

Cultural Impacts on the Freedom of Matrimonial Consent

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It is often said in Tamilnadu, 'Marriages are made in heaven and solemnised on earth'. Marriage in the secular sense is defined as the 'condition of man and woman legally united for the purpose of living together and, usually, procreating lawful offspring'. The institution of marriage in Tamil culture in general, is not merely an affair between two isolated persons but rather an important event between families. Therefore arrangement of marriage is given serious consideration in the areas of caste for racial purity, the traits of the family for stability, economical status for financial security, while love and personal relationship of the prospective couple are conveniently ignored. However, the impact of globalization makes in-roads into the traditionally guarded marriage network of Tamil culture. In this article I try to present the impact of the various nuances of Tamil culture that play vital role in marriages.

Culture and its Perception of Marriage

Marriage is, first and foremost, a primordial human reality. Its very existence and purpose are defined by human nature. As a human reality it is inseparably linked to the evolution of human beings. Since human beings evolve within the context of specific cultures, the inner structure and external manifestation of marriage, too, are shaped by cultural influences. On the one hand, therefore, the Church cannot be indifferent to its own values derived from the Gospel, while on the other hand it cannot be blind to those values which are integrated into the culturally influenced conceptual formulations of marriage. For instance, while the notions: rights and duties, freedom, equal dignity, love, etc., are essential to the meaning of marriage, their understanding and importance would be certainly interpreted by the culture of each

society. In certain cultures, for instance, in Tamilnadu, marriage is considered more a 'school of love' than a 'result of love'. A culture can set assumptions and expectations about dating, courtship, parental roles in the choice of a partner and gender roles within a marriage. In contrast, courtship in the Western society today allows or even requires, greater privacy and intimacy. Some other cultures, especially the traditional ones, see marriage as the moment for two people to come to know each other and to grow to love each other. Similarly some cultures may consider the objective social aspects of marriage to be more important than its subjective aspects.¹

In his post-synodal apostolic exhortation, *Familiaris consortio*, Pope John Paul II emphasised the need to understand marriage and family within the concrete social and cultural contexts in order to serve the people of God effectively. He said,

“Since God’s plan for marriage and the family touches men and women in the concreteness of their daily existence in specific social and cultural situations, the Church ought to apply herself to understanding the situations within which marriage and family are lived today in order to fulfil her task of serving.”²

There are two points that are relevant for our subject matter: (i) Marriage is a natural reality which is perceived, chosen and lived within a concrete socio-cultural milieu. (ii) The pastoral care of marriage or family is not possible without understanding their concrete situations. The Pope touches on the issue of pastoral care in his rotal allocution of 1991 where he said, “Precisely because it is a reality that is deeply rooted in human nature itself, marriage is affected by the cultural and historical conditions of every people. They have left their mark upon the institution of marriage. The Church cannot prescind from cultural milieu.”³

Hence, the Code has to find a way to answer to certain issues that are very much related to cultural nuances. In the field of marriage it is a vital issue that the universal law should be impartial in reaching out to the people of diverse nationalities, language and ethnicity without

diluting its own non-negotiable dogmatic truths. The arranged marriage system that has very much in common many parts of India, particularly, of Tamilnadu, throws a challenge to the universal law which demands freedom of consent in the choice of marriage.

Christianity in Conflict with Ethos of Culture

The conversion to Christianity could in no way alter the cultural nuances of the arranged marriage system. The attempts by the Western missionaries during the course of the 16th to 19th centuries could do very little to change the existing structures. As the society regards the virginity of unmarried girls as one of the main aspects of marriage, the girls are very much safeguarded and protected by the mothers, in particular, from their puberty. So there is no chance for dating and courtship before marriage, strictly speaking, although such practices are to some extent tolerated in urban and educational circles. The society, as a whole, looks at the moral conduct of marriageable girls even though such a quality is conveniently forgotten for boys of that age. A society which is so conscious of its caste endogamy and dowry affairs usurps the freedom of marriageable girls, in particular, in their life decisions such as marriage. Such an existing structure of matrimonial process comes into conflict with canonical requirements of marriage which stresses unlimited access to the freedom of consent before marriage.

Arranged marriages, as distinguished from courtship marriages, are negotiated and decided upon by the parents or guardians of the parties. The lack of dating and courtship has to be understood within an overall cultural context. Marriage, in Tamil culture, is not only a contract made between a man and woman but also an alliance between two families. As marriage is a family affair, an institution creating new alliances, most marriages are arranged even today. Even during the solemnisation of marriage it is not the spouses alone who give consent but, in a wider perspective, the families of the spouses and the community at large give consent to the marriage. This co-consent is so strong that in times of misunderstandings between the spouses in their marital life, the parents or the elders of either party take up the

initiative to settle the issues amicably. An arranged marriage has many requisites such as family background, caste endogamy, dowry, character of the girl, personality, complexion and so forth. The interventions of parents were seen as natural in such circumstances. The system protected the morality of youth and avoided unions within the prohibited degrees or different castes. In this way, we can conclude that arranged marriages preserved the stability of marriage in general.

Cultural Impact in Conflict with the Expression of Consent

Vatican II can be seen as a cultural event of historic importance by means of its pronouncements in various Documents. It devoted a significant section of its *Pastoral Constitution on the Church in the Modern World* to a discussion on 'culture'. The Post Conciliar Documents and the Papal Pronouncements also have shown a greater sensitivity to the demands of the times to allow Christian proclamation in a localised expression, consonant with the cultural values of Christians. There prevails a common opinion that 'most cultures possess a variety of traditions of which it is difficult to say whether they are good or bad. Most of them, however, are meaningful'. Theologians feel the necessity of 'inculturation' 'in the light of the mystery of Christ and not just as efforts to make a system or institution more meaningful to the people of different cultures'. Karl Rahner attempted a first analysis, showing with considerable nuances, how the Church truly became aware of its universal character with Vatican II. In fact, it has been reported, 'either the Church sees and recognises the essential differences of other cultures for which she should become a world Church [.....] or she remains a Western Church and so in the final analysis betrays the meaning of Vatican II'.

While analysing culture's relationship to matrimonial consent, the consideration of two of its aspects such as, each culture has its own content, and at the same time that content is dynamic, are important. It communicates, it conveys information and knowledge to those who live and participate in the life of the cultural group through the use of tools, symbols, language, as well as systems of abstract thought. People of certain cultures are very subdued in expressing their emotions while

members of some other cultural group show no inhibition in manifesting their feelings.

Ecclesial law is not a compendium of legal statues. Certain canons in the Code, which declare certain dogmatic truths, are certainly non-negotiable in any interpretation because they constitute the foundation of our faith community as a whole. Most canonical norms, however, are disciplinary in nature and, consequently adaptable to particular circumstances and for the spiritual well being of Christian faithful in certain cultures.⁴

Culture precedes individual's convictions and choices. It is possible to consider the effects of cultural influences under two aspects of matrimonial consent. Firstly, in the determination of the content of one's own intention and secondly, in the very choice of the marriage partner one selects. The content of person's intention is marriage and the marriage partner. Often the content of person's intention is already determined by his or her experience within a specific cultural environment. Therefore, if the content is substantially different from or contrary to the essential elements of marriage, the consent would be null. Likewise, the essence of choice of the marriage partner is internal freedom. If, in the name of culture, the freedom to make a deliberate and free decision is substantially diminished, the consent elicited under such circumstances would equally be null. Marriage is an 'intimate union' (GS, 48), a 'partnership of whole life' (c. 1055 §1) between a man and woman, by its nature ordered towards their own well-being (good of the spouses) and the procreation and upbringing of children (good of the offspring). This conjugal union is one, exclusive and lifelong (permanent), and between two validly baptised persons it is a sacrament (c.1055 §2). This is the theological and juridical conceptualisation of marriage according to the teaching of the Church.

Each cultural group cherishes its own values. For instance, values such as conjugal love, procreation, family status, prestige, virginity, etc. have a greater degree of importance in one culture than in another. In most cases, such values are instilled into the members of the cultural group through cultural education or enculturation and they stem from

a deeper underlying cultural level. In most cultures the meaning and purpose of marriage are determined by the deeply rooted beliefs concerning the meaning and purpose of human life itself as lived within the context of a particular cultural group. In fact, such beliefs differ from culture to culture. A proper understanding of the juridic implications of these cultural dynamics is very important in examining marriage cases.

The Church's Understanding of Cultural Values

Matrimonial consent is an act of a human person who is a product of a particular socio-cultural environment. "The Church proposes and imposes nothing. She respects individuals and cultures and honours the sanctuary of conscience" (*RM* no.39). On the occasion of 'World Day of Peace 2001', John Paul II speaks of a region's cultural profile, by which he means the basic heritage of language, traditions and values, cannot be met by legislative measures, since these would prove ineffectual unless they were grounded in the ethos of the population. In other words, the values of a regional culture would prove ineffectual under legislative measures. Culture cannot be separated from the life of the Christian. Since the beginning of Christendom, the Church has been in conflict with various cultures during its expansion. In the second millennium, as the Church spread to American and African Continents, given the civilisation and social awareness of people, it could easily penetrate the lives of the people enforcing its culture. At the beginning of the third millennium the Church cannot go with the same 'yard stick' in its pastoral approach. Given the civilisation of the present time, it is impossible to thrust one's views on others. Today, unlike the past, the society is well governed, grouped and organised so much so that the people are conscious of the importance of their own culture. To some quarters even conversion from one religion to another is considered a destabilising factor of one's own culture (*RM*, no. 37 and *Lineamenta* for Asian Synod, no. 33).

Faced with challenges of this type, the Second Vatican Council has in its new outlook, i.e. *novus habitus mentis*, brought out a new

understanding of the contemporary world giving due consideration to one's own culture. Thus the Church has to implement itself in cultures that are foreign to its outlook with proper adaptation that are intelligible and acceptable to its universal norms. So we can conclude that it becomes a necessity to move from a Church centred hierarchy to one founded on communion and from a Church of uniformity to a Church of unity in pluralism, integrating certain values.

Juridical Understanding of Matrimonial Consent in Cultural Values

Canonically speaking, in the arranged marriage system, the main difficulty is that often the full co-ordination of the will is given secondary place as the parents are busy preserving significant values such as parental authority, filial reverence and prestigious issues. The arrangement is made with good intention, sometimes without giving due regard to the consent of the spouses. Instead of focussing on the free consent of the spouses, attention is paid to freedom from social stigma, criminal background and the moral behaviour of the family members, history of any contagious disease, alcoholism, caste and the dowry, etc.

Yet such a system has prevailed for centuries. It is not a practical solution to consider all arranged marriages null and void. On commenting on arranged marriages dealing with reverential fear, rotal jurisprudence tries to understand the influence of cultural factors and their impact on the freedom of choice. Acknowledging these exploiting factors in the arranged marriage system, rotal jurisprudence is, however, concerned about the freedom of parties and how far human intellect and will are hampered by cultural factors. Taking into consideration the cultural values where the parental decisions are valued highly, Serrano Ruiz makes a distinction between the deprivation of freedom and the abdication of freedom. In deprivation some intrinsic or extrinsic elements destroy or substantially diminish internal freedom and ultimately the consent is invalid. On the other hand, in abdication, a person accepts

the will of the other. For instance, a girl voluntarily accedes to her parents' request to marry the spouse of their choice. In such eventualities the marriage is valid.

Commenting on the same issue on another occasion, royal auditor, Burke, states that jurisprudence cannot play any role in valuing the customs. On the other hand, out of respect and deference to parents, if the children leave the choice of the partner to the matured decision of the parents, then jurisprudence can come into the picture. In this context, he argues that a marriage arranged by parents for their children is not invalid if the children ratify the engagement entered and contract marriage. If, however, they do not wish to ratify the engagement and are, therefore, compelled to wed, the marriage is null. Jurisprudence comes into conflict with those values, which do not give the proper role and freedom to the contractant. From decisions of these types, we can conclude that jurisprudence gives due respect to local cultural values and never sides with unjust cultural factors which devalue freedom, human dignity and free consent.

The manifestation of matrimonial consent in Tamil culture conflicts with Western thinking where the words uttered before the official minister of the Church are preceded by a period of acquaintance for months and, in some cases, for years between the spouses. For example, the very aspect of reverential fear in marriage should be considered on the basis of the cultural context in which the spouses are born and bred. The customs, habits, nationality, age, economy, social status and education of the parties should all be taken into consideration. While reiterating the principles governing consent in reverential fear, De Jorio says that this type of consent must be interpreted according to each culture. In Western countries persons choose their spouses but this is not necessarily so in Indian culture. Hence, we can conclude that due respect and importance must be given to the local manifestation of consent without jeopardising the universal norm of the manifestation of free consent as given in c. 1104

Inculturation: A Step Towards the Application of Subsidiarity

A criticism may be raised that the papal documents and speech, and the curial documents did not go beyond the various repetitive ideas as regards the terminology of inculturation. It is a complex issue that requires the attention of the reader. Theoretically speaking, since 1979, (*Catechesi Tradendae*) almost all the papal and congregational documents that deal with the inculturation process, invariably make reference to the slogan: 'In communion with the Universal Church and compatibility with the gospel'. With the exception of *Fides et Ratio* of 1998, all the other papal documents and pronouncements speak about the inculturation and evangelisation of culture but do not go beyond that as regards the implementation of this process. The encyclical *Fides et Ratio*, true to its philosophical outlook, tries to rationalise certain matters. For instance, it makes a special reference to Indian cultural contexts and certain burning issues (no. 72).

The reason why the documents do not go beyond the slogan "compatibility with the gospel and union with the universal Church", as regards my opinion, is that the Church is reluctant to convert the principle of subsidiarity into practical norms and instructions. The earlier discussions that had centred around this principle during the synods of Bishops in 1967 and 1969 accepted the principle with great margin. As a result of this, the principle of subsidiarity found its place among the ten principles for the redaction of the new Code *CIC* 1983. Though the new Code did not mention this terminology, the meaning behind it is mentioned in the form of *communio* and *participatio*. The enthuse with which this principle was adapted ran into rough weather in the course of time. Precisely speaking, the synod of 1985, after heated discussion, raised the issue 'whether this principle applies in the Church'? In his concluding observation, John Paul II also did not give any form of new orientation towards this contentious issue, but rather made a brief account of the view of his predecessors.

Since then, the documents of Rome seldom mention the implementation of this issue and on a couple of occasions the principle of subsidiarity was reduced to the content of social philosophy

(*Centesimus Annus*, nos. 15 and 48 and 'Message for the 43rd Italian Catholic Social Week' on 10 November 1999). According to my view, the implementation of the principle demands a certain amount of freedom to the local Church as regards the issue of *approbatio*. Considering the painful experience of the nationalist and pluralist churches of the past, the Church is reluctant to venture into this sphere. However, it has to concede to the contextual realities that reawaken the principles of regional and cultural awareness.

When we look at the history of the Church the devolution of powers did not create a vacuum in the Church. In some dioceses the very choice of the names for the bishop, for some political reasons, is invested in the hands of the cathedral canons, for instance: the diocese of Köln in Germany and Basel in Switzerland. The Church has created concordats with many countries. Accordingly lots of bilateral agreements have been enacted. In the history of the Church, we come across the separation of the Eastern Church from the Western Church. After years of dispute on various issues, Rome has acknowledged and recognised certain prerogative powers for the Sees of the Eastern Churches. From these few examples, we can say that the undue fear concerning the implementation of the principle of subsidiarity, which might create a chaotic position in the Church and would sow the seeds of Nationalist and Regional churches, seems to be unfounded. A careful analysis of the devolution of powers in the past will help us take a fresh look at the implementation of the principle of subsidiarity with an open mind.

With reference to the matrimonial cases of *metus reverentialis*, error of quality and in discretionary Judgement in the context of the institution of marriage as understood in the Tamil and Hindu cultural and traditional way of life, we think that there is a need to imbibe the spirit and the soul of these traditions and beliefs handed down to us for more than two millennia. Thus the people who are more competent to judge these cases are the officials of the various local ecclesiastical tribunals. So we conclude that this calls for a belief in the principle of subsidiarity which demands that full scope should be given to every

organ in a body, and that a higher organ should never undertake to do what can be done at the lower level unless such an intervention is necessary for the good of the whole. This will eliminate unnecessary delays, enable much quicker decisions, transmit greater comprehension and compassion to the victims and demonstrate that the canonical principles are concerned about the salvation of souls as given in c. 1752.

Culture and Interpretation of Canon Law

One of the unique elements of ecclesiastical law applicable to matrimonial consent is its universality. That is, it has to be applicable to all the Christian faithful around the world. As it is universal, it needs to be reasonable and the principle of equity is central to its application to concrete situations. Ecclesiastical law is also a norm which has 'the salvation of souls' (c.1752) as its supreme goal. In an address of 17 October 1953 Pius XII said the following on this point:

"Canon Law, like everything in the Church, is wholly geared towards the care of souls. [...] it must give an account; whether it administers ecclesiastical matters or passes judgement or offers advice to sacred ministers and the Christian faithful, the salvation of souls should be its deepest concern."⁵

The universal nature of ecclesial law and its supreme purpose rooted in the very nature and mission of the Church necessarily imply that they must be interpreted and applied in a spirit of equity to diverse and variable conditions where the life of the faithful is grounded and nurtured.⁶ In other words, concrete situations within the believing community, which may be a nation, province, region, diocese or a religious community, demand the interpretation and application of ecclesial law.⁷ The cultural conditions and the pastoral needs of particular local Churches and of individual faithful are so diverse that the interpretation and application of the universal law must take into consideration the cultural heritage and the social situation of the people concerned.⁸ The interpretation of the universal law bears three indispensable characteristics. Firstly, the interpreter knows one's own

cultural background before interpreting the law. Interpretation is a human act. The personal modes of perception, cognitive style, skills, limitations, and biases that are embodied in each interpreter always influence the interpretative process.⁹ Even within the same culture, interpretations of law sometimes vary and conflict. This can be vivid in the conflicting decisions local tribunals pronounce on the same case. Secondly, the interpreter knows well the law and the value it is meant to uphold. A just and equitable interpretation and application of law cannot be effected without a good knowledge of the law. Subjecting canon law to contrived interpretations in the name of an ambiguous and indefinite humanitarian principle would mean destroying the very dignity of the persons even before the norm.¹⁰ Finally, the interpreter knows the cultural context in which the law is interpreted and applied. The law is to be applied in a community which is a product of concrete historical or cultural conditions. Anthropologists maintain that one cannot understand another person's culture without knowing its language because so much that comprises culture is transmitted through language. Therefore, good interpreters of law, lacking such experience, should at least listen to those who are most intimately acquainted with the culture and the needs of the local Church, because such persons are usually in the best position to understand the cultural context in which the law must be enfolded.¹¹

This is particularly true in marriage cases coming from cultures with which we are totally unacquainted. For instance, in a marriage case originating from Tokyo (Japan), judged *coram* Agustoni,¹² the rotal court has sought the assistance of a certain Japanese priest about the local customs and traditions. The judges wanted to know how the role of parents or guardians or the so-called 'match-makers' was played in the decisions the children made concerning reverential fear in marriages of the arranged marriage system. The sentence *coram* Agustoni confirms the impact which cultural elements had on the matrimonial consent.¹³

It is a fact that the Code provides definite rules in cc. 7-22 on different aspects of law, including the principles of interpretation.

However, they are inadequate for an appropriate, pastorally sensitive interpretation of law in every situation. A good interpreter will make every effort to know people's language and other ways of communicating and their perceptions of reality and the social context in which the meanings are transmitted.

Conclusion:

The idea that culture has an impact on marriage is not something new to the Church's experience. In the early middle ages, for example, the dispute over what brought the marital bond into existence was a clash between two different culturally informed viewpoints. The missionary activity of the 16th and 17th centuries provides another example of the Church confronting cultural views and practices that differed from its comprehension of marriage. In the areas of subsidiarity, which gives more understanding and consideration, the Code did not mention it explicitly. However the meaning behind it is mentioned in the form of *communio* and *participatio*. For the sake of culture the church never compromised its universal principles which are dogmatic by nature. The expression of freedom has to be translated and understood giving due consideration to local culture. Hence, it is clear that though the Code does not explicitly speak about cultural aspects, the application of cultural impact is upheld by rotal judges. However, the nuances of culture may be understood only when the appropriate judicial authority puts on the shoes of the local culture.

Endnotes

¹ MENDONÇA, A., "The Importance of Considering Cultural Contexts with Special Reference to South East Asia", in *CLSA Proceedings*, 57 (1995), p. 243.

² JOHN PAUL II, "The Apostolic Exhortation on Family", in *Origins*, 11 (1981), no. 4, pp. 439.

³ WOESTMANN, W. H. (ed.), *Papal Allocutions to the Roman Rota*, Ottawa, St. Paul University, 1994, p. 214-215.

⁴ HUELS, J. M., "Interpreting Canon Law in Diverse Cultures", in *The Jurist*, 47 (1987), p. 289.

⁵ The statement of Pius XII on 17 October 1953 was quoted by Paul VI in his rotal allocution of 8 February 1973, in which he emphasised the pastoral nature of Church law and canonical equity. Cfr: WOESTMANN, W. H. (ed.), *Papal Allocutions to the Roman Rota*, 1994, p. 121.

⁶ WJLENS, M., "Salus animarum suprema lex: Mercy as a Legal Principle in the Application of Canon Law", in *The Jurist*, 54 (1994), pp. 569-573.

⁷ CORIDEN, J. A., "Rules for Interpreters", in *The Jurist*, 42 (1982), p. 331.

⁸ HILL, R.A., "Reflections on the Interpretations of the Revised Code", in *The Jurist*, 42 (1982), p. 311.

⁹ HUELS, J. M., "Interpreting Canon Law in Diverse Cultures", p. 272-273.

¹⁰ WOESTMANN, W. H. (ed.), *Papal Allocutions to the Roman Rota*, p. 226.

¹¹ HUELS, J. M., "Interpreting Canon Law in Diverse Cultures", p.271.

¹² *Coram* AGUSTONI, 9 May 1973, in *S.R.R. Decisiones*, 65 (1982), pp. 409-417.

¹³ MENDONÇA, A., "The Importance of Considering Cultural Contexts with Special Reference to South East Asia", in *CLSA Proceedings*, 57 (1995), p. 242.