Freedom: A Prerequisite for a Valid Marriage in the Light of Canon 1103 of the Code of Canon Law

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Abstract

It examines freedom in marriage, especially as found in the Christian domain and to establish the fact that freedom is a prerequisite for a validly contracted marriage. Freedom, an offshoot of canon 1103, speaks of matrimonial freedom, whereby the denial of freedom through coercion (force and fear) would result in invalidating marriage. It considers too marital consent and marital choice, Christian understanding of marriage, force and fear in canon 1103, proofs of force and fear, deprivation of freedomin marriage in a bid to contribute to the enhancement and protection of marital freedom. The study clarified the following problems: lack of love in marriage as a result of lack of freedom due to the interference of parents in the choice of partners for their children, marriage divorces and separations, unhappy marriages and broken homes. The expository, exegetical and the deductive methods were used in this study. The major findings revealed that many marriages were contracted under force and fear accruing from parental influence in the marital choice of their children; also lack of knowledge of what freedom in marriage and Church marriage laws entails. The study recommended: Pre- Marriage Catechesis, Civil Legislations in the society should enshrine in the Constitution laws Prohibiting Marriage Coercion, Establishment of Diocesan Structures to take care of Marriage Problems.

Key words: Freedom, Marriage, Force and Fear

1. Introduction

One of the pinning concerns of man right from the dawn of the ages is that of freedom; a concept generally understood as the rights or state of being able to do or say what you want without anyone stopping you. In our present world, abundant efforts, resources and means are put in place to regain and protect the freedom of nations, countries and individual persons, such that the notion of freedom has become one of the central issues both in ecclesiastical and civil domain. Notwithstanding all the efforts in ensuring freedom, there are still some draw backs in the society. It is an appalling situation in our society today especially when it comes to the area of marriage. According to the Council Fathers, marriage is an intimate partnership or sharing of marital life and love (*Gaudium et Spes* no. 48). It is a union between two baptized Christians, a giving of the partners to one another. For the Council Fathers, marriage is formed by the marital covenant, a covenant whose nature is one of irrevocable personal consent. The partners do this by a human act in which they mutually give and accept one another.[1] In the Code of Canon Law, more elements of the Church's conception of marriage are found. For instance, like *Gaudium et Spes,* canon 1057§1 says: "A marriage is brought into being by the lawfully manifested consent of persons who are legally capable. This consent cannot be supplied by any human power"[2] It means then that not by any other means but the parties expressed consent can marriage be created.

With a keen look at our society today, there are experiences of separation, divorce, unhappy marriages and even broken homes. One of the underlining factors is that some people are denied or lack that basic freedom necessary in marital choice. The appalling situation has led me to take a deeper look into freedom but with special emphasis on marital freedom as could be obtained in the Church. This freedom is with particular reference to the sacrament of marriage. This research

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[1] Paul VI. "*The Pastoral Constitution on the Church in the Modern World Gaudium et spes*" Vatican Council II Volume 1: The Conciliar and Post Conciliar Documents. Ed. Flannery Austin.St Paul's, 2001.

[2] 1983 Code, can. 1057 §1: "*Matrimoniumfacitpartiumconsensus inter personasiurehabileslegitimemanifestatus, qui nullahumanapotestatesuppleri valet*."

paper intends to contribute to the enhancement and protection of marital freedom. The inquiry is carried out with special reference to canon 1103. Through this canon, the Church wishes to protect the matrimonial freedom of the spouses entering into marriage.

Freedom per se is part of natural law; and as such it is an expedient and inevitable necessity for the performing of juridical acts. Juridical acts are human acts and therefore must be performed in knowledge and freedom. If someone is compelled by force and fear while performing a juridical act, to the extent that the will is rendered absent because resistance is not possible, such an act therefore is not human. The act could be declared invalid in accordance with the law after verification. For instance, marriage under the influence of force is invalid and under the influence of fear could be declared as such because human freedom is restricted, coerced, or denied. The freedom of the contracting parties is damaged and influenced by the violence or fear appositely used to force people to celebrate marriage. Force and fear according to can. 1103 militate against the natural law of freedom which is at the very foundation of the exchange of marital consent. It violates human dignity, and vitiates the matrimonial consent. This article therefore, will consider how the facts explored would help in empowering the prospective couples in their freedom to choose their life partner.

2. Clarification of Key Concept: Freedom

Going through the United Nation's Declaration on Human Rights, one would come to terms with the fact that freedom is basic for human existence and for the well-being of the society. In this document it is stated that the human person has fundamental right to Freedom - freedom of expression, of political and religious association, etc. The aim of this document is to help in the restoration of the dignity of the human person. This restoration of the dignity of the human person is emphasized in the Church's Pastoral Constitution on the Church in the Modern World ; *Gaudium et Spes*. Here, the Council Fathers affirmed that "it is only in freedom that man can turn himself towards what is good. They continue to maintain that man's dignity therefore requires him to act out of conscious and free choice, as moved and drawn in a personal way from within, and not by blind impulses in himself or by mere external constraint"[3].

Having a close look at the above statement, we would say that freedom is a human right required by the law of nature. That is, freedom is a natural law. It is also a necessity performing juridical acts. Juridical act is human and as such should be performed in knowledge and freedom. However, when this act is performed under compulsion (force and fear) and verified as such, it could be declared invalid, according to law[4]. The application of this law to marriage makes it invalid if there is an influence of force. The presence of fear too could lead to such a declaration. Again, our foundational canon (1103) as point of reference supports such a declaration, "A marriage is invalid which was entered into by reason of force or of grave fear imposed from outside, even if not purposely, from which the person has no escape other than by choosing marriage."[5]

Going further on the meaning and structure of freedom, Babcock went further to look at freedom in more concrete terms - freedom of speech or expression, right of ownership, free practice of religion, free movement, etc. He pointed out that freedom generally refers to the power to act, speak, or think without externally imposed restraints[6]. Included here is the capacity to exercise

[3]Paul V1, *Gaudium et spes*, no. 17
[4] 1983 Code, Can. 125 §1
[5] 1983 Code, Can. 1103
[6] Gove Philip Babcock, 'Freedom' in Webster's third New International Dictionary, USA, Massachusetts, (1993)907

choice which implies the ability to use the freewill. It could be said then that freedom is the condition or state of being free and the power to act freely without any restraint, compulsion, or coercion.

It is important to note that the two synonyms: freedom and liberty are often used interchangeably by some authors and thinkers. For instance, Dewey, views freedom or liberty to mean "the quality or state of being free; not being coerced or constrained by fate, necessity or circumstances in one's choices or actions"[7]. In one of his papal documents, *Libertas*, Pope Leo XIII explained liberty exactly as "freed distinguishing between natural liberty which belongs to man as endowed with intelligence, and moral liberty. Moral liberty consists in choosing that good only which is in conformity with the judgment of reason. Further, this aspect of moral liberty according to him is to be guided by law in order to objectively determine reasonable and unreasonable knowledge, since the intellect and will of man are defective"[8].

Freedom which is so central to human existence could further be seen under three major forms: personal freedom, social freedom, and spiritual freedom. With regard to personal freedom, it is the action of a person. This action originally comes from the individual. The notion of autonomy then comes to the scene. Autonomy here means that freedom that makes the person independent, free and self-directing. It involves mapping the course of one's life, making decisions to meet needs and wants[9] . In this sense therefore, "the individual is required and must be able to coordinate his movements, to array his thoughts and cultivate his emotions so that what he intends doing would be able to devote himself to it"[10].

Bernard Lonergan, while expressing his view on autonomy in the light of personal freedom stated that "three things are characteristic of personal freedom: opportunity, intention and choice"[11]. What in fact Lonergan is saying here is that for a person to personal1y performs any free act, the course of the above characteristics has to be run and completed.Contextually then, opportunity does not only involves condition but also the capacity to grasp the given condition. Again, it involves knowledge of the objects of action presented to the person and this involves the power of the intellect. Based on this, Lonergan, says "in order that opportunities be relevant to human action, they must be shaped according to the contours of human wishes and expectations. Opportunity therefore can be said to be the springboard from which actions of the person takes off and moves towards its realization through intention and choice"[12].

Intention according to St. Thomas Aquinas, as the name itself indicates, "means to tend toward something"[13]. It is a conscious aiming at a goal or end. Implicitly, therefore, apart from having opportunities, a person must be able to act on the basis of his intention. There is then a necessary link between the opportunity and intention in the chain-course of action. This is very much attested to in the following statement by Lonergan: Critical reflection cannot execute the proposed action, for it is simply a knowing. Knowing cannot necessitate the decision, for consistency between

[7]Dewey John, 'Freedom' in Webster's Third New International Dictionary, USA, Massachusetts, (1993)906.
[8] Pope Leo XIII, *Libertas* no. 1, Rome: Vatican Press, 1888
[9] Elizabeth Bergner Hurlock, *Development Psychology: A Lifespan Approach*. *TerjemahanIstiwidayanti*. Jakarta: *ErlanggaGunarsa*, (1990) 65
[10]Neville Robert Cummings, 'Freedom's Bondage' Proceedings of the American Catholic Philosophical Association (1976) 4
[11] Bernard Lonergan, *Insight: A Study of Human Understanding*, Toronto, (1992) 623.
[12]Lonergan, 1992, 642.
[13]Cf. Thomas Aquinas, *Summa Theologia (ST)*, I-II, q. 12. a. 1

knowing and willing becomes an actuality only through the willing[14].Lonergan's statement above, points to the fact that intention is the operation of the will. That is, the capacity whereby a person is physically attracted to some object that is apprehended as good or is physically repelled by some object apprehended as evil. The operation of the will lies in willing[15].

Choice is distinct from intention. As understood choice is the act of the will concerned with the means to an end. St. Thomas Aquinas affirmed when he says choice substantially is not an act of reason but an act of the will; and that it is concerned with the means to an end while intention regards the end[16]. Relating choice to freedom, Aquinas says that the faculty of man's choice is the proper explanation of his freedom or free will. Man therefore chooses freely and not of necessity[17]. In addition, freedom in relation to our free will therefore signifies our power to choose between alternatives; that is our power to say 'yes' or 'no'. A free and responsible person is one who can choose and such is what characterizes a human person and also forms the foundation of his/her dignity making him/her to carryout personal responsibility[18]. Furthermore, Burke expressed that freedom lies in the ability to refuse or accept a situation or a thing according to one's free choice. The inability to say "no" to an opposing situation, habit etc means loss of freedom in that dimension or aspect. Generally Burke is of the opinion that freedom is for choosing and in choosing one thing, one necessarily excludes other things[19].

Making reference to Spiritual Freedom, Haring Bernard explained that the freedom of the children of God under grace is infinitely more than the independence and the power of the will to do so as it pleases. Inclusive is the capacity of the will to do good and avoid evil. Sin must be seen as the loss of that freedom for which God has created man and Christ has redeemed him[20]. For St. Paul, Spiritual Freedom is the mean which is not under the law but under grace[21]. In other words, the Christian being renewed in mind by the gift of the Holy Spirit thus being free not only does not slavishly submit himself to those laws that impose a minimum of external duty but also he accepts wholeheartedly and gratefully the law of faith. Constantly he tries to live evermore in accordance with the liberating truth of the gospel.

3. Christian Understanding of Marriage

One of the fundamental understandings of Christian marriage is that it is a relationship between one man and one woman. There must be a declaration before the Christian community with the presence of a minister of their intention to stay together forever, until they are separated by death. By the act of consummation they become one flesh and hence no divorce. This is affirmed by Canon 1056 which reads: "The essential properties of marriage are unity and indissolubility which in Christian marriage obtain a special firmness in virtue of the sacrament"[22].

Scriptural passages could be used in tracing the Christian understanding of marriage. For instance, the creation of Adam and the provision of Eve as his only wife in Genesis 2: 22-24. In Matthew 19:5 it is stated "a man shall leave his father and mother and be joined to his wife and the two shall

[14]Lonergan, 1992, 642.
[15]Patrick Bourke, 'Cognitive Psychology' in the American Journal of Psychology', Vol. 105 no. 4, University of Illinois Press. New York (1967) 909
[16]Cf. Thomas Aquinas, *Summa Theologia (ST),* I-II q. 13 a. 4
[17]Cf. Thomas Aquinas, *Summa Theologia (ST),* I-II q. 13 a. 6
[18]John Burke, *Theology of Canon Law of Marriage*, Ibadan: Society of African Mission (1992) 126-127
[19]Burke, 1992, 52-53
[20]Bernard Haring, 'Spiritual Freedom in New Catholic Encyclopedia', Vol. 6 Washington (1967) 106
[21]Cf. Romans 6: 14
[22]1983 Code, Can. 1056

become one flesh. In the epistles of Paul, he talks of the need for a man to get one wife and a woman one husband and none of them should separate from the other. We could then say that the Christian understanding of marriage has an undertone of natural marriage which has always tended towards monogamy, that is, towards marriage involving two spouses and not one spouse with a plurality of partners as in polygamy.

The essential fact from all that has been said above is that God created them male and female (cf. Gen. 1:27). Important to note is that marriage should be between a male and a female. Despite the polygamist picture of marriage in the Old Testament, God actually intended a monogamous union between a man and woman. Canon 1055 of the 1983 Code of Canon Law supports God's monogamous intension of marriage.

The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its very nature is ordered to the well-being of the spouses and to the procreation of children, has, between the baptized, been raised by Christ the Lord to the dignity of a sacrament[23].

The use of the word "covenant" is very much important in Christian marriage. The 1917 Code had used the word "contract" as in place of covenant. The word covenant enriches Christian marriage in two ways: first, by linking it to the covenant between God and his chosen people Israel, and second, by linking it to the Pauline model of the Church as the spouse of Christ. In these passages - Mark 10:11, Luke 16:18, Christ offered a general prohibition of polygamy and portrayed all other marriages outside monogamy as invalid and adulterous. This teaching was upheld by the apostles and those after them till today. The Christian ideal of marriage is an entry into a physical and spiritual bond. This makes the partners truly one[24]. Since all were created in Christ, through Christ and in view of Christ, marriage as a true institution of the creator becomes a figure of the mystery of the union of Christ with his Church. It is then a sacrament signifying the participation in the spousal love of Christ and the Church.

3.1 The Sacramental Dignity of Marriage

Marriage is presented as belonging to the order of creation and as part of God's plan and it is said that “it was very good” (Genesis 1:31). The mystery between man and woman is the image and likeness of God's covenant with man and the reproduction of his love, faithfulness and creative power. Marriage has no ultimate value, but a penultimate value. This is because it points to something beyond itself. It is an actual form of human hope of salvation. In this sense we can talk of a natural sacrament of marriage[25].

From Old Testament understanding, the covenant between man and woman becomes the “image and likeness” of the covenant between God and m an (Hosea I :3; Jeremiah 2: 3, 31; Isaiah 54: 62). It could be said therefore that marriage is the language used by God to express his love and faithfulness, but in a definitive and surpassable way in Jesus Christ, who is in person God's covenant with human beings, the bridegroom of God's people of the new covenant. Marriage should be understood as a sign of God's covenant. Marriage is sacramental because it is fundamentally related to the saving work of Jesus Christ.

[23] 1983 Code, Can. 1055
[24]Cf. Ephesians 5:31
[25]PaulinusOdozor (ed), Sexuality, Marriage and Family: Readings in the Catholic Tradition Indiana: University of Notre Dame Press (2001) 340-341

Marriage is the sign of Christ. The unity in love existing between God and human beings is made present as a sign in marriage. The Dogmatic Constitution on the Church in the Modern World, *Lumen Gentium* no. 11 says: "Authentic marital love is included in divine love and guided and enriched by the redeeming power of Christ and the Church's mediation of salvation"[26].The love and faithfulness that Christian husbands and wives have for each other than is not simply the sign and symbol of the love of God, rather, they are the effective sign, the fulfilled symbol and the real epiphany of God that has appeared in Jesus Christ[27].

4. Marital Consent and Marital Choice

Canon 1057 §§1&2 states:

> *A marriage is brought about into being by the lawfully manifested consent of persons who are legally capable. This consent cannot be supplied by any human power. Matrimonial consent is an act of 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*[28]

From the above quoted canon, we can point to the fact that consent is very much central and of great importance in any marriage. According to John Beal et.al, "consent is not only an indispensable element of marriage but the efficient cause that brings marriage into being"[29]

Consent is to be exchanged between persons who are qualified by law. In other words, by those who are not under any form of impediment. Another aspect of the juridical effect of matrimonial consent is that it must be or have some public expression. Furthermore, marital consent is a personal act of the will exchanged between a man and a woman. This is done to establish an irrevocable covenant[30]. The exchange of consent according to the Second Vatican Council (*GaudiumetSpes* no. 48), "is that human act whereby spouses mutually bestow and accept each other." In the mind of the Council, the act of matrimonial consent is intended to establish a genuine interpersonal relationship, characterized by fidelity and steadfastness in good times and in bad. This exchange implies also, giving and accepting each other in order to establish marriage. It is an act of love; not a mere subjective disposition, infatuation, or erotic inclination; but an act of the will[31]. St. Thomas Aquinas says: 'to love someone is to wish him or her good'. Marital consent must will the good of the other spouse[32].

The above exposition agrees with canon 1103 in the upholding of the human freedom as far as marriage is concerned. Thus no other human person should be accountable for the free expression of consent, except the person contracting the marriage. CosmasOjemen underlies this fact by exclaiming: when we say that matrimonial consent is a free and personal act, it means that the choice of a marital partner, or the choice to choose marriage as a way of life, is the subject's

[26] Pope Paul VI, *Lumen Gentium* no. 11, Rome: Vatican Press , 1964
[27]Odozor, 2001, 344
[28]1983 Code, Can. 1057 §§ 1&2
[29]Beal, J.P. et al (eds) "New Commentary on the Code of Canon Law" Bangalore: Theological Publications in India, 2007, 1250
[30]Beal, J.P. et al. 2007, 1251
[31]Paul V1, *Gaudium et spes*, no. 48
[32]Beal, J.P. et.al. 2007. 1253

personal and freely expressed decision[33].From the above inferences, we can indicate the meaning of freedom:

a) The absence of coercion or restraint, preventing one from choosing alternatives he would wish to go for.

b) The absence of natural conditions preventing one from achieving a chosen objective.

Our major concern in this part of our inquiry is the freedom of marital choice. In choice making, there must also be freedom from obstructions and the freedom in the processes of choosing and acting on one's own initiative[34].

In analyzing the requirements of the freedom of choice for matrimonial consent, we have to be aware of the fact that: a) it is both philosophical and psychological freedom; b) this freedom involves a process of self-determination and also the whole human personality; c) it could sometimes be hindered or limited by coercive internal and/or external forces; d) freedom of choice does not mean absolute indeterminism, there is always some element of determination in each individual action; e) freedom involves some effort at deliberations[35].

When we talk of freedom of choice, we are not only talking of freedom from external coercive agents, but also from internal psychic obstacles. The law, in referring to the freedom of consent, includes all of the above aspects of freedom.

5. Force and Fear in Canon 1103

Here, the subject of discussion is consent extracted by force and fear. According to Can. 1103, "A marriage is invalid which was entered into by reason of force or of grave fear imposed from without, even if not purposely, from which the person has no escape other than by choosing marriage"[36].

5.1 Force (*Vis*)

Force is violence or a physical impulse from without (from an external agent), which cannot be resisted. Such force cannot compel the interior assent of the will (*actuselicitus*) but it can compel an imperious act or imposed act *(actusimperatus*) so that the person is said to act against his or her will[37]. The invalidity arises from the consent that has been given but not freely given. The law has established the invalidity of consent given under the influence of force or fear not so much because of the injury that is, violence suffered by the contracting parties, but because force or fear attacks the freedom necessary for matrimonial consent. Therefore, when the consent is obtained by the use of physical force or threat, the marriage is null for the lack of consent.

5.1.2 Forms of Force

Having had some understanding about force and its nature, we would here then try to have a look at the forms of force - slight force, absolute force and conditional force.

Slight force is the "form of external force that does not take away all freedom of action. Because it does not take away all freedom of action, it can be resisted externally. It is considered as force

[33]CosmasOjemen, *Psychological Factors in Matrimonial Consent in the Light of Canonical Legislation*. Remo Ambrosini, 1986, 125
[34]Ojemen, 1986, 125
[35]Ojemen, 1986, 129
[36]CIC/83, can.1103
[37]Egbuna, Miriam Perpetua. *Enjoy your Marriage*: *A Handbook for the Married and those Preparing for Marriage*. SNAAP, 2012, 614

that can be withstood by the victim. This form of force is also referred to as relative force. It is understood that the victim of such force is one who is in the condition of physical necessity. The physical necessity could either be grave or slight depending on the circumstance or the situation of the victim"[38].

Absolute force or violence is considered as that which takes away all freedom of action. Irresistibility is a principal characteristic of absolute violence. This means the exclusion of whatever possible resistance by the victim. Absolute violence excludes any voluntary will in the victim. The general concept of absolute violence is thus presented as follows:

1. Absolute violence is a domineering power in action. It is always a power that is physically and immediately operating on the body of the victim; but, one should be aware that if this is a constant character of absolute violence, it is not exclusive to absolute violence, because often it can concur also in the other form of coercion.
2. It is a power emanating from the will of a man. It must be a human power in the strict and literal sense, excluding a priori any and whatsoever use, intentional or not, of extra-human powers.
3. Absolute force is directed at influencing the behavior of a specific subject, more precisely; it is directed at acting not on the interior faculties that are able to elicit an act of the will, but exclusively on the executive physical capacities[39].

Absolute force then is the manifestation of the domineering will of a subject directed to bend, in an immediate and mechanical way, the executive organs of another subject towards a mere declaration of the will.

Conditional force is conceived as: a) a power that is not absolutely irresistible; b) a power that is not operating on the body of the victim through an immediate physical action, but through the fear which it generates and wherewith, at the end; c) a power that does not completely suppress the voluntary, will but only lessens it[40].

5.2 Fear (*Metus)*

Fear is trepidation of mind in the face of an impending evil caused by the psychological pressure or moral coercion, and the subject is forced to choose marriage in order to free oneself of the impending evil[41]. Fear is apprehension caused by moral coercion (Psychological pressure) exerted by the agent over the passive subject by means of threats. Egbuna Perpetua noted that moral coercion and fear are related in terms of cause and effect. She affirmed:

> *While force acts in the external expression of consent, fear (an effect of moral coercion), acts on the internal psychic state of the contracting party and vitiates the origin of consent. More so, while force, because it compels the external expression of consent, does not leave any option to the subject between accepting marriage or not; fear involves a defect in the consent because the subject accepts marriage albeit*

[38]McCoy Alan Edward, *Force and Fear in Relation to DelictualImputability and Penal Responsibility*, Washington: CL ST 1944, 76

[39]McCoy, 1944, 78ff
[40] McCoy, 1944: 78ff.
[41]Egbuna, 2012, 615

> *because of fear induced by the threat of some evil. And while force is physically irresistible, fear is morally irresistible too*[42].

When consent is obtained by the use of physical force or by threat, the marriage is null for the lack of freedom to consent. Likewise, where the fear is so grave that the victim had no option but to consent to marriage in order to escape the impending evil or danger threatened, there is also lack of freedom and can be considered equivalent to lack of consent.

5.2.1 Forms of Fear

Basically, we would be looking at two forms of fear: common fear, and reverential fear.
Common Fear: Here we have absolute or relative grave fear. According to Beal, "fear is absolutely grave when it results from a cause that would intimidate a mature and well-balanced person sufficiently to compel that person to enter an unwanted marriage. Imprisonments, disinheritance, threats of death are examples of causes of absolutely grave fear. Absolutely grave fear also has a great effect on the immature, vulnerable or insecure people. They are frightened or threatened into marriage by threats of lesser gravity. Relatively grave fear on the other hand is said to be of an induced nature brought about by threats of damaging one's reputation, the suspension or withdrawal of tuition fees, home eviction or loss of job[43].

Reverential fear on the other hand centers on the issue of dependence or subordination. At play here are the persons of the superior and subordinate. The subject always has that instinctive drive or desire to satisfy or please the superior. In such a situation, the subject is often afraid of offending the superior, thereby incurring his or indignation. Reverential fear often occurs in the relationship between parents with their children. The kind of fear that arises in such a relationship is that of parental indignation. For such fear to invalidate marriage it must have some objective gravity that is evoked by severities, cruelties, absolute and imperious commands, threats, curses, etc, that leaves the one with no option but marriage in order to avoid or escape the importuning[44].

In the same light of considering the concept of freedom and the concept of force and fear, we may say that we recognize sometimes the presence of force and fear in the absence of freedom, just as we can know the absence of force and fear in the presence of freedom. This assertion can however be disputed to some extent following the fact that some kinds of force and fear may not be qualified to take away freedom completely. Nevertheless, we would say that while freedom is a means through which a human act is performed, coercion (force and fear) is a means through which a human act is denied. Freedom being a fundamental human right is a natural law. And a natural law is that law of human conduct, which arises from the full reality of human nature as ordered to its ultimate end and which is recognized by means of reason. Marriage, being an act of this natural law, is violated and therefore prevented from attaining its ends and purposes when it is affected by force and fear[45].

In this regard, Vatican II Constitution *Gaudium et Spes*(no. 17), expresses that the dignity of the human person requires him or her to act out of conscious and free choice, as moved and drawn in a personal way from within and not from blind impulses in him or herself or by mere external

[42]Egbuna, 2012, 615-616
[43]Beal et. al, 2000, 1320
[44]Beal et. al, 2000, 1321ff
[45]Peschke Karl 'Christian Ethics: Moral Theology in the Light of Vatican II Volume 1, General Moral Law' Alcester (1993) 247. <http://www.amazon.com/Christian-Ethics-Theology-Vatican-General> accessed 30 October, 2024.

constraint. It thus instructs that a person should therefore gain such dignity when ridding himself or herself of all slavery, presses forward freely towards his or her goal by choosing what is good, and by his or her diligence and skill, effectively secures for him or herself the means suited to this end.

6. Proofs of Force and Fear

We must acknowledge that there are difficulties involved in having adequate proofs in the investigation of various cases of force and fear. These difficulties involve, for instance, gathering of the testimonies of the witnesses, whereby some important persons like the parents may not co-operate. In many cases the judge is left only with the testimony of one of the parties who is alleging the coerced consent. Generally, there are direct and indirect proofs.

In a direct proof, attention is focused on the persons who are inflicting the force or fear on the party. In case, it is not sufficient stating the facts alone, Lagges Patrick maintains, "What therefore needs to be demonstrated in such a case is not just that someone was causing fear in one of the parties, but why that person could be said to be causing fear. In addition, having understood from our inquiry that all fear is measured in a subjective sense, it would be important to show why the person reacted in such a way to that particular person in this particular situation. Such evaluation is necessary especially if the situations were such, that others might not experience fear under similar conditions[46].Wrenn, in one judicial decision expresses that in the case of coercion, there is the necessity of discovering actually that the victim was deprived of the freedom of the will, which is necessary for marital consent. Therefore, according to him:

> *Harshness, physical beatings and reprimands are not necessary to constitute coercion and on the other hand encouragement, advice and recommendations are not sufficient. Bur a grim appearance, a genuine command, repeated, insistent requests that wear the person down, these are the things that can remove the freedom of will that is necessary for marital consent. All of which are, of course, more effective on women than on men, on younger people than on the more mature and on children who are entirely dependent than on those who have gained some independence, especially economic independence.*[47]

In indirect proof, attention is focused on the person who fears, rather than the person causing the fear. The proof in this case is also based on demonstrating that the person has some sort of aversion to the marriage in question. In addition, the examination should also prove that this aversion to the marriage was caused by the fear which he or she was experiencing. There might also be the possibility that the person has an aversion to marry the person or does not demonstrate love toward his or her partner for reasons other than fear. The causal connection between the aversion and the fear should therefore be demonstrated[48].

In the argument leading to the proof of aversion, Wrenn, explained that when the signs of aversion are evident at the very time of the marriage, then the presumption of either a forced or a simulated marriage is especially strong:

> *Aversion doesn't come up overnight. Tears and complaints preceding the marriage, weeping, protestations, sadness and pallor at the time of the marriage plus a denial*

[46]Lagges Patrick, *Force and Fear*, in The Canon Law Society of America Washington DC (1996) 281
[47]Wrenn Lawrence, *1983 Decisions*, Canon Law Society of America Washington DC (1983) 178
[48]Lagges, 1996, 281

> *of any signs of love after the marriage, are arguments in favour of the presence of fear*[49].

He goes on to explain, that if after the marriage, signs of grave aversion are not present, this does not really prove that the party is not experiencing aversion, because it could happen that the party did not realize that the marriage was null and consequently was just resigning himself to his irreparable fate.It is also important to note here that, the fact of aversion for marriage does not remove the possibility of love for the party:

> *So, even a friendship between a young man and a woman would not necessarily rule out grave, unjust fear, for it is one thing to be a friend and another to wish to marry that person. Consequently, love and aversion regarding the same person are not necessarily incompatible. It is certainly possible that young people would be friends or even be sleeping together but still not want to marry each other*[50].

With regard to looking for a clear proof of aversion, as expressed in his argument, Wrenn concludes that where an argument of aversion to a person or at least a repugnance to marrying that person is entirely lacking, then a judge is not able to say that the person was entering the marriage out of grave fear and the marriage may not therefore be declared null[51].

7. Deprivation of Freedom

When we talk of deprivation of freedom in marriage, we should take into consideration that many people today enter into married life under one pressure or the other that denies them of the required freedom to marry. Canon 1103 refers to such pressure as 'force (violence) and fear'.

Force and fear affect the will in the sense that the will is deprived of its natural disposition towards taking decision. In other words, the intellectual constitution and disposition which allows it to know very well what to decide on, and the volitive constitution and disposition (the condition and freedom of the will) through which it can make the actual decision, are destroyed by the influence of force and fear. On this note also, in relation to the freedom of action, a person in this condition, in executing his or her acts, does so under the pressures of compulsion; that is, without the consent of his or her freewill. And since such act is not voluntary, it is not a human act, for an essential condition for a human act presupposes freedom from any external or internal compulsion[52].

8. Conclusion

This paper has compressed in a vast synthesis freedom in marriage in the light of Canon 1103. In a particular way, the scope of this canon lies in its consideration of force and fear as invalidating factors in marriage, because they deprive a person the freedom of making a matrimonial consent. The importance of matrimonial consent in Christian marriage cannot be over-emphasized. Accordingly, the Code of Canon Law has it that 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 (Can. 1057 § 2). It stands then that consent of the parties is very important constitutive juridical element in Christian marriage. It brings the marriage into being as it is required of the couples alone and not external bodies.

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[49]Wrenn (1983, 177

[50]Wrenn (1983, 177).

[51]Wrenn, 1983, 176-178

[52]Viladrich, Pedro- Juan. "*Matrimonial Consent" Code of Canon Law Annotated*, Caparros, Ernest and HélèneAubé (eds.). Wilson &Lafleur, (2004) 696

It would not be out of place to say that the forces and fears that strip marriage of the actual freedom consist not only in the external forces of violence and fear, but also in the internal forces as indicated above. Marriage as a way of life should be freely embraced by those who wish to enter it. That is, without force and fear as this paper contests. Marriage as already observed, cannot be a truly successful one without having its base on love and the source of this love, as an essential element of marriage, is freedom. Thus any marriage that lacks love lacks freedom and vice versa.

9. Recommendations

Marriage as an institution is a very important component of the human society and its well being. The nature and what happens within it determines the outlook of the society.

There is no doubt, the Church through her legislation and social teaching, condemns and prohibits marriage coercion, however, other religious bodies should equally guard against such marriage coercion. Such religious bodies, where the rights and freedom of women are very limited are reminded of heeding the natural law and the fundamental human right that give every person the freedom of choice.

The civil legislations in various areas of the society should not only enshrine in the constitutions, laws prohibiting marriage coercion, but should also avail themselves of the effective means of creating awareness and implementation of such rules. This can be done, for instance, through the media, seminars, and workshops and through the courts of law. This is very necessary especially in some areas that still have the culture, where the parents and guardians make choice of marriage for their children. This is obtainable especially as concerns girls who are underage and who are more susceptible to yielding to the pressures of the parents and guardians.

The local churches through their ministers are good medium for carrying this campaign against marriage coercion. They can do this through setting up marriage and pre-marriage commissions that would be in charge of educating our youths with regard to the free choice in marriage as a tool for successful marriage. Also there should be establishment of more diocesan structures to take care of marriage problems.