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Sajan Thankachen

NORMS AND CONDITIONS OF MIXED MARRIAGE
AND DISPARITY OF CULT IN THE CODE OF CANON
LAW AND ITS APPLICATION TO THE PROHIBITION
OF UNLAWFUL CONVERSION OF RELIGIOUS
ORDINANCES ENACTED BY SOME STATES OF INDIA

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Prof. Dr. Pablo Gefaell

Prof. Dr. Miguel Ángel Ortiz

Imprimi potest

Prof. Dr. Thierry Sol

Decano della Facoltà di Diritto Canonico

Dr. Jesús Sáenz

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in the name of our Lord Jesus Christ."
(Ephesians 5:20)*

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ABBREVIATIONS

AAS.	<i>Acta Apostolicae Sedis</i>
AL	<i>Amoris Laetitia</i>
ap.es.	Apostolic Exhortation
art.	Article
arts.	Articles
Av. Vv	Various Authors
BJP	Bharatiya Janata Party
can.	Canon
cann.	Canons
CCC	Catechism of the Catholic Church
CCEO	<i>Codex Canonum Ecclesiarum Orientalium</i>
Cf.	Confer
ch.	Chapter
CIC	<i>Codex Iuris Canonici</i> 1983
CIC'17	<i>Codex Iuris Canonici</i> 1917
CLSA	Canon Law Society of America
Cor.	Corinthians
cost.ap	Apostolic Constitution
CPLSMC	The Code of Particular Law of the Syro-Malabar Church
Decr.	Decree
DH	<i>Dignitas Humanae</i>
DMK	Dravida Munnetra Kazhagam
ED	Ecumenical Directory
ed.	Editor
EDB	Edizioni Dehoniane Bologna
enc. lett.	Encyclical Letter
Eng	English
Eph	Ephesians
FC	Familiaris Consortio
FIR	First Information Report

ABBREVIATIONS

GEM	<i>Gravissimum Educationis Momentum</i>
Gen	Genesis
GS	<i>Gaudium et Spes</i>
HC	High Court
<i>Ibid.</i>	<i>Ibidem</i> (same as)
INC	Indian National Congress
Instr.	Instruction
IPC	Indian Penal Code
KLJ	Kerala Law Journal
LEV	Libreria Editrice Vaticana
LG	<i>Lumen Gentium</i>
m.p.	<i>Motu proprio</i>
MM	<i>Matrimonia Mixta</i>
n	Number
NGO	Non-Government Organization
nn	Numbers
OBC	Other Backward Community
OE	<i>Orientalum Ecclesiarum</i>
p.	Page
PG	<i>Patrologia Graeca</i>
PL	<i>Patrologia Latina</i>
pp.	Pages
PUG	Pontifical Gregorian University
SC	Scheduled Caste
SCI	Supreme Court of India
SMBC	Syro Malabar Bishop's Conference
ST	Scheduled Tribe
Tit	Title
Trans	Translation
UAPA	Unlawful Activities Prevention Act
UDH	Universal Declaration of Human Rights
UR	<i>Unitatis Redintegratio</i>
USCIRF	United States Commission on International Religious Freedom
vol.	Volume

GENERAL INTRODUCTION

Freedom of religion and the right to choose a life spouse are profoundly personal and fundamental to an individual's identity and dignity. Every person has the inherent right to practise, adopt, or change their religion and to select a life spouse based on their free will and personal beliefs. The Constitution of India upholds these principles, declaring India a secular state where diverse religions, castes, and belief systems coexist harmoniously¹. It is the duty of the state to protect and uphold the religious freedom of all citizens, ensuring that no one is discriminated against or coerced in matters of faith or personal relationships. Religious freedom and the right to marry a spouse of one's choice are essential aspects of personal liberty and autonomy, as enshrined in the Constitution. Any attempt to restrict these freedoms goes against the very ethos of India's democratic and pluralistic fabric. Therefore, safeguarding these rights is a legal obligation and a moral imperative for fostering a just and inclusive society. And also, the Catholic Church has reaffirmed the principle of religious freedom in several documents, particularly those from the Second Vatican Council and Papal teachings². The Church teaches that religious freedom is a fundamental human right rooted in human dignity and the pursuit of truth³. It holds that governments must protect this right, ensur-

¹ «...[a]ll persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion» (Indian Constitution, 26 January 1950 enacted by Government of India. Art. 25 (1)).

² «The declaration of this Vatican Council on the right of man to religious freedom has its foundation in the dignity of the person, whose exigencies have come to be fully known to human reason through centuries of experience. What is more, this doctrine of freedom has roots in divine revelation, and for this reason, Christians are bound to respect it all the more conscientiously. Revelation does not indeed affirm in so many words the right of man to immunity from external coercion in matters of religion. It does, however, disclose the dignity of the human person in its full dimensions. It gives evidence of the respect which Christ showed toward the freedom with which man is to fulfil his duty of belief in the word of God, and it gives us lessons in the spirit which disciples of such a Master ought to adopt and continually follow. Thus, further light is cast upon the general principles upon which the doctrine of this declaration on religious freedom is based. In particular, religious freedom in society is entirely consonant with the freedom of the act of Christian faith» (VATICAN COUNCIL II, Declaration on Religious Freedom, *Dignitatis Humanae*, 7 December 1965, in AAS 58 (1966), pp. 929-941, n.9).

³ «The right to religious liberty is neither a moral license to adhere to error, not a supposed right to error, but rather a natural right of the human person to civil liberty, i.e., immunity, within just limits, from external constraint in religious matters by political authorities. This natural right ought to be acknowledged in the juridical order of society in such a way that it constitutes a civil right». (Catechism of the Catholic Church, n. 2108).

ing that no person is compelled to follow or reject a religion⁴. Both Church and State equally uphold the importance of freedom of religion and the right to choose one's spouse irrespective of their religion, caste and beliefs.

The pluralistic nature of Indian society, characterised by its diverse cultural, religious, and social fabric, has significantly influenced the institution of marriage. Traditionally, marriages in India were endogamous⁵, bound by caste, community, and religious affiliations. The notion of selecting a spouse was primarily confined within the boundaries of one's tribe, clan, or religious group. However, with modernisation, globalisation and increased social interactions, exogamous individuals marrying outside their traditional religious or caste-based groups have become increasingly common. This shift can be attributed to education, social mobility, professional aspirations, urbanisation, and the evolving outlook on humanism and secularism. According to the 2011 census⁶, the major religions in India are Hinduism, which accounts for approximately 79.8% of the population; Muslims, who make up around 14.2%; Christianity, which accounts for about 2.3 %; Sikhism, at 1.7 %; Buddhism, around 0.7%; and Jainism, approximately 0.4% of the Indian population. Each religion has its distinct traditions, liturgical practices, and theological beliefs that shape their perspectives on marriage. As Indian society becomes more secular, interfaith and interdenominational marriages are increasingly prevalent, particularly in urban areas centres. However, this trend presents challenges, especially for religious institutions with strong doctrinal positions on marriage. In this challenging situation, the Catholic Church in India faces significant concerns regarding mixed and disparity of cult marriages, particularly due to differences in theological perspectives, sacramental understandings, and religious obligations.

The Catholic Church has historically approached those kinds of marriages with caution. From the Protestant Reformation until the Second Vatican Council, the Church largely discouraged, and even forbade, such unions. Canonical impediments were also established to prevent and invalidate mixed marriages and disparity of cult marriages due to concerns about doctrinal unity, potential conflicts in faith, and the proper religious upbringing of children. However, the Church has evolved with Vatican II, recognising the reali-

⁴ «The right to liberty can of itself be neither unlimited nor limited only by a public order conceived in a positivist or naturalist manner. The due limits which are inherent in it must be determined for each social situation by political prudence, according to the requirements of the common good, and ratified by the civil authority in accordance with legal principles which are in conformity with the objective moral order» (CCC n. 2109).

⁵ Marriage within a specific group, as required by custom or law, is known as endogamy. In endogamous groups, marriage outside one's group may be forbidden, or there may merely be a tendency to marry within the group. Endogamy is characteristic of aristocracies and religious and ethnic minorities in industrialised societies but also of the caste system in India and of class-conscious non-literate societies such as the Masai of eastern Africa. Merriam Webster dictionary, (www.merriam-webster.com. [<https://bit.ly/3RmA-jd3>] accessed 26.03.2025)

⁶ 15th Census of India was held from 9 to 28 February 2011 by the Census Commission of India.

ty of religious pluralism and the increasing prevalence of interfaith and interdenominational unions. The Church acknowledges that those marriages can sometimes foster Christian unity and interfaith dialogue, though they present challenges that require pastoral guidance and careful discernment.

Recently, mixed and disparity in cult marriages have become more complicated due to the enactment of state-level anti-conversion bills in India. Many nationalists and religious leaders in India argue that the Catholic Church allows its followers to marry outside their Church as a means of conversion. This situation has led to numerous religious riots and incidents throughout India, affecting not only Catholics but also all other minority religions present in the country. While most religions encourage their followers to marry within their own community, some view interfaith marriage as a means to convert individuals to a different faith. This practice has sparked significant debate and raised concerns about personal freedom, religious identity, and social harmony. The intersection of religion, law, and personal freedom is a sensitive and complex area of discourse, particularly in a multi-religious and diverse society like India. Among the challenges faced by religious institutions today, one of the more prominent concerns of the Catholic Church is managing the norms surrounding mixed and disparity of cult marriages within the framework of Canon Law. These forms of marriage represent the Catholic Church's attempt to engage with an increasingly globalised and religiously diverse world while preserving the integrity of the faith. Today, the problem of the smooth celebration such marriages arises due to the enactment of state-level anti-conversion bills. Several states in India enacted anti-conversion laws that primarily regulate and restrict forced conversions, particularly in cases where religious conversions are perceived to be coerced through marriage. Upholders of anti-conversion bills assert that the Catholic Church permits its faithful to marry outside the Catholic Church for the purpose of converting to Christianity. Anti-conversion laws, while designed to prevent conversion through force, deceit, or inducement, have created difficult situations for religious communities, especially the Catholic Church, when it comes to the marriage of their faithful to individuals of other faiths. The laws often presume that interfaith marriage might be an indirect form of religious conversion, raising concerns about the legal recognition of such marriages and the freedom of religion that the Church advocates. By enacting these laws, nationalist Hindu and religious leaders claim that mixed and disparity of cult marriage serve as a means of induced conversion. In this context, my research will offer a suitable answer to whether the Catholic Church employs marriage as a means of conversion.

CHOICE OF RESEARCH TOPIC

My research topic is motivated by the many Catholic pastors and faithful in India who have faced punishment or penalties for alleged forced conversions through marriage under the anti-conversion laws enacted by several states. The primary concern of this research is to provide an appropriate response

to authorities and Hindu nationalist leaders who believe that the Catholic Church converts people through marriage. Conversion through marriage is not a policy of the Catholic Church; rather, the Church respects the freedom of religion and the right to choose a life spouse. This research will demonstrate this through Church documents, the teachings of the Popes, and particularly by explaining why the Catholic Church permits its faithful to enter into mixed marriages, as well as addressing the disparity of cult marriages and the pastoral care for those kinds of marriages. Therefore, my research focuses on critical and contemporary issues in India, particularly forced conversion through marriage, driven by the stringent laws enacted through anti-conversion bills. While these anti-conversion laws are intended to prevent forced conversions, they inadvertently affect the legal validity of mixed marriage and the disparity of cult unions in India, as they complicate the process of getting married according to both civil law and Canon Law. Many scholars describe these anti-conversion bills as unconstitutional because they violate the freedom of religion and the right to choose a life spouse, leading to religious persecution among minority religions such as Christians and Muslims. With this topic in mind, the aim of this research is to clarify whether conversion through marriage is a policy endorsed by the Catholic Church or not. In order to reach this conclusion, we will thoroughly discuss mixed marriages and disparity of cult in Catholic teachings, conduct an in-depth study on Anti-Conversion Bills, examine their purpose and scope, explore marriage perspectives in different religions in India, and analyse pastoral care for couples in mixed marriages and disparity of cult, as well as the reasons behind the Church permitting its faithful to marry outside the Catholic Faith. This research will help us understand the Church's stance on mixed marriages, the disparity of cult marriages, and how they relate to the anti-conversion bills.

SCOPE AND LIMITATIONS OF THE RESEARCH

This research aims to adequately address the concerns of Indian authorities and Hindu nationalist leaders who allege that the Catholic Church is inducing conversions through marriage. Additionally, this research aims to illustrate how mixed marriages and differences among couples can help them maintain their respective faiths, particularly through pastoral care. It offers a comprehensive overview of Catholic teachings on mixed marriages and the disparities in interfaith unions. Furthermore, the research will attempt to demonstrate that no documents from the Catholic Church instruct its faithful to convert individuals from one religion to another. The research also aims to offer pastoral suggestions to the Bishop's Conference of India for improved support for couples in mixed and disparity of cult marriages.

One primary limitation of this thesis is the challenge of conclusively proving that mixed and disparity of cult marriages are not tools employed by the Catholic Church for religious conversion in a country like India. This difficulty stems from historical instances where conversions have occurred

through marriage. Furthermore, while several states have enacted anti-conversion bills, these laws are often ambiguous and do not explicitly clarify whether marriage is considered a means of conversion. Additionally, in certain religious traditions, such as Islam, conversion is a prerequisite for interfaith marriage. This practice has contributed to a generalised perception that religious conversion is an inherent aspect of interfaith unions, which is then unfairly applied to Catholic mixed and disparity of cult marriages as well.

METHODS FOR THE RESEARCH

This research employs a multifaceted methodological approach, incorporating historical, juridical, canonical, interpretive, comparative and pastoral methods. Each chapter applies a distinct methodology tailored to its specific focus, ensuring a comprehensive analysis of mixed marriage and disparity of cult within the context of Church teachings and its impact on state-level anti-conversion bills. The study will begin with a historical and canonical approach toward mixed and disparity of cult marriages. In the early ages, the Catholic Church imposed strict restrictions on marriage between Catholics and non-Catholics, reflecting concerns about faith preservation and ecclesiastical unity. However, we will see over time, these restrictions evolved, leading to a more nuanced and pastoral approach. The second chapter will employ an interpretive and critical approach to analyse the Anti-Conversion Bill, its legal framework, and its implications on religious freedom and interfaith marriage. By examining legislative texts, judicial interpretations and socio-political contexts, this chapter will critically assess the theoretical and practical challenges posed by the Anti-conversion Bill. The third chapter will adopt a comparative method to study the concept of marriage across different religions in India. By analysing the theological, cultural, and legal perspectives on marriage in Hinduism, Islam, Christianity and other religions, this chapter seeks to highlight similarities and differences in marriage doctrines and practices, especially interfaith and interreligious marriages. The final chapter will discuss a pastoral and analytical approach to assess the implications of mixed marriage and the disparity of cult marriages in light of the Anti-conversion bills and the Special Marriage Act.

DIVISIONS OF THE RESEARCH

As previously mentioned, this research is organised into four chapters. The first chapter explores the historical and canonical legislation regarding mixed marriage and the disparity of cult marriage. It begins with a historical overview, briefly discussing the teachings of the Church Fathers, early councils, and the medieval period of the Catholic Church. This section provides a comprehensive understanding of how mixed marriage and the disparity of cult marriages were perceived and regulated by the early Church. Then, the chapter shifts its focus to the canonical legislation on mixed marriage, analysing its treatment in the 1917 Code of Canon Law, the Second Vatican Council and

the 1983 Code of Canon Law. This section explores the norms and conditions governing mixed marriages, highlighting their doctrinal and legal evolution. The final section of the chapter examines the regulation of mixed marriage in the Code of Canons of the Eastern Churches, particularly Syro Malabar Church and Knanaya Church. Overall, this chapter traces the doctrinal and canonical development of mixed marriage and the disparity of cults across different periods of Church history, offering a clear perspective on their historical significance and legal application.

The second chapter examines the prohibition of unlawful religious conversion in India, focusing on the purpose and reason behind the enactment of these ordinances. The first part of this section focuses on the constitutional guarantees of religious freedom under the Indian Constitution. It examines Articles 25-28, which ensure the right to freely profess, practice, and propagate religion while also considering the limitations imposed by the state in the interest of public order, morality, and health. This section comprehensively explains the balance between religious freedom and state intervention. This chapter then moves on to a detailed analysis of state-level anti-conversion laws, commonly known as anti-conversion bills or freedom of religion laws. It discusses their objectives, legal provisions and justifications given by different state governments for their enactment. Additionally, it examines the criticism these laws have faced, including concerns over their impact on minor communities, allegations of restricting personal liberty, and accusations of being used as tools for political and social control. The judicial approach to these laws is also explored, highlighting key court rulings and legal interpretations that have shaped the discourse on religious conversion in India. Furthermore, this chapter provides insight into the procedural aspects of religious conversion under these laws. It explains the legal process for conversion, including the requirements for Individuals seeking to convert, the role of government authorities in granting permission, and the penalties imposed for violations. The chapter concludes by addressing international human rights concerns related to anti-conversion laws. Overall, this chapter comprehensively analyses anti-conversion laws in India, their legal and constitutional dimensions, and their impact on religious freedom at both national and international levels.

The third chapter explores the concept of marriage across the different religions in India, focusing on six major religious traditions prevalent in the country. This chapter examines the fundamental principles and beliefs surrounding marriage in each religion and delves into the concept of interfaith and intercaste marriages. By doing so, it provides a deeper understating of how anti-conversion laws may affect these religious communities and their marital practices.

The fourth and final chapter of this thesis addresses the fundamental question at the core of our research: Does the Catholic Church permit mixed marriage and disparity of cult with the intention of conversion? Additionally, it examines the legal validity of the Special Marriage Act of 1954 in relation to anti-conversion laws in India. The first part provides an in-depth study of the

pastoral care extended by the Catholic Church to couples in mixed marriages and the disparity of cult. This analysis is based on Church documents, including papal encyclicals and canon law provisions. The focus is on the Church's approach to pre-marital and post-marital care for such couples, emphasising its commitment to supporting interfaith marriages while upholding religious freedom. Building on this, the chapter will try to demonstrate that the Catholic Church does not advocate or instruct its faithful to engage in religious conversion through marriage. By examining the official Church policies, this section wants to conclude that conversion through marriage is not a practice endorsed by the Catholic Church. The latter part of the chapter shifts to a legal analysis, exploring the conflicts and intersections between anti-conversion laws and the Special Marriage Act of 1954. It examines the challenges posed by anti-conversion legislation for interfaith couples, particularly concerning their right to marry without state-imposed restrictions on religious identity. This section will critically evaluate legal precedents and constitutional provisions and will try to prove that the Special Marriage Act of 1954 holds national legal precedence over state-enacted anti-conversion bills. The research will conclude with a general conclusion and present a detailed bibliography.

Chapter I

HISTORY OF CANONICAL LEGISLATION OF MIXED MARRIAGE AND DISPARITY OF CULT IN THE CODE OF CANON LAW

INTRODUCTION

Marriage is a natural reality, and when celebrated between two validly baptised persons, it is also a sacrament. «The marriage covenant, by which a man and a woman establish between themselves a partnership of their entire lives, and which by its very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptised, been raised by Christ the Lord to the dignity of a sacrament» (can.1055§ 1)¹. The definition of marriage in the Code of Canon Law itself demonstrates how precious and importance Catholic marriage holds within the Catholic Church. The Catechism of the Catholic Church clearly articulates God’s plan for marriage since the beginning of the history of salvation. It states: «The Sacred Scripture begins with the creation of man and woman in the image and likeness of God and concludes with a vision “of the wedding-feast of the Lamb”. Scripture speaks throughout of marriage and its mystery, its institution and the meaning God has given it, its origin and its end, its various realisations throughout the history of salvation, the difficulties arising from sin, and its renewal in the Lord in the New Covenant of Christ and the Church» (CCC. 1602)². Since Catholic marriage is a sacrament founded by God Himself, the Catholic Church has always given special attention to the celebration of marriages and has therefore established explicit laws for this purpose.

The Church has always asserted its role in regulating marriage discipline. It oversees not only the celebration of marriages between two baptised individuals in the Catholic Church but also the marriages of baptised non-Catholics and unbaptised persons, following the specified norms and conditions outlined in the Code of Canon Law. Regulating mixed marriages and the disparity of cult celebrations is challenging for the Catholic Church. The Church

¹ J. I. ARRIETA (ed.), *Code of canon law annotated: prepared under the responsibility of the Instituto Martín de Azpilcueta*, Wilson & Lafleur, Chambly (Quebeck) 2020, 3rd ed., p. 802.

² *Catechism of the Catholic Church*: revised in accordance with the official Latin text promulgated by Pope John Paul II, Libreria Editrice Vaticana, Roma 1997, 2nd ed., p. 400.

aims to ensure that the Catholic party in such marriages adheres to the norms and conditions set by the Church to safeguard their Catholic faith. Each party has their own beliefs, customs, and faith that must be respected. Thus, both parties should honour their respective religious teachings and traditions. In this context, the Church encounters significant difficulty in persuading both parties, especially the Catholic spouse, when the other party does not align with the teachings of the Catholic Church.

For this reason, mixed marriages have always been the subject of special pastoral concern for the Catholic Church. Issues surrounding mixed marriage unions are not only canonical but also theological and pastoral. The sacrament of marriage requires, above all, the complete and perfect harmony of the spouses, particularly concerning their faith. Therefore, the Catholic Church consistently emphasises this harmony between spouses during their marriage celebrations, regardless of whether they belong to the Catholic Church, a non-Catholic church, or other religions. If there is a lack of harmony or mutual understanding between them, their married life may feel unfulfilled. The Church, along with the spouses' families and relatives, seeks to preserve harmony in order to prevent unnecessary family conflicts in their married life. The concern over mixed marriages emerged when a Jew or a Gentile converted to Christianity. St. Paul addresses the pastoral dilemma when a Christian finds it challenging to coexist peacefully with a non-Catholic. In this scenario, St. Paul writes to the Church of Corinth³:

«To the rest, I say, not the Lord, that if any brother has a wife who is an unbeliever, and she consents to live with him, he should not divorce her. If any woman has a husband who is an unbeliever, and he consents to live with her, she should not divorce him. The unbelieving husband is consecrated through his wife, and the unbelieving wife is consecrated through her husband. Otherwise, your children would be unclean, but as it is, they are holy. But if the unbelieving spouse desires to separate, let it be so; in such a case, the brother or sister is not bound. For God has called us to peace. Wife, how do you know whether you will save your husband? Husband, how do you know whether you will save your wife? » (1 Cor 7: 12-16).

The key factor in St. Paul's letter is the peace and harmony within the family, as well as the believer's faith. According to Paul, a believer should not divorce their non-believing spouse as long as the spouse is willing to remain together. Therefore, he states: «...for the unbelieving husband is consecrated through his wife, and the unbelieving wife is consecrated through her husband...» (1 Cor 7:14). St. Paul further asserts the right to separate from an unbelieving spouse to safeguard one's faith. In St. Paul's letter, it is clear that, for him, peace and harmony in the family are crucial aspects of family life. Harmony and peace between spouses are among the most important considerations for the Church when permitting the celebration of mixed or disparity of cult

³ Cf. S. PAPPAPPILLY, *Mixed marriage: in the code of canons of the Eastern churches and the particular law of the Syro-Malabar Church*, Dharmaram Publications, Bangalore 2014, p. 8.

marriages⁴. Therefore, the Sacred Congregation for the Faith teaches that «...[t]he sacrament of marriage requires more than anything else the full and perfect harmony of the spouses themselves, especially in regards to religion: “in fact, the union of spirits may fail or at least be weakened when there are differences of beliefs and oppositions of the will concerning religious truths and sentiments that make up the highest values that are subject of human veneration” ...»⁵.

For these reasons, the Church considers it a solemn duty to protect the faith of the Catholic party and nurture children born from such unions in the Catholic faith through the discipline of mixed marriages. Consequently, the Church maintains a maternal and special concern for Christian marriages and provides dedicated pastoral assistance for mixed marriages and marriages of disparity of cult.

1.1. HISTORICAL VIEW OF THE LEGISLATION OF MIXED MARRIAGE

During the early periods of the Church, it prohibited Christians from marrying non-Christians. These prohibitions were primarily conveyed through the teachings of the Church Fathers, Church Councils, and other Church doctrines. In the early Church, obstacles of mixed religion and disparity of cult were legally prescribed, forbidding and invalidating marriages. Examining the general attitude of the Church towards mixed marriages from the early periods to the Second Vatican Council reveals a characterisation marked by abhorrence, avoidance, condemnation, and prohibition.

1.1.1. *The teachings of the Fathers of the Church*

With the inauguration of the Apostolic missions, Christianity entered many countries and soon became a global religion. The spread of Christianity into numerous nations, lands, tribes and cultures created new opportunities for Christians to enter into mixed marriages and with members of other religions, especially at the early stages with pagans and Jews and later with non-Christians and adherents of other religions. Mixed unions with pagans and Jews fell under the category of disparity of cult, although the term *Disparitas Cultus* was not widely used until the twelfth century⁶. Especially when heresies were rampant, a distinction was made between marriages with *heretics*⁷ (baptised persons) and marriages with pagans (unbaptised persons). The Fathers of the Church and the Councils differentiated between mixed marriages of Chris-

⁴ Cf. *Ibid.*, pp.8-9.

⁵ SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Instruction on Mixed Marriages*, 18 March 1966, in *AAS* 58 (1966) pp. 237-239. The English translation is from the Vatican web page (in www.vatican.com [<https://bit.ly/3oYEBfK>] accessed 20.03.2022).

⁶ Cf. C. LEFEBVRE, *Quelle est l'origine des expressions «matrimonia mixta» et «mixta religio?»* in U. Navarrete (a cura di), in *Ius Populi Dei: Miscellanea in honorem R. Bidagor*, PUG, vol. III, Roma 1972, pp. 361-373.

⁷ «Heresy is the obstinate denial or doubt, after baptism, of a truth which must be believed by divine and Catholic faith» (can. 751).

tians with non-Christians and pagans. Since the Patristic era, the Church has demonstrated its pastoral concern regarding marriages of Catholics with those who do not share the Church's faith. This concern stems from a well-founded fear that mixed marriages might lead Catholics to drift away from the practice of their faith and potentially fall into heresy or schism. Consequently, many early Church Fathers strongly opposed marriages between Catholics and non-Catholics or followers of other religions.

The fundamental teachings of the Fathers were derived from the scriptures⁸. The literature of the Patristic period contains a wealth of precepts and guidance on the indissolubility of marriage, its moral significance compared to the state of virginity, second marriages, chastity in marital relations and the religious responsibilities of the spouses⁹. The Fathers of the Church intervened in Christian marriages to assist them in living in accordance with the Gospel¹⁰. Prominent among the early Fathers were St. Ignatius of Antioch, Tertullian, St. Ambrose, St. Jerome, St. Augustine of Hippo, and St. John Chrysostom. None of these Fathers, however, spoke directly about the issue of mixed marriages. However, they did express their genuine concern for the safety of the faith of the Christian faithful who were in danger of losing their beliefs due to their

⁸ The following passages from Scripture were utilized by the Fathers of the Church in their arguments against mixed marriages: Exodus 34,16: "And when you choose some of their daughters as wives for your sons and those daughters prostitute themselves to their gods, they will lead you to do the same". Deuteronomy 7:1-4; "when the Lord your God brings you into the land you are entering to possess and drives out before you many nations- the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites and Jebusites, seven nations larger and stronger than you and when Lord your God has declared them over to you and you have defeated them, then you must destroy them totally. Make no treaty with them, and show them no mercy. Do not intermarry with them. Do not give your daughters to their sons or take their daughters for you your sons. For they will turn your children away from following me to serve other gods, and Lord's anger will burn against you and will quickly destroy you". Nehemiah 13: 23-27; "in those days I saw men of Judah who had married women from Ashdod and Moab. Half of their children spoke the language of Ashdod or the language of one of the other peoples and did not know how to speak the language of Judah. I rebuked them and called curses down on them. I beat some of the men and pulled out their hair. I made them take an oath in God's name and said. "you are not to give your daughters in marriage their sons, nor you to take their daughters in marriage for your sons or for yourselves. Was it not because of marriages like these that Solomon King of Israel sinned? Among the many nations there was no king like him. He was loved by his God, and God made him King over all Israel, but even he was led into sin by foreign women. Must we hear that you too are doing all this terrible wickedness and are being unfaithful to our God by marrying foreign women?". I Corinthians 7: 39; "A woman is bound to her husband as long as he lives. But if her husband dies, she is to marry anyone she wishes, but he must belong to the Lord" and II Corinthians 6: 14-16. These are the major Scripture passages, which early Church Fathers commented on to find arguments against mixed marriage.

⁹ Cf. S. PAPPAPPILLY, *Mixed marriage: in the code of canons of the Eastern churches and the particular law of the Syro-Malabar Church*, p.9.

¹⁰ Cf. R. PAGÉ, *Marriage: Sacrament of Love or Sacrament of Bond?* in «Studia Canonica», v. 34 (2000), p. 9.

marriages with non-Catholics and others religions¹¹. Here we will briefly list some of the Church Fathers whose teachings pertain to mixed marriages after the Apostolic Period.

1.1.1.1. St Ignatius of Antioch (+107)

St Ignatius is one of the earliest Apostolic Fathers to speak about the sanctity of marriage. He described Christian marriage as a union “in the Lord” and insisted that it should be celebrated within the Church, closely linked to the Eucharistic meal¹². Although Ignatius does not directly address mixed marriages, he strongly emphasises celebrating Christian marriages with the Eucharistic meal to preserve the sanctity of Christian marriage. Thus, he indirectly highlighted the issue of mixed marriages, which cannot be celebrated in the Church or within the Eucharistic meal. He cautiously advised that Christian marriages should be celebrated with the Church’s approval and proper guidance from the bishop to prevent inappropriate unions with pagans¹³. Therefore, the Church noted his teaching that marriages formed with the bishop’s consent are considered “in the Lord” rather than based on personal desires¹⁴. When believers marry, they are encouraged to unite «in the Lord» meaning among themselves, rather than those who are not married “in the Lord” namely non-Christians¹⁵. Ignatius firmly opposed Christians marrying non-believers because such unions are not “in the Lord” and cannot be celebrated within the Eucharistic meal. Therefore, Christians should refrain from marrying non-believers, as it could jeopardise their faith.

1.1.1.2. Tertullian (+223)

Tertullian, the African Church Father, considered marriages with pagans as “evilly founded” in his writings, *Ad Uxorem*¹⁶. He also condemned marriage with non-Christians as an offence to the faith. Christians who married non-Christians were considered guilty of fornication and were to be exclud-

¹¹ Cf. S. PAYYAPPILLY, *Mixed marriage: in the code of canons of the Eastern churches and the particular law of the Syro-Malabar Church*, p. 15.

¹² Cf. ST. IGNATIUS, *Ad Polycarpum*, ch.5, in J. P. MIGNÉ, *Patrologiae cursus completus, Series Graeca, Bibliothecae Cleri Universae, Parisiis 1857*, vol. 5, p. 868. (in www.books.google.it [<https://bit.ly/3POXHk0>] accessed 20.3.2022. «...et si praeter episcopum sese ostendet, interit. Decet vero ut mariti et maritae, cum episcopi arbitrio conjugium faciant; quo nuptiae juxta Dominum sint, non autem juxta cupiditatem...» (*Ad Polycarpum*, ch. 5).

¹³ Cf. J. MATHEW, *Mixed marriage conditions and consequences according to CCEO, c. 814: a juridical and historical study with reference to the particular law of the Syro-Malabar Church.*, Pontificia Istituto Orientale, Romae 2015 , p. 49.

¹⁴ Cf. R. PAGÉ, *Marriage: Sacrament of Love or Sacrament of Bond?*, «in *Studia canonica*» 34 (2000) p.16.

¹⁵ *Ibid.* p.12.

¹⁶ Cf. TERTULLIANUS, *Ad Uxorem*, book. 2, ch. 8, in J. P. MIGNÉ, *Patrologiae cursus completus*, vol. 1, pp. 1287-1288.

ed from all communions with their brethren¹⁷. For Tertullian, those marrying non-Christians must be excluded from all community activities of the Church because, by marrying a non-Christian, the Christian believer committed an offence against his faith and brought scandal upon his community. The background of his teaching is found in the book of Genesis¹⁸, where Abraham forbade the marriage of his son to a Canaanite woman and instructed his senior servant to go to his homeland and find a wife for his son Isaac from his own community. Abraham clearly emphasises the importance of contracting marriage within the community. Tertullian did not mention marriage with heretics and apostates, which could indicate that such marriages were either permitted or simply did not occur¹⁹.

Tertullian identified two types of marriages involving pagans. First, there is the union of someone who was converted by the Lord after having already been married to a pagan. Second, there is the union of someone who was already a Christian prior to marrying a non-Christian²⁰. According to Tertullian, a man who married a pagan woman and then converted by God's grace should continue living with his wife²¹. However, a Christian could not enter into a marriage with a non-Christian; if such a marriage were contracted, it would need to be dissolved²². Therefore, Tertullian strictly prohibited mixed marriages among Christians because they could undermine the true faith and customs of the Christian community. He believed that such unions might also lead to unhappiness in family life. Tertullian argued that Christian marriages should only be contracted with individuals who are fellow believers.

1.1.1.3. St Ambrose (+397)

St. Ambrose, in his writings, demonstrates that mixed marriages between Christians and pagans or Jews put Christians at risk of falling away from their faith and breaking their family solidarity. His argument is based on

¹⁷ «Haec si ita sunt, fideles gentilium matrimonia subeuntes stupri reos constat esse et arcendos ab omni communicatione fraternitatis, ex litteris apostoli dicentis cum eiusmodi ne cibum quidem sumendum. Aut numquid tabulas nuptiales die illo apud tribunal Domini proferemus et matimonium rite contractum allegabimus, quod uetuit ipse? Non adulterium est, quoad, prohibitum est, non stuprum est? Extranei hominis admission minus templum Dei uiolat? Minus membra Christi cum membris adulterae commiscet? Quod sciam, non sumus nosrtr, sed pretio empti? Et quali pretio? Sanguine Dei. Laedentes igitur carnem istam, eum laedimus de proximo» (Tertullian, *Ad Uxorem*, lib. II, Ch. 9. Quoted from (www.thelatinlibrary.com [<https://bit.ly/3rnTTvW>] accessed 20.3.2022).

¹⁸ Gen. 24: 3-4: «I want you to swear by the Lord, the God of Heaven and the God of earth, that you will not get a wife from the daughters of the Canaanites, among whom I am living, but will go to marry my country and my own relatives and get a wife for my son Isaac».

¹⁹ Cf. A. F. E. FAU, *Mixed marriage: the historical evolution of the impediment of disparity of cult and prohibition of mixed religion up to the legislation of the 1983 Code*, PUG, Roma 1993, pp. 24-25.

²⁰ *Ibid.*, p. 26.

²¹ *Ibid.*, p. 26

²² *Ibid.*, p. 26.

the simple reason that they are not baptized²³. Ambrose strongly prohibited baptised Christians from marrying Jews and non-believers because it posed a real danger to the faith of the Christian spouse. To Ambrose, the essential and fundamental element of Christian marriage is the Baptism of the spouses. Without this element, family life would be endangered, as they would have different religious concepts, beliefs, and thoughts, which could undermine family unity. Therefore, he advised Christians to be vigilant in avoiding marriage with the infidels²⁴. Canonists and theologians regard the teachings of Ambrose as the earliest historical source that considers baptism essential for Christian marriage²⁵.

1.1.1.4. St Jerome (+420)

The teachings of St. Jerome on mixed marriages closely resemble those of Ambrose. He was very strict in prohibiting marriage between a Christian and a Jew or a pagan. He contrasted the marriage of a Christian with a non-baptised person in terms of justice with inequality, and light with darkness. All his teachings were drawn from sacred scriptures, especially from the Pauline Epistles to the Corinthians²⁶. As Ambrose and Jerome believed that mixed marriages would directly affect the faith of the Christian spouse, it is advisable for the Christian faithful to avoid these types of unions.

1.1.1.5. St Augustine of Hippo (+430)

St. Augustine states that there is no citation from the New Testament indicating that such marriages are sinful. Therefore, we cannot conclude that these types of marriages are sinful. Although he did not oppose mixed marriages strongly, he urged Christians to avoid entering mixed marriages due to the risk of losing their faith in Christ, as this type of marriage can lead to separation from the body of Christ, i.e., the Church²⁷. The bishop of Hippo was pre-occupied and voiced serious concerns about mixed marriages, as they create conflicts between spouses and disrupt the harmony and peace of the family.

1.1.1.6. St John Chrysostom

Unlike other Church Fathers, St. John Chrysostom had a more liberal and positive view toward mixed marriages²⁸. He believed that Mixed marriage

²³ Cf. ST. AMBROSE, *De Abraham*, book.1, ch. IX, in PL, vol.14, p.451.

²⁴ Cf. J. MATHEW, *Mixed marriage conditions and consequences according to CCEO, c. 814: a juridical and historical study with reference to the particular law of the Syro-Malabar Church*, p. 50.

²⁵ Cf. S. PAYYAPPILLY, *Mixed marriage: in the code of canons of the Eastern churches and the particular law of the Syro-Malabar Church*, p. 17.

²⁶ Cf. ST. JEROME, *Adversus Jovinianum*, book. 1, ch. X, in PL, vol. 23, p. 223.

²⁷ Cf. S. PAYYAPPILLY, *Mixed marriage: in the code of canons of the Eastern churches and the particular law of the Syro-Malabar Church*, pp. 17-18.

²⁸ *Ibid.*, p. 18

was a special sign of God's goodness. According to him, mixed marriage can certainly create a salvific atmosphere, contributing to the conversion of the spouse. He based his argument on 1 Cor. 7:16, where Paul states, «Wife, for all you know, you might save your husband. Husband, for all you know, you might save your wife», which speaks to the saving role of the spouse²⁹. For Chrysostom, the role of the Christian faithful (wife/husband) in a mixed marriage is a salvific one. They must realise this salvific purpose through their constant dialogue with the non-believing spouse. Therefore, for St. Chrysostom, a mixed marriage could be a mixed blessing, potentially leading the non-believing spouse to rebirth in Christ³⁰.

Nearly all the Church Fathers, with the exception of St. John Chrysostom, share similar views on mixed marriages. The early Church Fathers strongly upheld their vision of safeguarding the sanctity of Christian marriage by prohibiting unions with *infidels*. Most Church Fathers assert that baptism is a vital element of Christian marriage, which is entirely absent in mixed unions. Many of these distinguished Church Fathers vehemently opposed mixed marriages because they pose a genuine threat to the faith of Christians. Overall, a serious prohibition is evident in the teachings and writings of the early Church Fathers.

1.1.2. *The legislation of early Church councils on mixed marriages*

From the late second century until the fourth century, the Church held councils at various levels: local, regional or provincial, and ecumenical or universal. According to Canon law, «An Ecumenical Council occurs when the Pope convokes and personally presides over (or by delegate) a general assembly of Cardinals, Archbishops, Bishops, Abbots, Superiors General of certain religious congregations, along with specific prelates possessing special jurisdiction»³¹. Technically, it is an ecumenical council called to include the participants from every particular Church of the Catholic union. Only the first seven general councils are considered ecumenical by the Orthodox Churches, while the Catholic Church recognizes 21 general councils as such ecumenical³². Ecumenical councils aim to regulate matters of faith, morals, and discipline. National Councils and Provincial Councils are now referred to as "synods." »³³. In the early periods of the Church, many national councils were convened to address issues at the national level. Some of these councils also established strict legislation regarding mixed marriages.

²⁹ *Ibid.*, p. 18

³⁰ *Ibid.*, p. 18

³¹ C. GALASSI PALUZZI, *The ecumenical councils*, Ente provinciale per il turismo di Roma, Roma 1962, p.5.

³² Cf. C. M. BELLITTO, *The General Councils*, Paulist Press, New York 2002, p.8.

³³ Cf. C. GALASSI PALUZZI, *The ecumenical councils*, p.5.

1.1.2.1. The Council of Elvira

The Council of Elvira, the first well-known council of the Christian Church in Spain, was held in the early 4th century at Elvira, near modern Granada. It is the first council for which the canons have survived, providing the earliest reliable information on the Spanish Church. The exact date is disputed, but some scholars believe it occurred either around 300-303 or in 309. The 81 canons of this council reflected the internal and external relations of the Spanish Church during the 4th century. Overall, the canons were severe and imposed rigorous discipline for various issues³⁴. This council also discussed the issue of mixed marriages and provided accurate responses to those intending to marry pagans and heretics. Canons 15 and 16 of the Council of Elvira addressed the regulation of marriages between the faithful and non-believers, establishing conditions under which such marriages were prohibited³⁵. The Council of Elvira in Spain legislated against Christians giving their daughters to pagans, which caused the contamination of the faith and adultery³⁶. The council firmly prohibited Christians from marrying pagans or heretics. Additionally, it imposed severe penalties on parents who allowed their daughters to marry non-Christians, resulting in their denial of communion for five years³⁷.

1.1.2.2. The Council of Arles

The Council of Arles (314) was the first representative meeting of Christian bishops in the Western Roman Empire. Convened by Emperor Constantine I in August 314 at Arles in Southern Gaul, it primarily aimed to address the issues concerning the Donatists, a schismatic Christian group in North Africa³⁸. It was like a general council bringing together the entire Western world to participate. Canon 11 of the Council of Arles temporarily denied Holy Communion to those who married pagans. In this council, the penalty did not fall on the parents who gave their daughters in mixed marriages but on the girls themselves who married non-Christians³⁹ (the canon did not mention the boys who marry pagan girls). The Council of Arles clearly outlined

³⁴ COUNCIL OF ELVIRA, in www.britannica.com, [<https://bit.ly/2WNAzsT>] accessed 23.09.2021.

³⁵ Cf. S. PAYYAPPILLY, *Mixed marriage in the code of canons of the Eastern churches and the particular law of the Syro-Malabar Church*, p.18.

³⁶ *Concilium Eliberitanum*, c.15 states, «*Propter copiam puellarum gentilibus minime in matrimonium dande sunt virgines Christiane, ne aetas in flore tunens in adulterio aimae resolvatur*», in J.D MANSI *Sacrorum Conciliorum nova et amplissima collectio*, vol.2, Akademische Druck-U, Austria, 1960, p. 8. (English Translation is mine).

³⁷ *Concilium Eliberitanum*, c 16 states, «*Haeretici si se transferre noluerint ad Ecclesiam catholicam, nec ipsis catholicas dandas, esse puellas; sed neque Judaeis neque haereticis dare placuit, eo quod nulla posit esse societas fideli cum infideli. Si contra interdictum fecerint parentes, abstineri per quinquennium placet*», in J.D MANSI, vol.2, p.8. (English Translation is mine).

³⁸ COUNCIL OF ARLES, in www.britannica.com [<https://bit.ly/3DfU5xV>] accessed 23.09.2021.

³⁹ *Concilium Arelatense*, c 11, «*De puellis fidelibus quae gentilibus junguntur, placuit ut aliquanto tempore a communione separentur*», in J.D MANSI, vol.2, p. 472. (English translation is mine).

the discipline regarding mixed marriages and the consequences for Christians who wed non-Catholics.

1.1.2.3. The Council of Nicaea

The Council of Nicaea (325), the first ecumenical council, strongly opposed mixed marriages. It forbade Christians from giving their daughters in marriage to unbelievers due to the risk of undermining the Christian faith. This synod decreed that excommunication would be the punishment; repentance was required from anyone who contracted a marriage with an unbeliever⁴⁰. The council urged Christians to abandon their non-Christian beliefs spouse⁴¹. The council also stated that Christians could be allowed to marry an unbeliever, provided the unbeliever expressed a desire to embrace the Christian faith⁴². The stance of the first ecumenical council is quite clear: Christians must uphold their faith and should not agree to marry an unbeliever unless he or she professes the Catholic faith.

1.1.2.4. The Council of Laodicea

The council of Laodicea was convened between 343 and 381 AD. The Council strongly prohibited the marriage of Christian believers to heretics. Like the Council of Nicaea, the Council of Laodicea also allowed mixed marriages, provided that non-Christians converted to the Christian faith. Additionally, the council encouraged Christian parents not to support mixed marriage unions. This council was significant because it highlighted the role of parents in discouraging mixed marriages and urged them to intervene to convince their children that such unions are dangerous in every sense, particularly for Christian faith⁴³.

⁴⁰ *Concilii Nicaeni I*, can. 67, «*Quaecumque mulier viro infideli nupserit, ipsa quoque a communione, quae si poenitentiam malefisiis egerit, et eum virum, quae habere non poterat, id est, infidelem dimiserit, non est recipienda, nisi eo modo, quo recipitur is, qui postquam fidem negavit, ad fidem, reuertitur, debetque ipsa infidelem relinquere. Erit autem poenitentia eius, qui ad fidem reuertitur, et eius quae virum infidelem reliquit, ferre cilicum, dormire super cinerem, constituendumque est eisdem de ieiunio, et de bonis operibus, prout conueniat, et postea licebit cum fidelibus conuersari, et communionem sacram accipere, et qui contradixerit a Synodo excommunicator*» in J.D MANSI, vol.2, p.976.

⁴¹ Cf. *Ibid*, can. 69, p. 978.

⁴² *Concilii Nicaeni I*, can. 53, «*Ut Christiani uxorem ducant ex quacumque generatione, modo ad fidem veniant, sed non debent Christiani dare filias sua infidelibus, ne ad errorem maritorum peruertantur, et fiant vel iudaeae vel Gentiles propter infirmitatem, et qui non paruerit, a Synodo excommunicatur*», in J.D MANSI, vol. 2, p. 970. (English translation is mine).

⁴³ *Concilium Laodiceanum*, can.10. «*Non oportere eos qui sunt ecclesiae, indiscriminatum suos filios haereticis matrimonio coniungere*», in J.D MANSI, vol. 2, p. 565. Can. 31 «*quod non oportet cum omni haeretico matrimonium contrabere, vel dare filios aut filias: fed magis accipere, si se Christianos futuros profiteantur*», in J.D MANSI, vol. 2, p. 569. (English translation is mine).

1.1.2.5. The Council of Hippo

The Council of Hippo was a significant African council held in 393 at Hippo Regius. It was presided over by Aurelius, the archbishop of Carthage. The council prohibited bishops and clerics from allowing their children to enter mixed marriages unions⁴⁴. This council also prohibited Christians from marrying heretics and pagans. Specifically, the council forbade mixed marriages, particularly involving the children of bishops and priests. However, the synod did not establish any specific punishment for those who entered into mixed marriages.

1.1.2.6. Council of Chalcedon

The Ecumenical Council of Chalcedon (451) was the first general council to legislate specifically on the issue of mixed marriages. The disciplinary canon of the Council explicitly ordered the clergy not to marry non-Christians. It also states that unmarried clergy, chanters, and lectors must avoid marriages with heretics, while those already married are not allowed to let their children enter unions with non-Christians. Non-baptised children from such unions were to receive baptism in the Catholic Church, and violations of these regulations concerning mixed marriages were met with severe penalties⁴⁵. This marked the starting point for the Catholic Church to consider the baptism of children born from mixed marriages, which later became the first condition in the regulations regarding mixed marriages legislated by the Code of Canon Law 1983. This council clarifies the Church's position on mixed marriages. It forbade Christians from marrying heretics, pagans, and Jews, and it also urged that children born from mixed marriages should receive baptism in the Catholic Church.

Having presented important conciliar legislation on mixed marriages in the early Church, the teachings are consistent among them. Almost all the councils prohibited Christians from marrying non-Christians and followers of other religious confessions. However, there was also a lack of uniformity among the councils until the Ecumenical Council of Chalcedon, which introduced a new concept regarding mixed marriage: the only justification

⁴⁴ Concili Hipponiensis, can. 16, «*Ut cum omnibus omnino Clericis extraneae feminae non cohaitant, sed solae matres, aviae, materterae, amitae, et sorores, et filiae fratrum, aut sororum, et quaecumque ex familia domestica necessitate, etiam antequam ordinarentur, iam cum eis habitabant. Vel si filii eorum, ordinati iam parentibus, uxores acceperint, aut non habentibus fervis in domo, quas ducant, aliunde ducere necessitas fuerit*», in J. D MANSI, vol. 3, p. 921.

⁴⁵ Concilium Chalcedonense, can. 14, «*Quoniam in nonnullis provinciis concessum est lectoribus et cantoribus uxores ducere, decrevit tanta synodus nulli eorum licere diversae a recta opinionis Uxorem ducere: eos autem qui ex eiusmodi matrimonio liberos susceperunt, si eos quidem baptizare apud haereticos praevenierint, ad catholicae ecclesiae communionem adducere: si autem non baptizaverint, non posse eos apud haereticos baptizare. Sed neque haerteco, vel pagano, vel Judaeo, matrimonio conjungere, nisi utique persona, quae orthodoxae jungitur, se ad orthodoxam fidem convertendam spondeat. Sii quis autem hoc sanctae synodi secretum trasgressus fuerit, canonicis poenis subjiatur*», in J. D MANSI, vol.7, p. 363. (English translation is mine).