetuity and exclusivity of marriage in the Archdiocese of Windhoek emerge as mere challenges that may arise because the couple was never deeply prepared to face them. To this, *Amoris Laetitia* stated that the pastoral approach :

> Should not only involve helping them to accept the Church's teaching and to have recourse to her valuable resources, but also offering practical programmes, sound advice, proven strategies and psychological guidance. All this calls for a pedagogy of love, attuned to the feelings and needs of young people and capable of helping them to grow interiorly[218].

Proper Pastoral formation is also important in order to address cultural norms that may find themselves conflicting with Christian principles. This is a reality in most African cultures of Which the Archdiocese of Windhoek is not immune to. In proposing the maxis that bring challenges to African families today, G. Selvam "stressed the need in molding young people towards building good Christian families in Africa. Formation of the youth is a necessity if we want to face the social crisis afflicting African families today"[219]. Such formation will help integrated cultural norms and practices with Christian principles without undermining both of them.

On the other hand, through pastoral care, the doctrinal and juridical elements of marriage are clarified and expounded so that the spouses acquire a more rooted understanding of their love, duties and responsibility of married life. It can be observed that there is a need for a

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[216] FRANCIS, Post-Synodal Apostolic Exhortation *Amoris Laetitia*, p. 160.
[217] FRANCIS, Post-Synodal Apostolic Exhortation *Amoris Laetitia*, p. 160
[218] FRANCIS, Post-Synodal Apostolic Exhortation *Amoris Laetitia*, p. 160
[219] A.A. KYOMO – S.G SELVAN., (*eds.*), *Marriage and Family in African Christianity*, Acton Publishers, Nairobi 2004, p. 4.

deep pastoral, doctrinal and juridical formation especially of the engaged couples which is "efficient and strong to offer a clear understanding and awareness of their vocation to take part in the divine-human spousal love for Christ and the church"[220] .

3.7.3 Organized Proper Catechesis for Young Adults

There is a lack of active catechesis that is rigorous and deepen the reality of marriage and family. Catechesis is the best form of preparing young people for their future. It helps young people to cultivate deep faith, and understand what the Church teaches especially on the sacrament of Marriage. It will be of great value if the Archdiocese of Windhoek come up will catechetical programs focusing on marriage and other vocations to help them deepen their understanding of choices in life.

Number one of can.1063 offers ways on how this can be done; by preaching, by catechetical instruction adapted to children, young people and adults, indeed by the use of the means of communication, so that Christ's faithful are instructed in the meaning of Christian marriage and in the role of Christian spouses and parents. Number two of the same canon recommend a personal preparation for entering marriage, so that the spouses are disposed to the holiness and the obligations of their new state. Number three of the same canon stipulates how, by the fruitful celebration of the marriage liturgy, it clearly emerges that the spouses manifest, and participate in the mystery of the unity and fruitful love between Christ and the Church.

Finally, by those who have already contracted marriage, that are assisted by the help given to them, so that by faithfully observing and protecting their conjugal covenant, they may day by day achieve a holier and fuller family life. through the catechesis, the young adults are

[220] F. MERONI, "Pastoral care of Marriage: Affirming the Unity of Mercy and Truth", in *Communio International Catholic Review*, 31 (2004), p.443.

helped to understand to realize that is not something that happens once for all. Their union is irrevocable, confirmed and consecrated by the sacrament of matrimony"[221].

The catechesis will also resolve the challenge of the decline of youth participation the Church, and be deprived of the spiritual riches the Church offers, hence, choosing to contract civil marriages that will give rise to people merely living together without the sacrament of marriage. The Preparation will help in the maturation of faith and understanding of marriage of the young people.

3.7.4 Preparation for the Sacrament of Marriage

It is important that the Archdiocese of Windhoek encourages and promotes as well as strengthen the active sacramental life of the Christian faithful. To is, then, Pontifical Council for family has proposes practical ways to achieving this. The first proposal is "evangelization, which is both maturation and deepening in the faith"[222].

The Dicastery for the laity, family and life has produced what is titled as "*Orientamenti Pastorali per le Chiese Particulari,* an inspiration from *Amoris Laetitia* as a means to announce the joy of family"[223] It will help them to have a rooted sacramental life, that respects the sacraments as well as the magisterium of the Church. This can be done through family and marriage apostolate, well-structured catechesis in parishes in order to promote the sanctity of marriage and well-being of family life. "If the faith of the faithful is weak or

[221] FRANCIS, Post-Synodal Apostolic Exhortation *Amoris Laetitia*, p. 165.

[222]PONTIFICAL COUNCIL FOR THE FAMILY, *Preparation for the Sacrament of Marriage*, 13 May 1996, n.2, Vatican Press, Vatican City, p.5.

[223] Perché la Chiesa, in ogni epoca, è chiamata ad annunciare nuovamente, soprattutto ai giovani, la bellezza e l'abbondanza di grazia che sono racchiuse nel sacramento del matrimonio e nella vita familiare che da esso scaturisce. A cinque anni dalla sua pubblicazione, l'Anno "Famiglia *Amoris laetitia*" ha inteso rimettere al centro la famiglia, invitare a riflettere sui temi dell'Esortazione apostolica e animare tutta la Chiesa nell'impegno gioioso di evangelizzazione per le famiglie e con le famiglie, DICASTERO PER I LAICI, LA FAMIGLIA E LA VITA, Itinerari Catecumenali per la vita matrimoniale: Orientamenti pastorali per le Chiese particolar, Libreria Editrice Vaticana, p.7.

almost nonexistent, it must be revived"[224].The second proposal is the "patient instruction that arouses and nourishes the ardor of a living faith"[225]. The Pontifical Council also suggested that marriage preparation be transformed by "a presentation of the fundamental Christian truths that may help acquire or strengthen the maturity of faith of the persons contracting marriage"[226].

The Pontifical Council for the Family also published some guidelines on the "Preparation for the sacrament of marriage" on 13 May 1996 of which it highlighted that "Preparation for marriage, for married and family life, is of great importance for the good of the Church"[227]. It highlights three type of preparations: the first is the Remote Preparation which takes place in childhood and adolescence, in the family, in school and formation groups. The purpose of this preparation is to "attain the goal whereby every member of the faithful called to marriage will understand completely that, in the light of God's love, human love takes on a central role in Christian ethics"[228].

The second preparation is called the Proximate Preparation, a time during which the couple will have to deepen their faith as well as to identify any difficulty they may have in living an authentic Christian life. This normally takes place during the period of engagement, considering generally the youth. It focuses on "the elements of psychological, pedagogical, legal and medical nature for marriage and family life" (n.35). The last one is called the immediate preparation which "offers the synthesis of other preparation. It is the preparation towards the celebration of the sacrament of marriage" (n.55).

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[224] Cf. *Familiaris Consortio*, n.68.
[225] PONTIFICAL COUNCIL FOR THE FAMILY, *Preparation for the Sacrament of Marriage*, p.6.
[226] PONTIFICAL COUNCIL FOR THE FAMILY, *Preparation for the Sacrament of Marriage*, p.6
[227] PONTIFICAL COUNCIL FOR THE FAMILY, *Preparation for the Sacrament of Marriage*, p.7.
[228] PONTIFICAL COUNCIL FOR THE FAMILY, *Preparation for the Sacrament of Marriage*, pp.102-103.

Canon 1064 highlights the responsibility of the Local Ordinary in ensuring that these assistance is duly organized. If it is considered opportune, he should consult with men and women of proven experience and expertise. Through this canon, the Ordinary is advised to formulate diocesan programs in light of advice offered by qualified lay persons who possess particular expertise. This involves ensuring that those who exercise this ministry are well trained and have the opportunity and the means to continue their formation.

The Dicastery for the laity stated that "there is above all the need to accompany with a sense of responsibility all who manifest the intention to unite themselves in marriage, so that they may be preserved from the trauma of separation and that they may not lose hope in love"[229]. For this reason, a recommendation for a proper prolonged and profound preparation for the future spouses in all the steps of the sacramental journey, of its celebration and of the successive years is an important one.

3.7.5 Formation of Pastoral Agents with Regard to Marriage

It is absolutely true that pastors cannot provide this assistance alone due to their already demanding pastoral work. Therefore, it could be recommended that different structure be created in the Archdiocese, with sufficient pastoral and canonical flavor to assist especially the clergy in rendering this assistance to other members of the Christian faithful. These structures can be entrusted with the role of nurturing healthy marriages by offering education on married life considered in the totality of its values. These structures can be created at parish level to face practical pastoral issues at hand and help accompany the faithful whose marriages face the reality of separation, and fell that they can no longer sustain the commitment of marriage as a commitment of life. through these structure, family ministry

[229] Cf. DICASTERO PER I LAICI, LA FAMIGLIA E LA VITA, *Itinerari Catecumenali per la vita matrimoniale: Orientamenti pastorali per le Chiese particolar*, Libreria Editrice Vaticana, Città del Vaticano p.8.

which provides systematic and ongoing formation on the value of marriage as a vocation [...]"[230].

It can also be observed that most couples drop their commitment of live and love merely to difficulties and challenges which do not necessarily constitute elements of divorce of nullity and even dissolution of the bond. Pastoral structures, especially at parish level will help those who face difficulties in their commitment to identify whether such difficulties give an indication of a marriage that is null from the beginning or these are just difficulties that married life is not immune to.

The Archdiocese of Windhoek could therefore provide pastoral and canonical formation to these pastoral agents although not an elaborate formation. With their formation, chosen among those members of the Christian faithful based on their reputation and expertise and with the guidance of their Pastor, they are able to help create a good healthy community nurturing healthy marriage. They will also be able to help other Christian faithful to understand the dynamics of the Church in dealing with marriage cases.

3.7.6 Separation of the Spouses while the Bond Remains (cann. 1151-1155)

The role of the Church is always to accompany her children on the path to holiness. For this reason, Pope John Paul II issues a letter on the sanity of the family "*Gratissimam Sane Familiis*, emphasizing the values and beauty of conjugal love which should be cultivated by the spouses themselves, but also appreciated in the community of the Church"[231]. therefore, the church has the responsibility of protecting the sacrament of marriage, and consequently, promoting values of family.

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[230] III EXTRAORDINARY GENERAL ASSEMBLY SYNOD OF BISHOPS, *The Pastoral Challenges of the Family in the context of Evangelization* (*Instrumentum Laboris*), Libreria Editrice Vaticana, Vatican City 2014, p.21.

[231]Cf. IOANNES PAULUSII.1994.Littera ipso volvente sacro familiae *Gratissimam Sane familiis*, 2 February1994, in *AAS* 87 (1994), pp. 868–925.

The recommendation of separation of the spouses while the bond remains, will help respond to a situation where spouses take it upon themselves to institute a divorce due to merely marital challenges, and also in cases where these challenges do not necessarily constitute a declaration of nullity. Such a separation will combat causes of divorce that may simply require the Church's intervention.

It is important to note that marriage is a complex reality that requires sensitivity, care and consideration. For this reason, the Church has exhausted all means possible to maintain the dignity of marriage while being sensitive to this reality. One of the considerations that could serves almost as the last resort before the declaration of nullity or dissolution of the bond is the Separation of the spouses while the bond remains. The first form of this separation is temporal separation. It is considered to be an interruption for a determined time of the conjugal living. Canon 1151 indicates that spouses have the duty and right to preserve conjugal living unless a legitimate cause excuses them.

The duty mentioned in the canon refers "both to the moral and juridical duty"[232]. This is to preserve what *Gauidum et Spes* 48 and can.1055 alluded to that marriage is a partnership of the whole life, which by its nature is ordered by its nature to the good of the spouses, that of generation and education of the offspring. However, the Church is aware of the marital disharmony as a fact of life, of which the law must also be attentive to where unfortunate situations may arise, and common life cannot be maintained. What is ended however, is life in common, and not the matrimonial bond, motivated by a lawful reasons enumerated in cann.1152 §1, 1153 §1.

In this case of separation, neither party is free to enter a new marriage. Therefore, the Church makes use of this intervention as a pastoral action to avoid multiplication of divorces

[232] Cf. *Communicationes* (1973), p.86, art.II, 2°.

and new civil marriages of the divorced, which is a reality that is prevalent in the Archdiocese of Windhoek. Such separation is understood to be of two categories, and a brief understanding of both would be of great help.

3.7.6.1 Permanent Separation (can.1152)

While can.1152 §1 earnestly recommends that a spouse, motivated by Christian charity and solicitous for the good of should not refuse to pardon an adulterous partner and should not sunder conjugal life, the other partner has the right to sever the common life, provided he or she has not consented to the adultery, nor been the cause of it, nor also committed adultery, in case where the spouse has not either expressly or tacitly condoned the other's fault. "The canon deals with perpetual separation caused by adultery understood to be a carnal union of a man and woman united in a valid marriage, with the other party diverse from the proper one who is not a legitimate spouse "[233].

Paragraph two states what is meant by condonation, that tacit condonation occurs if the innocent spouse, after becoming aware of the adultery, has willingly engaged in a marital relationship with the other spouse, on the other hand, the canon further states that it is presumed however, if the innocent spouse has maintained the common conjugal life for six month, and has not had recourse t ecclesiastical or civil authority. The last paragraph of this canon gives an indication that, within six months of having spontaneously terminated the common conjugal life, the innocent spouse is to bring a case for separation to the competent ecclesiastical authority.

Having examined all the circumstances, this authority is to consider whether the innocent spouse can be brought to condone the fault and not prolong the separation permanently. In this regard, the Code considers adultery as a unique cause of legitimate total and perpetual

[233]Cf. L. SABBARESE, *Il matrimonio canonico nell'ordine della natura e della grazia*, p.389.

separation. Adultery is considered to be the gravest violation of the conjugal love and fidelity, which disturbs profoundly the lives of the spouses, often rendering the interpersonal relationship intolerable.

The innocent spouse is "earnestly exhorted to pardon the adulterous partner"[234], and not to interrupt the conjugal life for the motive of Christian charity and solicitous for the good of the family, and if there are children, to bring them up and educate them. Therefore, it lies upon the competent ecclesiastical authority to prudently judge the matter and consider all the possibilities and consequences rightly. Juridically, the Code provides norms to be observed in dissolving common conjugal life, which is given as a right. These norms help the authority involved to determine whether it really constitutes adultery in its material, formal and moral perspective, examining whether the married person has really engaged in an act of sexual intercourse with someone other than his or her spouse, that it was a voluntary engagement, and not a rape case suffered by constrain or deceit or in a state of unawareness perhaps as an outcome of drunks or any form of intoxication, and that it does not arise out of doubt, suppositions, suspicions which are considered not sufficient to qualify it to be an adultery.

The canon also indicates that, adultery should not lead to separation if it took place with the approval or consent, express or tacit or implicit of the spouse, or worse, with the direct instigation for an end of profit or to attain a particular purpose, and that the innocent spouse did not also commit adultery, and that the innocent spouse did not pardon expressly or tacitly.

> By express condonation if referred to when the innocent spouse has openly and explicitly pardoned his or her spouse, and by tacit condonation is referred to a situation when the innocent party has engaged willingly in a marital relationship, particularly sexual intercourse with the guilty spouse, and that the innocent spouse has preserved the common conjugal life for six months after learning of the adultery,

[234] Can. 1152 §1, *Licet enixe commendetur ut coniux, caritate christiana motus et boni familiae sollicitus, veniam non abnuat comparti adulterae atque vitam coniugalem non disrumpat, si tamen eiusdem culpam expresse aut tacite non condonaverit, ius ipsi est solvendi coniugalem convictum, nisi inadulterium consenserit aut eidem causam dederit aut ipse quoque adulterium commiserit.*

> and that he or she has not approached the competent ecclesiastical authority or civil authority to request a separation or divorce. All these fall under the presumption of law, of which it can be overturned by contrary evidence, especially if the adulterous spouse has prevented the other party from leaving or from approaching the appropriate authority[235].

3.7.6.2 Temporary Separation (can. 1153)

Canon 1153 §1 provide reasons for temporal separation in a situation where a spouse who occasions grave danger of the soul or body to the other or to children, or otherwise makes common life unduly difficult, provides the other spouse with a reason to leave, either by decree of the local Ordinary or, if there is danger in delay, even on his or her own authority. Paragraph two of the same canon states that, in all cases, when the reason for separation ceases, the common conjugal life is to be restored, unless otherwise provided by ecclesiastical authority.

The canon outlines three possible causes of temporal separation; the danger posed to any of the party, to the children, or in case of behaviors that makes common life exceptionally difficult. The party threatened can approach the local Ordinary for a decree of temporal separation, or in case there is a perceived danger in delay, the law gives the spouse the authority to act on his or her own initiative and ends common life. The cases mentioned by the canon are to be serious, that they causes serious harm to the party or to the children. The canon does not contemplate mere tensions, misunderstandings, and arguments between the spouses which can be overcome by the spouses themselves or with the intervention of the counselor. That is way, the Parish community is to have experts in marital matters, including counselors with good reputation and knowledge of marital affairs to help in cases such tensions and misunderstanding occur in order to help the spouses who merely struggle to see the other side of the coin.

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[235] Cf. L. SABBARESE, *Il matrimonio canonico nell'ordine della natura e della grazia*, pp.389-390.

In light of the general principle of can.1151, "as soon as the cause for separation ceases, the couple should restore their common conjugal life"[236]. It could be prudent that a gradual facilitation be considered, including the use of counselors, priest, and any other necessary assistance, due to the fact that restoration of common conjugal life may immediately not be possible due to the pain previously cause, and where possible, weighing the gravity of the matter, the ecclesiastical authority may determine that a couple not resume life together, of which the Bishop, or the Tribunal may issue a decree of permanent separation, because the law does not permit that couples institute a permanent separation on their own authority.

3.7.7 Creation of Pre-Judicial and Judicial Structures in the Catholic Archdiocese of Windhoek

One of the notable things brought by the Apostolic Letter *Motu Proprio* of Pope Francis *Mitis Iudex Dominus Iesus* is the "conversion of ecclesiastical structures, through the principle of proximity"[237]. In this way, the Christian faithful are able to easily access ecclesiastical services and render judicial services closer to them. This will alleviate burden on the side of the people of God in accessing justice. Although the document brought some reforms on procedure and not doctrine, "due regard was considered to protect the principle of the indissolubility of the marital bond"[238].

In this case, the document establishes the diocesan bishop' judicial power, which he can freely exercise or through a Judicial Vicar. This will give greater access to the administration of justice to those people who await for the status of their marriages. Most people in the Archdiocese decide to remain in irregular situations because they are not aware of what method the Church has to address their situations. Therefore, structures mentioned in

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[236]Cf. L. SABBARESE, *Il matrimonio canonico nell'ordine della natura e della grazia*, p.391.

[237] FRANCIS, Apostolic Letter Motu Proprio *Mitis Iudex Dominus Iesus*, 15 August 2015, Libreria Editrice Vaticana, p.3.

[238] FRANCIS, Apostolic Letter Motu Proprio *Mitis Iudex Dominus Iesus*, p.2.

Mitis Iudex Dominus Iesus include the erection of a tribunal in dioceses to render greater and easy access to structure of justice in the particular diocese. Where this seems to be impossible due to practical reasons, an interdiocesan tribunal can be erected in the ecclesiastical province, thus promoting collaboration, and facilitated resources. Currently, the Archdiocese makes use of the Tribunal in South Africa, which has proven to be time consuming and also costly for couples. Therefore, can.1673 of *Mitis* emphasizes the centrality of the diocesan bishop in marriage cases as judges in the first instance.

The is to exercise this judicial power personally or through others he has appointed according to the norm of law. Lay people can be trained and be part of this tribunal as collegiate judges. The diocesan bishop can equip his tribunal so that it can be able to attend to cases throughout the diocese, even for purposes of educating the clergy on parish level oh how to go about handling matter concerning marriages. This is because a situation may arises that a priest may not be well versed in procedure of handling marriage cases. Tribunal officials can therefore be at the service of parishes in order to train the clergy and other pastoral agent to handle matters of pre-judicial enquiry. This can help in lessening the costs especially for the Christian faithful who cannot not access structures of justice because of their economic status. Although the document is meant to provide relief to what is considered as a lengthy process in regarding the nullity of marriage, it also serves as a tool to respond to situation of multiple divorce due to lengthy processes or a lack of judicial structures

3.7.8 Training of Tribunal officials and Resources for the Tribunal

The personal intervention of the diocesan bishop in matters concerning marriage also entails training of tribunal officials. It would be of benefit to the diocese to train more of the tribunal judges and canonists who will assist the diocesan bishop in the administration of justice, especially in matters concerning marriage. “The diocesan Bishop exercises his judicial power

through an established tribunal, which consists of a judicial vicar ("*officialis*"), associate judicial vicars ("*vice-officiales*"), and judges"[239], of which can.135 makes reference. In this way, the existence of the tribunal will be able to attend to emerging disputes affecting matrimonial bond, and avoid separations that are not authorized by the competent ecclesiastical authority. This will bring awareness to the Christian faithful of the relevant structures available in the Archdiocese for them to seek justice.

The diocesan bishop of the Archdiocese of Windhoek can also make provision that the tribunal is sustained financially to remain functional, by finding it directly or by soliciting funds for the upkeep of the tribunal. In the spirit of synodality, the diocesan bishop of the Archdiocese of Windhoek could cooperate with other bishops in the ecclesiastical province in the training of tribunal official, and in doing so, foster the spirit of brotherhood, ease economic difficulties, and dispense the divine grace and gratuitous love of Christ that saves all, signifying that the Church has as a generous mother of the faithful. For this reason, the tribunal is to act as a hospital for all the wounded members of the Church who seek healing from marriage infirmities. Such structures help in executing the principle of celerity advocated by "*Mitis Iudex Dominus Iesus*, especially in cases where marriage nullity seems to be manifest"[240]. However, tribunal is always to be considered as the last resort after all possible pastoral means are exhausted.

Judicial structures specifically the tribunal as avenue of recourse for couples in search of justice when faced with the complexities of their marital status. This goes along with tribunal officials. For this reason, it appears to be demanding and time consuming and costly to refer

[239] G.M. BZDYRAK, "The Status and Duties of Ecclesiastical Judges in Cases Concerning the Nullity of Marriage", in *Journal of Religions*, Vol. 14 (2023) Catholic University of Lublin, Lublin 2023, pp.1-10

[240] FRANCIS, Apostolic Letter Motu Proprio *Mitis Iudex Dominus Iesus*, p.2

marriage cases to a tribunal located in a different country. This has also created an impression in the minds of the faithful that they no forum within the ecclesiastical structure where their marital status can be evaluated, perpetuating the situation of either spouses living together but separated because there is no common conjugal life, or eventually divorced and separated because no forum to help them understand their marital status. This will compromise the reality of exclusivity of marriage of which *Amoris Laetitia* stated that: "Christian marriage, as a reflection of the union between Christ and his Church, is fully realized in the union between a man and a woman who give themselves to each other in a free, faithful and exclusive love, who belong to each other until death [...]"[241].

A tribunal can be an effective means to address the issues affecting matrimonial bond and avoid spouses making decision of divorce and separation of which the Church will consider it as a situation of marriage with concubines. Although structures are secondary, they serve as instruments of reference. This has led to the problem that this work intends to address partially. The problem is that which the working document of the Synod alluded to. The synod noted that "there are a great number of Catholics excluded from the sacraments, the source of unity and strength, by reason of their irregular marital situation"[242]. This challenge, observed already by the synod remains a persisting problem, and it is still affecting the life of families and the Church. At the heart of these irregular union is the question of consent that has been compromised at a certain stage.

Conclusion

This Chapter has tried to bring to light the practical realities affecting the matrimonial bond in the context of the Archdiocese of Windhoek. It tried respond to the to the reality of many Christian faithful who are married and ended up being deprived of the sacraments,

[241] FRANCIS, Post-Synodal Apostolic Exhortation *Amoris Laetitia*, p. 222.
[242] *Instrumentum Laboris*, Libreria Editrice Vaticana, Vatican City1993, n.68.

especially the Eucharist in the Archdiocese of Windhoek and the situation of irregular unions. It has presented the reality of the ground and also tried to analyses why there are existence of such realities, especially of divorce and civilly married couples, separated spouses, polygamy and a situation of married spouses with concubines.

The analysis has discovered that part of these challenges on the ground are caused by lack of particular laws that directly bind in the Archdiocese of Windhoek, specifically on marriage, as well as lack of pastoral exhortations toward marriage and Christian families, presenting therefore a legislative *lacuna* in the legislation of the Archdiocese of Windhoek. Another discovery brought by this study is a gap in proper and effective pastoral care and formation that can respond effectively to that challenges observed.

It is not enough to promote and encourage Christian marriages without offering proper pastoral care. Helping couples to mature in faith and in their commitment with benefit not only themselves but also the Church and society. As Pope Francis puts it, "no family drops from heaven perfectly formed; families need constantly to grow and mature in the ability to love"[243]. More can be drawn from this document that will assist pastoral agents in helping the faithful and especially young couple.

Finally, some recommendations are presented to help respond to these challenges, and promote a proper juridical and pastoral approach that can help both the christen faithful, pastors and pastoral agents in handling matter affecting the perpetuity and exclusivity as effects of matrimonial bond. This will eventually contribute to nurturing healthy marriages and families in the Archdiocese of Windhoek and promote good sacramental life.

[243] POPE FRANCIS, Post-Synodal Apostolic Exhortation *Amoris Laetitia*, n.325, p.254.

GENERAL CONCLUSION

This thesis is on the perpetual and exclusive bond as effect of a valid marriage. Chapter one has presented biblical foundation of perpetual and exclusive bond, from the Old Testament to the New Testament, the understanding of marriage as a sacrament the Church Father, the understanding of perpetual and exclusive bond of marriage in the *Decretum Gratiani* as well as the understanding of matrimonial bond in the Councils of the Church, beginning with the Council of Trent, until the Second Vatican Council, the Popes teachings on marriage as well as the entire Magisterium of the Church.

The Canonical and theological tradition regarding the perpetual and exclusive bond of marriage emphasized that marriage bond remains a sacred union between one man and one woman. This bond is perpetual, and therefore, a lifelong commitment which reflects the covenant between Christ and the Church. To this end, matrimonial bond remains indissoluble and permanent. The bond is also exclusive, meaning that it is a monogamous and therefore, excludes other forms of relationships that include polygamy or polyandry. The exclusivity of marriage is essential for the integrity of a matrimonial bond.

The valid matrimonial bond between the baptized is considered to be a sacrament (can.1055 § 2), endowed with a special grace that strengthens the spouses for their duties and dignity, therefore, enforcing perpetuity and exclusivity as effect of a valid matrimonial bond. There is not matrimonial bond contracted by the baptized it is no *per se* a sacrament. Christ the Lord raised it to the dignity of sacrament "establishing a form relationship between contract and sacrament in Christian marriages based on the doctrine of inseparability"[244].

[244] Cf. M.F. POMPEDDA., (*ed.*) "Faith and the Sacrament of Marriage Lack of Faith and Matrimonial Consent: Juridical Aspects", *in Marriage Studies IV: Reflections in Canon Law and Theology*, Canon Law Society of America, Washington, DC:1990, pp.32-65.

Chapter two offered a Juridical analysis of the canon of study which is canon 1134 on the perpetual and exclusive nature of the matrimonial bond, it studied the sources of the canon, its process of formation until the current legislation in the 1983 Code of Canon Law. The Chapter also focused on related canons in the 1983 Code as well as the CCEO Code.

The third chapter focused on the Practical consideration of the perpetual and exclusive nature of the matrimonial bond in the Archdiocese of Windhoek. It presented a brief reality of and context of the Archdiocese of Windhoek, considered the particular legislation and other pieces of auxiliary legislation of which it is discovered that there is a gap in particular legislation on matter concerning marriage, and those laws that conform to the canon of study and the topic at large. The Chapter also looked at other challenges affecting the Archdiocese of Windhoek in upholding the perpetual and exclusive nature of the matrimonial bond. Finally, the chapter offered recommendation, as suggestions and possible answers to underlining problems.

It comes out that the institution of marriage has raised serious interests especially from the Second Vatican Council, beginning with the pastoral constitution of the Church in the modern world. Marriages, especially Christian marriages remain sources of hope to society through which it renews itself in the realization of God's plan. Related to this is the institution of family which has seen some notable realities that arise from societal factors that seem to bring about new phenomena of which the Church recognized its important role to play especially in reawakening the teaching role.

Apart from being a doctrinal factor, the emphasis seem to take a more pastoral approach. For this reason, the church also had to renew its juridical approach to marriage in order to offer more sound principles. This however, does not mean the question of marriage was not treated anywhere in the life of the Church. Marriage could be understood as one of

the old institution in the life of humanity, beginning from the very existence and creation of man until his redemptive end. For this reason, the Old Testament serves as a foundation of this reality. Man who is created in the image of God was always called to be in relation with his Creator, with others and as a vocation, to create a conjugal bond capable of carrying on what God has entrusted to man.

The Church as a perfect society with means necessary for her mission, offers juridical norms to regulate every aspect of her life, and from all her *munera* dispenses all the divine treasures in order that her members be equipped with grace and truth, especially in matters of marriage, so that at last, all her members attain the joy of participating in the wedding feast of the Bride and the Lamb (*Rev 21:2,9*).

This study would be considered of great value to the Archdiocese of Windhoek as it tried to identify some canonical issues that are faced by the Archdiocese, by trying to bring light the gap in the legislative aspect of the Archdiocese and through the recommendations that are proposed in it. It would help guide the pastors as shepherd of souls in assisting couples who find that it has become difficult to live conjugal life, but also to help guide them to avoid marriage breakdowns.

The work has been faced with few challenges, specifically in Chapter three where it was challenging to find particular legislation, and more materials from the Archdiocese, due to the obvious fact that there is not much of them, and those that are there do not address the topic of this study at all. However, many authors have helped this work to be a reality through their doctrinal, juridical and pastoral insights that were of great importance to this work. It has helped me develop this work with expediency and clarity of thoughts.

This work does not exhausted all that can be said on the topic chosen, or the canon of study. More study and insight can still be advance to this topic, and therefore, this topic is still open to further development and study, leaving a window for future research.

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