

The engagement, marriage and divorce according to Nomocanone of Mar Abdisho

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We are going to talk about engagement, marriage and divorce according to Mar Abdisho's laws, the bishop of Nisibis and Armenia. He had lived in thirteenth century and died at the beginning of the fourteenth century. Mar Abdisho is the most popular legal author in the Church of the East. His laws fall into two well-known and important legal books;

- (Concise Collection of the Conciliar Canons (Nomocanone) ܩܘܢܝܢܐ ܩܘܢܝܢܐ ܩܘܢܝܢܐ ܩܘܢܝܢܐ)
- (Ordo iudiciorum ecclesiasticorum) ܩܘܢܝܢܐ ܩܘܢܝܢܐ ܩܘܢܝܢܐ (The judgments church system)

These two laws proclaimed the authoritative canon code of the Church of the East in the Synod of Mar Timothy II in 1318.

These codes are still valid in our Assyrian Church¹ of the East and haven't been changed except a few of them.

For the importance of being aware of these codes and due to the thread capacity, we will talk about what is beneficial to believers in general; without indulging into it clearly. Hoping that we will write about it more clearly in the near future.

The engagement and marriage:

According to Mar Abdisho, marriage contained two periods: the engagement and the marriage.

Again, the engagement contained two periods; the traditional period, which is the period of handing the ring and receiving a verbal consent and the Liturgical period, which is the period of blessing and receiving a written consent. In this period, every girl should have "*Mamkrānāh* ܡܡܟܪܢܐ" a person who is responsible for her marriage, for example her father, her brother or others. Therefore, the consent of the parents is important but the most important is the girl's consent.

The engagement:

According to his book (The judgments church system ܩܘܢܝܢܐ ܩܘܢܝܢܐ), "*The engagement is a Covenant, a contract and a promise of the marriage for the sake of natural participation that will be done after the marriage, either written or not, which is the base that both parts show their consent to after big research and investigating during this time in order to build love between them*"².

The engagement is not to reserve a girl, it is the first period of marital life, which is a holy commitment for faithfulness to celebrate with marriage by a free determination and consent of both parts. The engagement has the same canonical force of the marriage, therefore Mar Abdisho says the couple cannot divorce from each other in the period of engagement if not for the same reasons they can divorce during marriage. Being engaged is very powerful with its ceremonies, the couple cannot share in full marital life only after the second stage is done; that is the ceremonies of the marriage.

¹ Also for ancient church of the East.

² 'ABDĪŠŌ', *Ordo iudiciorum* in CCO, ser. II, fasc. XV, Tra. III, C.7, 182.

The importance of the engagement: to increase the love and cooperation between them, seeking for reasons that impedes the marriage, to understand the meaning of marriage and its purpose so that they can establish a holy marriage for the rest of their life.

The engagement is an important step to complete the marriage that comes after it. The three reasons are; first: due to its equality to marriage from the part of celebrating and divorcing. In which Mar Abdisho speaks in Nomocanone on celebrating the engagement more than celebrating the marriage, he mentions all its details; the traditional and liturgical concepts without mentioning anything about marital ceremonies. Second: because it is taken from the Bible that God had created Adam first and then made Eve from him “*It is not good for the man to be alone. I will make a helper suitable for him.*” Genesis 2:18; This means that God himself established the engagement.

Third: since it is similar to the engagement of Christ and the church that was done by John The priest in baptism when the Holy Spirit descended on Christ.

What are the main elements of establishing the form of celebrating engagement and marriage: the elements that must be found in every engagement or marriage, otherwise, the marriage is null or invalid except in certain exceptions.

The main elements are:

1- **The liturgical and legal form:** we said that engagement contains two periods³; the first period, the traditional one, handing the girl the ring and taking her verbal consent, handing the ring to the girl is done by first the fiancé handing it to the priest, then the priest sends it to the fiancée with four women or *Bnath Qyama*, they hand the ring to the girl and tell her that this ring is for the person who is asking for your hand; here Mar Abdisho gives total freedom to the girl to accept or refuse. If she refuses the ring; this means that she refuses the engagement and the ceremony is finished; but if she accepts the ring while she is silent; this means that she accepts the boy and then the engagement starts with its second period, which is the liturgical period, that contains priests prays, blessing the ring itself, the cup, the *Khmana*, and the cross with the attendance of witnesses in front of the alter, then the fiancé and fiancée drink from the cup with this ceremony, the engagement reaches its peak⁴.

2. The presence of the priest: the importance of the priest attending three times in the three stages act as different rules; First: is like a mediator who hands the ring of the fiancé to the fiancée to receive the verbal consent that is done in the traditional stage, therefore, the engagement is not done through parents or through the fiancé himself as it is done nowadays, but it is done by the priest. Second: the blessing of the engagement that is done in liturgical stage according to the prayers that are put in liturgy in the church in front of the Alter. Third: the priest is responsible for the one who has no relatives because he is the father of the believers.

In the second situation, the blessing, the presence of the priest is important for the validity of the engagement. Although being witness on the consent of the both parts, priests blessing is important for the validity of the engagement.

³ Some authors before him spoke about these two periods, Mar Narsai is the first who distinguished between these two periods and the necessity of the presence of the priest in it, where he said that "it is not allowed to betroth a girl to a boy without the presence of the priest, and not to marry without his blessing" but some researchers say that this sentence is not him but it is added later in his *Miy mre* (ܡܝܡܪܝܘܬܐ).

⁴ Here we see that the main elements that we see in the engagement are the same as those we see in the current Marriage rituals.

3. The presence of 4 or 5 witnesses: witnesses have a big role in the engagement and marriage, for they are not only witnesses on the engagement or the marriage, but they are the representatives of the believers, therefore, their attendance is important in the ordinary and extraordinary situations. Their role starts when the ring is given to the priest then to the women and finally the witnesses to state the consent.

4. Stating the consent (agreement): we have heard how did the betrothed show their consent verbally in the traditional stage through a priest and four women, but Mar Abdisho oblige both parts to state their consent in the liturgical stage in two copies; one contains the consent of the fiancé and the second the consent of the fiancée, this is done in front of the Alter, the priest, the deacons, the 4 or 5 witnesses and the believers.

The extraordinary or the unfamiliar form: the elements that we mentioned are important to any engagement or marriage according to the law and liturgy of the church, otherwise, it can't be regarded an engagement or marriage, and therefore, we have to distinguish between our marriage and the unbelievers. However, there are some exceptions we can make in these ceremonies in the absence of one element or more. In Nomocanone, one situation is mentioned that is the absence of the priest, or the betrothed are in a distant place where there is no priest but the believers only, in this case they can celebrate the engagement in a special way (*they say Our heavenly father God you are holy*) in the presence of 4 or 5 witnesses, the cross, the ring, and the *Khnanana*.

The same thing is done in the case of the marriage, when there is no priest.

Even in this case, they should reach to a priest as fast as they can, in order to continue what is left from the prayers, this means that the church should be aware of each engagement or marriage and should be done through the church.

In his book (The judgments church system), Mar Abdisho mentioned another exception, that is the absence of the believers in addition to the absence of the priest, if the betrothed are in a place where neither priest nor witnesses exist, here the author emphasizes that the witnesses should be believers, in this case he says they can get married but for the validity of their marriage, they should declare their marriage when they meet a priest and believers, the brides show their agreement to the marriage in front of the priest and the believers in the church, they must announce publicly that the girl is his wife, then the marriage is righteous.

The marriage:

In his book (Ordo; The judgments church system), Mar Abdisho has defined “*The legitimate marriage as the unanimous consensus and coexistence of a man and a woman as harmony, agreement, familiarity or living experience between man and a woman by the witness and priestly prayer, the unity and the natural communion for the mutual help between them to support themselves in this temporal life, the necessary cohesion, and for procreation of the children that will follow*”⁵.

Marriage Purposes or goals: Mar Abdisho is considered as the only author among the canonist authors and the church synods, who had treated the marriage goals in a clear image in his canonical collection (The judgments church system) under a special chapter titled (about the legitimate marriage goals or purpose)⁶, these goals are:

⁵ ‘ABDĪŠŌ’, *Ordo iudiciorum* in CCO, ser. II, fasc. XV, Tra. III, C.1, 170.

⁶ Canon 2 chapter 3

1. Procreation of the children: according to the Lord's word: "God blessed them, saying to them, 'Be fruitful, multiply, fill the earth and subdue it'". Genesis 28: 1. It is not allowed to procreate before and outside the marriage because God had blessed Adam and Eve first, then He asked them to procreate.
2. The mutual help between the couple in bearing the burden of the miserable life, according to the Lord word: "It is not good for the man to be alone. I will make a helper suitable for him." Genesis 18:2. Thus, the founder of the marriage's purpose is God from the beginning when He created Adam and Eve and they are linked together for the preservation of the family and establish life based on love and support between the couple for the procreation of children and educating them the fear of God⁷. Indeed, Mar Abdisho added another purpose to the above two goals that is the lust; according to the Paul's word: "To the unmarried and to widows I say: it is good for them to stay as they are, like me. But if they cannot exercise self-control, let them marry, since it is better to be married than to be burnt up". 1Cor: 7: 8-9. Therefore, the unique physical participation legitimacy between man and woman is through marriage, this participation is another goal to be added to the above two goals for those who burnt up in the lusty and this participation can be cured for them according to the Paul's word: "But if you do marry, you have not sinned; and if a virgin marries, she has not sinned" 1Cor. 7: 28.

The marriage property: as the main and general base, the marriage has two essential properties; unity and indissolubility.

1. **The unity**: excludes polygamy and proclaims mutual fidelity between the two spouses, since God created one woman to one man in work and word. In work; had created one man and one woman. In word; said: *to be one body*. Polygamy negates God's plan and is against the mutual personal dignity between the man and the woman, who in matrimony give themselves with a total, unique and exclusive love.
2. **Indissolubility**: excludes the divorce because the man cannot resolve what God had united. In the Old Testament, God allowed them for their heart-hearted but it was not thus from the beginning. "He said to them, 'It was because you were so hard-hearted, that Moses allowed you to divorce your wives, but it was not like this from the beginning'". Matthew 19:7.

These properties are derived from the essential purpose of marriage, because its purposes can't be achieved without the unity and indissolubility. The unity between the man and the woman is like the unity between Christ and His church, as Christ is united with the church, loved it and sanctify it, the man should be united with his wife in love and by his love should sanctify her.

Even though the marriage is not considered as one of the seven sacraments of the church, but Mar Abdisho regards it as a sacrament bond because God considered it as a holy thing in addition to that the bond between the spouses is like the engagement of Christ to His church. Paul refers to this holy bond in these words: "This mystery has great significance, but I am applying it to Christ and the Church" Ephesians 5:32.

⁷ St. Ephraim is the first author of the Church of the East who spoke about one of the goals of marriage is in his commentary on the Book of Genesis, when God created Adam and put all animals under his control, but did not see as real assistant for him so God created Eve to help him. canonically Aqaq synod (485) considered the first synod that talked about it in the canon (3) when it talked about Legal marriage before or after the priesthood, where he talks about the first goal, and says that having children before or after the priesthood is something good and acceptable to God.

Therefore, the marriage as a main base indissolubility, except in certain reasons canonically legitimate, we will talk about them later.

Impediments of the marriage:

Here are the situations that can stand against the marriage.

1-The legal age: in Nomocanone, Mar Abdisho stated and talked about the age of the girl only to get married, he said that the girl can get married at the age of 12, but for men he talked about one situation only that is when his parents don't agree to his marriage, he can get married at the age of 16; but in (The judgments church system) states that the age for boy to get married is 16.

The age of getting married is very important so that the person can make the right decision to get married and fulfill the marriage goals⁸.

2-Engagement bond or legal marriage: this Impediments is related to the essential properties of the marriage especially to the marriage unity, where Polygamy is regarded as the Impediment to the marriage, this means that when somebody is engaged or married they cannot implement another validly because as we mentioned before, the engagement is celebrated according to the prescribed canons, it has the same canonical force that the valid marriage has.

3- Disease: When a spouse becomes sick is that regarded as an impediment to the marriage? (The judgments church system) talks about certain diseases that can stand against the marriage, it says that the couple should do an examination and check before the engagement in 8 points that impedes the marriage, one of the point is disease; some diseases like; leprosy, spirit of evil, hermaphrodite, and etc.... are Impediments to the marriage; but in Nomocanone, we cannot see any disease that impede the marriage as Impediments, and even cannot divorce because of the disease which we can see later. So there is conflict between his two books.

4- With non-Christian⁹: the woman is not allowed to get married to a non-Christian, but the man is allowed hoping that he can make his wife, his children or both Christians. We can see here that first the commitment is not to change the religion but hoping to change it, secondly, the commitment is not to change the religion of the wife and the children together but at least one of them¹⁰. The main reason behind not getting married these wives, because, marriage unites spouses, not just in one flesh, but also in one faith and the danger of apostasy against the Christian woman who marries a non-Christian or for her children.

5. Impediment of asceticism¹¹: Nomocanone gives the permission for the monk, the nun and *bnāt qyāmā* to get out from the monastery and get married but in three conditions; firstly, to ask for the permission of the bishop so then he can celebrate the marriage. Secondly, the ceremony or the blessing should take place in the house not in the church. Thirdly, there should not be any relation between them during the monasticism period.

6. The kidnapping or rapture: we have to distinguish two points in this impediment, if the kidnapping is done by the will of the woman or not, if she is engaged, married, kidnapping, not married or not engaged. If the woman is kidnapped without her will, she should be sent back to her fiancé, while if she is not engaged and been kidnapped without her will, Mar Abdisho gives the one who had kidnapped her to get

8 Our Church changed this canon in Mar Ishai Shimon synod where he set age of girl in 16 or according to the country law.

9 Canon 14,15.

10 Only Nicaea Arab laws allows the marriage of a man from a non-Christian girl, in canon 34; but Mar Dinkha synod in 1994 prevents a men and a women from marrying a non-Christian, unless the non-Christian party is baptized.

11 Canon 11.

married to her, but in two conditions; firstly, her return to her home should be liberated. Secondly, if she and her parents do agree to that; but if the woman is kidnapped by her will, either married or engaged, she can return to her husband or fiancé, if they agree to that, but if the husband or fiancé doesn't want her to come back, she cannot get married to the one who had kidnapped her. In his book (The judgments church system), Mar Abdisho doesn't give any possibility to the kidnapped woman to go back to her fiancé or husband, and it is regarded as adulteress and they should be stopped from the church (in reality, she had run away not kidnapped).

7-Kinship: He mentioned 65 cases for man and 65 for the woman, they cannot marry; because of blood kinship or intermarriage; if we examine these cases we will find that there are only 13 cases of consanguinity when he has nearly 49 cases of affinity or intermarriage. Vessels or natural kinship is the relationship of blood that exists between people through procreation from one another, as the father and higher, and the Son, and lower, or procreation out of a nearby like brothers and cousins and aunt and uncle and other relatives; so the basis of kinship is not a marriage, but generation. But affinity or intermarriage are legal kinship arising from the marriage, which is basically exclusive to it, which may arise between the husband's relatives and relatives of the wife and has nothing to do with blood¹².

The main reasons for limiting this Impediment: the main reasons that Impede the church to prevent the marriage from the relatives, some of them are mentioned by Mar Abdisho, these are, diseases: the marriage of kin leads mostly to deformation of the boys; inheritance: because the properties of the family was the ground they did not want that land to be for a stranger, so they preferred their daughters to marry their relatives and not to a stranger; Increasing family members: If they marry strangers they become relatives and increases the number and they help and support each other, but if they marry their relatives the number remains itself does not increase; Love and solve problems and hatred between families by marriage: as the kings and presidents were getting married with each other, the dispute was solved and the fighting did not happen between them. Conviviality: Most of the families who are relatives as sons and uncles and their children were living together in one house, so they were considered as brothers. The killing of family members to marriage is prevented, maybe he will kill his brother or father or cousins to marry his wife, especially in the past in Old Testament when they were obliging the wife of a deceased person to marry his brother. Increasing Christian members: so the far becomes close by the marriage, thus they will be united by faith and kinship as well.

8-Spiritual kinship: spiritual kinship Impediment does not exist in Nomocanone but we can only see it at (The judgments church system), where he considers the children of the spiritual baptism or The Godfather, such as natural sons and their wives. According to Mar Abdisho, the relationship resulting from Baptism is similar vessels for about, so it prevents marriages between them. Impediment is not only with the parents, but also with the children and the grandchildren.

9-The death of one spouse: there is another reason for stopping a marriage which we can call respect Impediment, in the case of the death of one spouse, the other one cannot remarry before 10 months of the death in the respect the deceased party.

¹² This impediment started in the Church of the East from Mar Aba in 544, which was adopted on what is stated in the Bible in the Old Testament Book of Leviticus 18: 7-18.

10-Adultery: Adultery is Impediment of a marriage. But in a second marriage only. He says that a man or woman cannot remarry if divorced because of adultery. According to the word of the Lord “*Married a harlot he commits adultery*” Matthew 5:32.

11- Slave: slavery in Nomocanone is one of the Impediments of the marriage. Regarding the marriage of the master with a slave, Mar Abdisho gave permission to complete the marriage with the condition of publicly liberalization of the servant. As for the marriage of slaves among themselves, it must be with the consent of their master. If they are to get married, then their master cannot separate them from each other.

Divorce

As we saw earlier, Mar Abdisho considered marriage sacrament bond and indissolubility, which he considered one of the basic properties of the marriage, but in spite of that he did not take it as absolute, because he gave permission for divorce in specific cases; for certain reasons.

- 1- The main reason is the reason given by the Bible itself: in Matthew 19:9, 5:32. Which is adultery (*everyone who divorces his wife, except for the case of adultery*).
- 2- Didn't explain adultery narrowly to be specify that the adultery as physical adultery only, but exegesis adultery in a wide explanation, so adultery did not include physical adultery but spiritual adultery too. Rejection of Christ, magic and murder were considered as spiritual adultery; also considered non-virgin and willingly kidnapped an adulteress.
- 3- Then they identified the reasons for the delay, as explained (*except the case of adultery*) to any legal reason

Divorce cases

1. **Adultery:** Physical adultery is the first cause of the oldest and most important reason for divorce; because the basic principle upon which the case is the word of the Lord in Matthew 5:32, and 19:9, that we mentioned earlier, it said Mar Abdisho four laws pertaining to this case in Nomocanone and 3 laws the (The judgments church system). By adultery, willingly unity of marriage with its union with another person may be demolished. As for how to detect or prove adultery? Some cases are mentioned to show that, if the woman is pregnant while her husband in a remote location for a long time; or has been seen on the red-handed doing adultery, or the testimony of witnesses, but it must be four or six witnesses, in all normal cases the witnesses is through two or three persons, but the case of adultery the witnesses of four or six witnesses is needed this is due to the seriousness and severity and because the adultery is happening due to the will of the two parties. In addition, the witnesses should not be relatives or friends of the accused person and not have enmity with the accused person. Another case is the recognition personally, when the adulterer recognize in front of the judge, or through trusted witnesses that she had committed adultery, or if she traveled alone to a remote place without being accompanied by her father or her brother or her husband (we will find this situation in the case of divorce); visiting a strange man or visit to a strange man by the witness of neighbors¹³. We see these cases as revealing and proving adultery to the wife. Not talking about the adultery of the pair. There is a clear lack of equality between adultery of the wife and the husband's adultery, which gives the right of divorce for a husband from the adulterous wife, but does not talk about the divorce of a wife from adulterer husband. The justification of this is that, that the pair could

¹³ Canon .19.20.23.27

commit adultery with others, but does not consider the children born as children of the legitimate wife and also will not participate in the inheritance, nor bringing them up and serving them. While the adultery of the wife, the children who are born of adultery will be considered legitimate children and will have the right of inheritance, and bring them up and dependents. He also adds that if the wife committed adultery sure that children born of are her children, while if the husband committed adultery it is not known that the children born are his children, or the children of others.

But in his second book (The judgments church system) in a law was taken from Mar Timathios first, he gave the right of the wife to divorce from her adulterer husband he also gave her the right to remarry if she wants, and took 10 percent of the inheritance of her adulterer husband; but he prevents the pair adulterer from remarrying.

2. **Apostasy or reject Christ and Magic**¹⁴: Mar Abdisho considered apostasy committed adultery, and called it the spiritual adultery, he gave consent to a divorce in this case, because the rejecter of God can be rejected by the second party, the law applies to men and women if they refuse Christ. Here Mar Abdisho connects apostasy with magic consider the spiritual adultery; because he says the magic is the reject of God, because no one is approaching to this heinous act unless first denying the God himself.
3. **Murder**¹⁵. Murder is one of the reasons for the divorce, because he says, as death is the separation of the body of the man who is created by the Creator from his soul; so the person should be separated from the second party unit husband, which is considered as a place of her spirit and life. Here is talking about the killing in general, without specifying whether the killing was intentional or accidental or unintentional. He also identified the divorce for woman only as if the man kills, but the woman did not.
4. **Controversy**: Mar Abdisho gives permission for divorce in case of a quarrel between husband and wife, but with the conditions: the adversarial to be more than 10 years and during these years to give them instructions and tips for reconciliation between them; and should not have children. And if they have children then the divorce is not allowed at all, because enough consolation of the boys, and it is necessary to take into consideration the pain they suffer from the divorce of their parents.
5. **Captivity**: another reason for divorce is the captivity, but are required to wait 3 years because the patience shows chastity and love between the couple¹⁶.
6. **Absences**: The absence is a reasons for divorce. The absence is when the husband is leaving his wife and going to a remote location, then the wife has the right to divorce her husband after a waiting period. Waiting period of the wife for her husband to return depends on sending expenses (maintenance) for his wife or not. If he is not sending the expenses for his wife during the period of his absence, then waiting to be seven years, if he is sending expenses to his wife during the period of his absence, then waiting to be 10 years, but in both cases, on condition that they do not have children¹⁷.
7. **Asceticism**: a couple can divorce for monastic life. But with conditions: First, it must be by mutual agreement, and second that they both have to become monks, but if only one is becoming monk , then the consent of the second party is required and should pay 400 Zouzah (money) and 3 clothes to the second party¹⁸. All this is in condition that they do not have children, and did not support parents or brothers. Thus, divorce is allowed because it is the monastic life and is higher than married life.

14 Canon 17 ,3 ,1.

15 Canon 17.

16 Canon 21.

17 Canon 26.

18 Canon 10

8. **Kidnapping:** kidnapping involuntary is a reason for divorce. If a woman went desirable with another person, then the husband can divorce her, because she is considered an adulteress, in fact she is fleeing with him willingly, and is not kidnapped¹⁹.
9. **Non-virgin:** When the girl is non-virgin at marriage, then she is considered as an adulteress, and the husband has the right to divorce her, but on the condition: lack of knowledge of her non-virginity before marriage, and that the issue be known to all. However, if he knew about her non-virginity and married her, and the story is not known to public then the divorce is not allowed.
10. **Disease:** When the disease is the cause for divorce? The disease is the reason for the divorce in conditions: First, the disease must be before the marriage, second the disease must not be unknown to the second party at marriage, third the disease must be incurable²⁰. Any disease comes after the marriage whatever it could be, even if not healable then the divorce is not allowed.
11. **Kings of Greece:** Mar Abdisho mentioned a law of the kings of Greece which gave the right to the husband for divorce from his wife in specific cases: the first case, if the wife goes to another village without being accompanied by her husband or her brother or her father; the second case, if she slept wife in the house of others, Third if the wife went to the theater or cinema²¹.

Conclusion:

Although Mar Abdisho gave divorce in some cases, but it must be repudiated by the Church, and the Church should not govern according to whims and desire of the two parties, but judgment must be in accordance with the laws of the Church. The church before sentencing the divorce has to go over many procedures trying to prevent divorce, because the marriage is essentially insoluble, so that they collect accurate and definite signs to make sure that the case is within the allowable cases, then taking a reliable witnesses testimony to get to the reality and situation, after examining the situation and intervene and try to reform in every way to prevent divorce, and give time for them for up to 10 years to think about and perhaps to return to their relationship, then when they arrived to the closed end and be sure that they were unable to live together, they are given their divorce.

Doing these procedures may change the situation and everything may go back to normal and the divorce may not happen. Tips and intervention or giving them time to think, might led them to return to their relationship and return to their association privately when one of them is away or is in captivity during this period to return to his home and his wife, and that the patient could be cured from his illness .Also, giving terms may help to change the status of some cases. It is important to mention that in cases when they have children the divorce is not given at all. Also, giving a divorce does not mean giving the two parties right to remarry again.

¹⁹ Canon 5

²⁰ Canon 17

²¹ This canon is now obsolete in the Church of the East since the 1970 in Mar Eshai Shimon Synod.