

**DOCTRINE AND LAW ON INDISSOLUBILITY OF MARRIAGE**

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**Abstract**

*Doctrine and Law on indissolubility of marriage expounded the Church's teaching that marital consent creates a perpetual bond between the parties which cannot be broken by any human power except death. It equally stated the resultant Church law which makes the doctrine binding on Christians who entered marriage. It found that notwithstanding the elaborate doctrine and law on the indissolubility of marriage, cases abound which revealed the non-observance of the doctrine and law and quite often the Church herself declare the non-existent of the bond in many difficult marriage situations. The paper tackled the aching question of how best to safeguard the observance of the doctrine and law on indissolubility of marriage. It drew attention to adequate marriage preparation, assertion of the legitimate power of the Church over Christian marriages, proper training of staff to avoid declaring marriage otherwise valid as invalid and grant of separation in place of outright declaration of nullity in most difficult marriage cases.*

**Keywords:** Catholic Doctrine, Canon Law, Marriage, Indissolubility,

**1. Introduction**

Marriage is the foundation of the family. Stability in marriage brings about stability in the family and the society at large. The church teaches that marriage validly celebrated cannot be dissolved by any human power. This teaching is in line with both divine and natural law. The realities of our time, however, show that many families are in disarray because the bond of valid marriage which is believed to be indissoluble are broken with ease. This is epitomized in, the multifarious cases of divorce in the customary and civil courts, and annulments in the ecclesiastical courts. Against this backdrop, this paper re-examined the

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doctrine and law on the indissolubility of marriage. It argues that for the family to be stable and achieve its purpose in the society today, the originators of the family must constantly think about the marital bond that brought them together, respect the promises they made to each other, stick together in difficult times and in good times, and eschew the divorce and annulment mentality of our time which as it were erodes the family structure of the society.

## **2. Marriage and Its Nature**

Marriage is a natural institution. It is established by God when he created humankind male and female (Gen. 1: 27). Creation thus presents humankind as couple and that is why the scripture says, “a man leaves his father and mother and become attached to his wife, they become one flesh” (Gen. 2: 24). In this light, Aristotle, one of the foremost Greek philosophers proclaims that “man is by his nature more inclined to live as a couple than associate politically, since family is something that precedes and is more necessary than the state.”<sup>2</sup> Marriage is that natural institution that brings about the union of a man and a woman for the establishment of family. We can define it as “a binding and mating relationship existing between male and female persons for the foundation of family and the rearing of progeny recognized by the society.”<sup>3</sup>

The Fathers of the Second Vatican Ecumenical Council describe marriage as an intimate partnership of life and love established by the creator and endowed by him with its proper laws. It is rooted in the contract of its partners, that is, in their irrevocable personal consent.<sup>4</sup> In this wise, the 1983 Code of Canon Law for the Latin Church sees marriage as a “covenant by which a man and a woman establish between themselves a partnership of their whole life, and which of its own nature

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<sup>2</sup> *Nichomachean Ethic*, Vol. VIII, cited in Pazhayampallil, T., *Pastoral Guide*, Vol. II, Bangalore: KJ Publications, 1997, p. 674

<sup>3</sup> Enemali, A., “Monogamy in a Polygamous Society: The Place of Bigamy in the Protection of Monogamous Marriage in Nigeria” in *Journal of Inculturation Theology*, Vol. 3, n.1, 2013, p. 267

<sup>4</sup> Gaudium et Spes, 7 December 1965” no. 48 in Austin F., *Vatican Council II: The Conciliar and Post Conciliar Documents*, New Delhi: St. Paul Publications, 1975, p. 835-837

is ordered to the well-being of the spouses and to the procreation and upbringing of children (and between the baptized) raised by Christ to the dignity of a sacrament”<sup>5</sup>

Looking at the above definitions and descriptions of marriage, we could see that by nature, marriage exists only between a male person and a female person. Any other mating union outside of this is not in accord with nature and therefore not marriage. Again, by its nature, marriage is monogamous. It is established between one man and one woman to the exclusion of all others.<sup>6</sup> Polygyny (one man with two or more wives) and polyandry (one woman with two or more husbands) is not in accord with the nature of marriage.

Furthermore, in line with its nature, marriage makes two persons to become one flesh (Gen. 2: 24, Matt. 19:5). It is, therefore, naturally required that marriage enjoys an indissoluble bond. Thus, by nature, all valid marriages are indissoluble. According to Beal *et al*, to say that marriage is indissoluble means that “it is a perpetual relationship which not only should not be terminated but cannot be terminated, even if the couples’ existential relationship is irretrievably broken.”<sup>7</sup> Therefore, once a man and a woman successfully enter a union which is recognized as marriage, they are bound to remain together as two in one flesh till death do them part. Canonical tradition distinguishes between “intrinsic indissolubility” and “extrinsic indissolubility”. Intrinsic indissolubility means that the parties themselves are not able to withdraw from or renounce the marriage once they have entered it. Extrinsic indissolubility refers to the inability of other bodies be it civil or ecclesiastical to dissolve and undo the union.<sup>8</sup>

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<sup>5</sup> *Codex Iuris Canonici*, Auctoritate Joannis Pauli II, 25 January 1983, AAS (1983) II, 1-301, c. 1055 § 1.

<sup>6</sup> Hyde V. Hyde, 1 *P & D*, 130

<sup>7</sup> Beal J., et al., (ed.) *New Commentary on the Code of Canon Law*, New York: Paulist Press, 2000, p. 1249

<sup>8</sup> Beal J., et al. Op. cit., p. 1249, Sheehy G., et al. (ed.), *The Canon Law, Letter & Spirit*, Dublin: Veritas Publications, 1998, p. 574.

### **3. Indissolubility as a Natural and Essential Property of Marriage in the Doctrine of the Church**

#### **Scriptural Background**

The Church teaches that marriage is indissoluble. This teaching is firmly rooted in the gospel of our Lord Jesus Christ where he said “Have you not read that at the beginning the creator made them male and female and declare *for this reason a man shall leave his father and mother and cling to his wife and the two shall become as one they are no longer two but one flesh.* Therefore, let no one separate what God has joined” (Matt. 19: 4-6). In this passage, Jesus distanced himself clearly from the practice among the Jews of allowing divorce. According to Jesus, Moses allowed the practice of divorce because “men’s hearts were hardened” (Matt. 19:8), but this is not the original plan of the creator who created male and female and decreed marriage to be indissoluble. For the great apostle of the gentile, St. Paul, Jesus Christ expressly prohibits divorce (which is the break of the marriage bond). He said, “to the married I give charge, not I but the Lord, that the wife should not separate from her husband, but if she does, let her remain single or else be reconciled to her husband and that the husband should not divorce his wife” (I Cor. 7: 10 – 11). As a basis to support the Lord’s teaching on the indissolubility of marriage, St. Paul writes in his letter to the Ephesians “husbands, love your wives, as Christ loved the Church and gave himself up for her” (Eph. 5:25). He equally added “For this reason, a man shall leave his father and mother and be joined to his wife and the two shall become one flesh. This mystery is a profound one, and I am saying that it refers Christ and the Church” (Eph. 5: 31-32). Christian marriage is, therefore, a mystery that mirrors the covenant relationship between Christ and the Church which cannot be ruptured.

#### **Traditions of the Church: Teachings of some Early Fathers, Councils and Pontiffs**

The early Fathers of the Church, Church Councils and Roman Pontiffs, following the scripture passages above taught that marriage is indissoluble and that all should abide to it. A look at the position of some of them on this matter is necessary. Tertullian, one of the Western Fathers of the Church said regarding indissolubility of marriage “for we have a practice that goes back to the beginning, then marriage is

monogamous by law, since we know that Christ wished things to be as they were in the beginning. For instance, when the question of divorce came up, he said that ‘it was granted to Moses because of the hardness of their hearts but from the beginning it was not so’. Thus, indubitably, he referred to the beginning in support of the indissolubility of marriage. Therefore, those whom God from the beginning has joined together as two in one flesh, let no man put asunder in the day ... And so truly in Christ are all things recalled to their beginning. ... There is unity of marriage, as it was in the beginning.”<sup>9</sup> In essence, Tertullian based his stand on indissolubility of marriage from the fact that from creation, God made marriage to be a permanent and exclusive relationship between one man (Adam) and one woman (Eve).

Another father of the Church, St. Ambrose in his *Expositio Evangelii Secundum Lucam*, VIII, 5 equally stresses the fact of indissolubility of marriage based on the scriptures. He wrote “But perhaps someone may say: How is it that Moses permitted that a man could give a bill of divorce and dismiss his wife. The one who says this is Jewish; he is not a Christian. ... Moses permitted this, but God did not command it; the law of God was from the beginning. What is the law of God? ‘A man will leave his father and mother and cling to his wife, and they will be two in one flesh’. Therefore, he who puts away his wife, cuts his own flesh in two, he divides his own body.”<sup>10</sup>

For St. Augustine of Hippo, there is no doubting the fact that the scripture clearly provides for indissolubility of marriage. The fact of adultery is not and cannot be a ground for divorce. According to him, there cannot be contradiction in the teaching of Christ handed down to the Evangelist. The exception given in the case of adultery in Matthew 19:9 is clarified by the other Evangelists and St. Paul (cf. Lk. 18:18, Mk. 10:11, ICor.7:10). It is clear in the gospel of Luke and Mark and in the

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<sup>9</sup> Tertullian, *De Monogamia* c.5, cited in Babilacqua, A.J., (2012), “The History of the Indissolubility of Marriage” in *Proceeding Catholic Theological Society of America*, 22, p. 257, Retrieved on 06/011/22 from <http://ejournals.bc.edu/index.php/ctsa/articles/view/2633>.

<sup>10</sup> St. Ambrose, *Expositio Evangelii Secundum Lucam*, VIII, 5, cited in Bevilacqua, A.J., op. cit., p. 262.

teachings of St. Paul that anyone who divorces and remarries is guilty of adultery. The prohibition without exception in Luke and Mark, according to St. Augustine, is a general one and represents the true teaching of Christ on the indissolubility of marriage. In this wise, adultery cannot be a ground for dissolution of marriage.<sup>11</sup> St. Augustine further opines that sterility and inability to procreate cannot be a ground for dissolution of marriage. In his view, even though marriage is ordered towards procreation, it cannot be dissolved for the purpose of procreation.<sup>12</sup> He said that not even the vow of chastity by a married person who leaves his or her married state to embrace religious life while the other partner is still alive could break the bond of marriage. In the eyes of St. Augustine, the indissolubility of marriage is firmly established by the law of the gospel which is the starting point for Christians. For Christians, therefore, absolute, and radical indissolubility pertains essentially to Christian marriage. Like St. Paul, St. Augustine liken the conjugal bond of marriage between the baptized as an image of the union between Christ and the Church. Just as Christ and his Church are inseparable, so also husband and wife in a Christian marriage are inseparable. Divorce in the strict sense is impossible. Although spouses can be physically separated and even separate by their wills, they remain united in the city of God and by the religious and sacramental bond.<sup>13</sup> He compares the bond of marriage with the indelible mark of the sacrament of baptism and Holy Orders. Just like the fact of apostasy or serious crime committed after baptism cannot remove the sacramental character of the sacrament of baptism received; and like the deprivation of clerical office do not remove the character of sacred ordination, the fact of infidelity after marriage cannot remove the bond of marriage.<sup>14</sup>

Apart from the Fathers of the Church, we find teaching on indissolubility of marriage on the lips of the Roman Pontiffs. We shall cite few examples. Pope Innocent I (401-417) strongly uphold that marriage is

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<sup>11</sup> St. Augustine, *De Adulterinis Coniugiss*, 1, 10-11, cited in Bevilacqua, A.J., op. cit., p. 268

<sup>12</sup> St. Augustine, *De Coniuguii*, 7, 7; 15,17;24,32, ibid.

<sup>13</sup> St. Augustine, *De Nuptiis et Concupiscentia*, I ,!!, cited in Bevilacqua, A.J., op. cit., p. 269.

<sup>14</sup> Ibid.

indissoluble as taught by the scripture. He condemned the idea of remarriage after divorce and gives the rule that divorced and remarried persons should be excommunicated from the body of the Christian faithful.<sup>15</sup> Similarly, Pope Gregory I (590-604) teaches that indissolubility of marriage is ordained by God and no reason can be adduced to oppose it. He strongly opposed the civil law (*Novellae XXII of Justinian Legislation* of 536) that permits divorce on grounds of religion. The Justinian law states one who is married but enters a religious life even without the consent of his or her partner in marriage that the marriage is dissolved by reason of taking the vow of chastity in a religious life. Pope Gregory I is also of the position that adultery could be a ground for separation but never of dissolution of the bond of marriage. For him, there is no room for divorce on any ground at all. Thus, there is no right of remarriage even when there is a clear case of adultery. According to the Pontiff, if they said that the marriage can be dissolved, let it be known that while human law had conceded this, the divine law forbids it. For truth says, ‘what God has joined together, let no man separate.’<sup>16</sup>

Aside the Church Pontiffs, numerous Church Councils equally join hand in teaching that marriage is indissoluble in accordance with the scripture. The Council of Arles (314) teaches that even when a wife is dismissed on grounds of adultery, the husband should not take another wife. “Concerning those young men who are Christians who apprehend their wives in adultery and are forbidden to marry, we decree that, as far as it is possible, counsel be given them not to take other wives while their own, though guilty of adultery, are still living. ... We decree that, in so far as it is possible, a man who has dismissed his wife be forbidden as something unlawful to marry another woman while his wife is still alive. But whoever should not do this shall be cut off from Catholic communion”<sup>17</sup> The same prohibition of men from remarrying after divorce on ground of adultery was equally given to woman earlier by the Council of Elvira (306) in these words: “Also a baptized woman who

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<sup>15</sup> Pope St. Innocent I, *Epistula II ad Vicricium*, c.13; *Ad Esxuperium Episcopum Tolosannum*, c. 6, cited in Bevilacqua, op. cit. pp. 280-283

<sup>16</sup> Pope Gregory I, *Epistolarum*, Lib., 45, cited in Bevilacqua, op. cit. p. 284

<sup>17</sup> *Concilium Aralatense*, 1, c.10 &24, cited in Bevilacqua, op. cit. p. 289

leaves a baptized husband and on the ground of his adultery and marries again, is to be prohibited from marrying; if she marries, she is not to be received into communion until the husband who she left be departed out of this life. ...”<sup>18</sup> Other later Councils of the Church affirm indissolubility and discourages divorce and worst remarriage.<sup>19</sup>

For the Fathers of the Council of Trent (1545 & 1563), the teaching of Christ with respect to indissolubility of marriage is sacrosanct. The positions of the Council of Trent on indissolubility of marriage are very clear from the following canons on the sacrament of Matrimony. Canon 2 states that, “If anyone says that it is lawful for Christians to have several wives at the same time and that this is not forbidden by divine law, let him be anathema”. Canon 5 states, “If anyone says that the bond of matrimony can be dissolved on account of heresy, or irksome cohabitation, or by reason of voluntary absence of one of the parties, let him be anathema. Canon 7 provides, “If anyone says that the Church errs in that she taught and teaches that in accordance with evangelical and apostolic doctrine the bond of matrimony cannot be dissolved by reason of adultery on the part of one of the parties, and that both, or even the innocent party who gave no occasion for adultery, cannot contract another marriage during the lifetime of the other, and that he is guilty of adultery who, having put away the adulteress, shall marry another, and she also who, having put away the adulterer, shall marry another, let him be anathema”<sup>20</sup> In these three canons, the Church upholds the indissolubility of marriage and frowns at remarriage after separation occasion by adultery alone.

The Fathers of the Second Vatican Ecumenical Council in the Pastoral Constitution *Gaudium et Spes*, - *The Church in the Modern World* emphasized that marriage is indissoluble by referring to it as a covenant rather than a mere contract between parties. They affirmed the

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<sup>18</sup> *Concilium Eliberitanum*, c. 9, cited in Bevilacqua, op. cit. p. 288

<sup>19</sup> See Council of Arles, Eleventh Council of Carthage, Council of Vannes, Council of Agde, Second Council of Orleans etc. cited in Bevilacqua, op. cit. pp. 289-299

<sup>20</sup> Schroeder, J., *Canons and Decrees of the Council of Trent*, Ottawa: St. Louis Press, 2005, pp. 183-184



indissolubility of marriage, based on the marital covenant, the intimate union of persons and activities, the mutual giving of two persons as well as their children. “The intimate union of marriage as a mutual giving of two persons, and the good of the children demand total fidelity from spouses and require an unbreakable unity between them” (GS. 48). The Council likens the covenant between the spouses as that between Christ and his Church and went ahead to state that the married love is indissolubly faithful (GS. 49) and that marriage retains the mark of indissolubility even when it is childless (GS. 50).

### **Recent Magisterial Teachings on Indissolubility of Marriage**

In his Post Conciliar encyclical titled *Humanae Vitae*, Pope Paul VI upholds that the conjugal love is “faithful and exclusive until death.”<sup>21</sup> Pope St. John Paul II in the homily at the Liberati Stadium in Terni on 19 March 1981, said “At the basis of family unity there is indissolubility of marriage. If society seeks the ways that deprives marriage of its indissolubility and the family of its unity and stability, then they cut off as it were, the very root of its health, and deprive themselves of one of the fundamental goods on which human life is built.”<sup>22</sup> Later in the year, Pope St. John Paul II reinstated the above position on indissolubility of marriage in the apostolic exhortation *Familiaris Consortio* issued on 22 November 1981 no. 21. Here the Pope asserts that indissolubility of marriage is “rooted in the personal and total self-giving of the couple and required by good of the children.”<sup>23</sup> Going further, he maintains that it is the fundamental duty of the Church to reaffirm strongly as the Synod Fathers did, the doctrine of indissolubility of marriage. To all those who consider it too difficult, or indeed impossible, to be bound to one person for the whole life, and to those caught up in the culture that rejects indissolubility of marriage and openly mock the commitment of spouses to fidelity, it is necessary to reconfirm the good news of the definitive nature of that conjugal love that has in Christ its foundation and strength.

The Dicastery (before Congregation) for the Doctrine of Faith on 14 September 1994 made a statement on the reception of holy communion

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<sup>21</sup> Pope Paul VI, “*Humanae Vitae*” n. 9 in AAS (1968), 486

<sup>22</sup> *L’Osservatore Romano*, in English, 30 March 1981, p. 10

<sup>23</sup> John Paul II, “*Familiaris Consortio*”, n.21, in AAS 74 (1982), 102

by divorced and remarried members of Christ's faithful. In no. 10, it affirms that they are not to be admitted to communion because they are not faithful to the will of Christ, "who has restored and entrusted to us anew the indissolubility of marriage as a gift from the creator."

In the Post Synodal apostolic Exhortation *Sacramentum Caritatis* of 22 February 2007, no. 29, Pope emeritus, Benedict XVI while addressing the issue of the divorce and remarried faithful upheld the indissolubility of marriage when he said that it is "the Church's practice, based on sacred Scripture (cf. Mk 10: 2-12) of not admitting the divorce and remarried to the sacraments." Pope Francis equally reaffirmed the traditional teaching on the indissolubility of marriage making it clear that the Vatican was not in any form promoting or sanctioning divorce.<sup>24</sup>

#### **4. Church Law on Indissolubility of Marriage**

The law of the Church on indissolubility of marriage is presented clearly in the 1983 Code of Canon Law for the Latin Church. The law in the first place stipulates that "a marriage is brought into being by the lawfully manifested consent of persons who are legally capable" (c. 1057 §1). In other words, "consent" which the law describes as "an act of the will by which a man and a woman by an irrevocable covenant mutually give and accept one another for the purpose of establishing a marriage" is primarily the cause of marriage. This agrees with the ancient Roman law that consent make marriage. For consent, however, to result in marriage, it must be "lawfully manifested", that is, done according to prescribed forms and the parties must be "legally capable". If consent is not "lawfully manifested and or the parties are judged not to be "legally capable", their exchange of consent cannot result in a valid marriage and therefore, no marriage at all no matter how they look at it. The law stipulates that indissolubility is an essential property of marriage (c. 1056). To buttress this, the law states that "from a valid marriage, there arises between the spouses a bond (*vinculum*) which of its nature is permanent and exclusive" (c. 1134). The canons here speak of all marriages, whether between Christians or non-Christians.

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<sup>24</sup> Pope Francis, 8 September 2015 at <https://www.reuters.com> retrieved 18/10/22

The canonical discipline, however, provides for the dissolution of marriages in cases of non-consummation or of conversion to the Christian faith. “The Roman Pontiff can dissolve a non-consummated marriage between the baptized persons or between a baptized party and a non-baptized party” (c. 1142). Also, “a marriage entered by two non-baptized persons is dissolved by means of the Pauline Privilege in favor of the faith of the party who has received baptism by the very fact that a new marriage is contracted by the same party (c. 1143). The dissolution related to conversion and baptism are based on Paul’s advice to the Church at Corinth (1 Cor. 7: 12-16).

The law finally states that a valid marriage celebrated between baptized Christian (the fact of celebration is referred to as *ratum*) and “if the spouses have performed between themselves in a human fashion a conjugal act which is suitable in itself for the procreation of offspring” (this fact of conjugal act is referred to as *consumatum*), then, the marriage “cannot be dissolved by any human power and by no cause, except by death” (cc. 1061, 1134). This is the “the greatest firmness and indissolubility” attributed to sacramental and consummated marriage.<sup>25</sup>

The Church’s doctrine and laws on indissolubility of marriage as laid down above are very clear and precise. It remains the Church’s constant reaffirmation of her doctrine and laws in the modern world according to the teaching of Christ. How best can this be achieved?

## **5. Ways to Strengthen Adherence to the Doctrine and Law on Indissolubility of Marriage**

### **Proper Preparation for Marriage**

There is today more than ever a mentality opposed to the Christian understanding of marriage as creating an indissoluble bond between the parties. Such mentality includes “divorce mentality” especially in Europe and America where marriage bond is easily dissolved at the invitation of both or any of the parties in case of difficulties. This mentality sees divorce as escape route from marital problems. Also, we have “fecundity mentality” especially in Africa where people believe that childbearing in

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<sup>25</sup> Pope Pius XI, “Casti connubi”, n.35, in AAS 22 (1930), 546

marriage is a *sine qua non* and when this is not possible, they resort to dissolution of the bond of marriage. Lamenting on this issue, Archbishop Muller states that “today’s mentality is largely opposed to Christian understanding of marriage, regarding indissolubility. Because many Christians are influenced by this, marriages nowadays are probably invalid more often than they were previously because there is lack of desire for marriage in accordance with the Catholic teaching, and there is too little socialization within the environment of faith.”<sup>26</sup> To avoid invalid celebration of marriages, it is pertinent that parties to marriage be adequately taught about marriage and prepared for its valid celebration. The Church does this preparation by offering premarital courses to make sure that the intended couples understand the essential properties, obligations, and rights in marriage. Banns of marriage are called to inform the public of the intended marriage and to ask anyone who know of any impediment on the way to a valid celebration of marriage to come forward and report.

All these are done to forestall declaration of nullity. It often beats one’s imagination how there are still many invalid marriages being celebrated by the Church and in the Church. The Church will permit a marriage to be celebrated. The same church will come to declare the marriage null on frequent occasions. Something must be done. To forestall this, after adequate marriage course lesson, the intended couple should be meant to swear to an oath and write an undertaken that they have understood all that the Church is teaching about indissolubility of marriage and that they must abide by it. A copy of this document of undertaking should be taken from the parish and stored in the diocesan tribunal (or diocesan archive) of the place of the celebration of the marriage and place of domicile of the parties. Should the marriage fail, and the couple comes up to seek annulment on grounds that prudent marital preparation could have dictated, they should be turn back based on the document of undertaken signed by them before the marriage. This will enable people

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<sup>26</sup> Muller, G.L., “Testimony to the Power of Grace: On the indissolubility of marriage and the debate concerning the civilly remarried and the sacraments”, 8-9, [www.vatican.va/curia/congregation/cfaith/muller/rc\\_con\\_cfaith2013](http://www.vatican.va/curia/congregation/cfaith/muller/rc_con_cfaith2013) 1, retrieved 15/10/22

to take the Church more serious on her teaching on indissolubility which she cannot deny.

**Assert Limits to State Powers on Canonical Marriage**

It is pertinent and urgent that the Church as an independent and autonomous entity should assert herself in areas that pertain to the spiritual well-being of the Christian faithful. The church has full right in directing Christian faithful in matters of faith and salvation of souls. This is not within the competence of the State at all. The Church has well defined laws that govern the administration of the sacraments for the sanctification and salvation of her faithful. The state should accord the Church or rather state should respect that right of the Church. In this wise, marriage even though a social reality, is for the Church a sacrament, a vocation, a way of witnessing to the Christian faith and a way of salvation. The Church should, therefore, have exclusive jurisdiction or competence over marriage of baptized Catholics without state interference except in matters dealing with “the merely civil effects of the marriage” (cf. c. 1059). The Islamic religious adherents in Nigeria have the Islamic law that governs their marriages. The Catholic Christians also have the canon law that regulates their personal religious practices and marriage. We most respectfully submit that the situation where Catholic Christian marriage, which is a sacrament, a religious thing, is subjected under the state law instead of the ecclesiastical law is wrong and oppressive. Catholic Christians who have celebrated their marriages in accordance with Church law and who are taught before their marriage to see it as a vocation should not have their marriages dissolved before the state or customary courts. The great problem of divorce and remarriage today without canonical recognition is occasioned by the fact that the state courts interfere with sacramental marriage where they suppose not to have any competence. The state does not understand the covenant teaching about matrimony. The state does not understand the fact that the Catholic Christian marriage is a vocation and a means of their salvation. The state is open to divorce and so quickly grants divorce making the affected Catholic Christians torn birds. We strongly recommend that when matters affecting sacramental marriage are wrongly reported to the civil courts, the state should decline jurisdiction.

**Well Trained Tribunal Staff to avoid issuing of “Invalid annulments”.**

Greater percentage of Christ’s faithful will celebrate the sacrament of marriage which has special rules governing it in the Church. Among these rules are those that established grounds for invalid celebration of marriage. Pastors of souls who are charged with the task of directing Christ’s faithful in the knowledge and observance of these rules of marriage should be well trained on the rules. This is because they cannot impart the knowledge of the rules if they themselves do not have a comprehensive grasp of the rules. This is more so for those who are tasked to work as tribunal official to apply the rules in declaring the invalidity of marriage.

It is pertinent to have well trained ecclesiastical staff that prepares people for the celebration of the sacrament of matrimony. These staff should be able to expose to the parties everything that could make the celebration of their marriage invalid. They should do all they can to see that those they prepare for marriage do not enter an invalid marriage. It will be a shame on them and on the parties if in future the marriage is declared null and void on grounds of reason they should have spotted and avoided during the preparation for the marriage. The staff that will make enquiry into the marriage celebrated and are given the power by the Church to declare marriage null and void should equally be well grounded on the matrimonial doctrines and laws of the church especially on the indissolubility of marriage. Their task of investigating marriage and declaring it null and void is an onerous one. Tribunal Judges should tread with caution when they are declaring marriage null. We are convinced that Church tribunals many times and often give what we call “invalid annulments”. By this we mean, that time without number valid marriages have been declared invalid contrary to the mind of God. It is, therefore, important that the tribunal staff be well trained in their job. They must be people who have passion for the teaching of Christ regarding indissolubility of marriage. Otherwise, for every difficult marriage, they would find reason to annul on grounds of simulation<sup>27</sup>or lack of due

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<sup>27</sup> *CIC.*, 1983, c. 1101§2

discretionary judgment and inability to assume the essential obligations of marriage.<sup>28</sup>

### **Grant of Separation in Difficult Marriage Situations**

The Church recognizes and rightly so that there are some situations in which living together becomes practically impossible for many reasons. In such cases, the Church allows physical separation of the couples and their living apart. The spouses do not cease to be husband and wife before God and man and so are not free to contract a new marriage. In this difficult situation, the solution would be, if possible, reconciliation. The Christian community is called to help those persons live out their situation in Christian manner and in fidelity to their marriage vows and created marriage bond which remains indissoluble.<sup>29</sup> For in line with the scripture, and the tradition of the Church even in cases where separation is permitted on grounds of adultery as recorded in the gospel, the innocent or the guilty party is not at liberty to enter a second marriage. Indissolubility of marriage is the hallmark of a ratified and consummated marriage.

### **6. Conclusion**

The Word of God is unchanging and immutable even in changing times. Even though civilization and culture vary, the kernel of the Word of God fits everywhere. Suffice it to say that the gospel message must be put into practice in all generations and among the believers with no dilution or mutilation. The Church received this message from the mouth of her divine master and have taught and put it into practice throughout centuries of her existence on earth that marriage is a sacrament where a man and a woman are joined together by God himself to become one flesh. “Therefore, what God has joined; man should not put asunder” (Matt. 19:6). The doctrine and law on the indissolubility of marriage is very clear. In our days, things must not be different. The Word of God remains the Word of God no matter how we take it or think of it. The seriousness attached to the doctrine of indissolubility of marriage as

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<sup>28</sup> Ibid., c.1095, nn. 2 & 3

<sup>29</sup> Cf. *Catechism of the Catholic Church*, Liberia Editrice Vaticana, Liguori Publications, 1992, 1649. John Paul II, *Familiaris Consortio*, n.83, CIC 1983, cc. 1151-1155.

coming from the Lord will yield the desired result if we adhere to proper preparation and acceptance of the doctrine before marriage celebration, remove the hands of civil authorities from infiltrating and meddling with Church marriage cases, avoidance of “invalid annulments” and grant of separation in place of annulment in difficult marriage situations.