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Thematic Article

Mental Conditions and Clinical Frameworks that Can Affect Marital Abilities and Evaluation in the Canonical Field

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Abstract

In the work are explained the psychic conditions and psychopathological diagnoses most found in cases of marital incapacity, in particular in the evaluations in the canonical context.

The points in common with other areas of forensic assessment, those peculiar to the canonical evaluation, are addressed and the most important topics that understantiate this assessment are discussed.

The aim is to illustrate one of the areas that can be considered more "exotic" than forensic psychiatry and legal psychology, as they are little known and where rarely a psychiatrist or psychologist find themselves having to do their work, unlike the "civil" and the "criminal", where the greater the number of professionals who work as experts or consultants for the courts of the Italian State.

***Keywords**: Canonical Context; Discretion of Judgment; Impotence; Matrimonial Nullity; Psychiatric and Psychological Expertise; Use of Reason*

Introduction

Evaluation in the canonical field is almost exclusively required to evaluate marital capacity, whenever a reasoned technical opinion is required and based on certain scientific knowledge, in this case in psychiatric and psychological matters.

The task of the expert is to detect any psychic causes, present at the time of the celebration of the marriage, that can determine nullity, through the theories and methodologies typical of its discipline applied to the forensic sector.

The majority of the court cases for the nullity of the marriage concern the defects of the consent of a party or both.

In addition, the assessment activity is naturally placed within the canonical legislation that establishes the nature of the object on which it intervenes and the methods of carrying out it.

According to the Concordat between the Italian State and the Church of 1929, canonical marriage transcribed in the Italian register of civil status produces the same effects deriving from civil marriage, in fact the marriage agreed in the former art. 82 c.c. reads: "The marriage celebrated with a Minister of Catholic Worship is regulated in accordance with the Concordat with the Holy See and the special laws on the subject".

The concordat marriage therefore declared null and void by the ecclesiastical court becomes null and void even for the Italian State, while the Church does not recognize the nullity or divorce judgments pronounced by the Italian judiciary in relation to them.

The reasons for the nullity of the marriage are different, but only some are of interest to the psychiatrist or psychologist called to do their job.

The canons concerning the activity of the psychiatrist or psychologist expert are the Can. 1084 on coeundi impotence, or on the impossibility of physical or psychic order to perform the sexual act, and can. 1095 on the psychic inability to marry.

The Can. 1095 expresses in relation to the lack of sufficient use of reason, the serious lack of discretion of judgment with regard to the marriage and the impossibility of fulfilling the obligations arising from marriage for mental reasons.

These causes, as will be seen later, can consist of real pathologies, immaturity, as well as transuent disorders or inconveniences that affect consent and the assumption of the burdens deriving from marriage.

Can. 1084- "The impossibility of congiment, prior and perpetual, whether it concerns the man or that it concerns the woman, or whether it is an absolute or relative condition, directs, by its very nature, marriage".

Can. 1095- "They are unable to marry:

1. Those who lack sufficient use of reason
2. Those who seriously lack discretion of judgment as to the essential marriage rights and duties to be given and accepted by each other.
3. Those who, for reasons of a psychic nature, cannot assume the essential obligations of marriage."

Evaluation in canon law

Like the criminal and civil law of the Italian State, canon law also provides the use of evaluation in cases where an assessment involving a contribution of knowledge in a given technical, scientific or artistic field that is outside the knowledge and competence of the judge.

Currently most doctrine considers expert opinion as a means of proof, in this sense the expert is not considered as an auxiliary or adviser to the judge, where the expert report represents an investigative means, but it'is a mean or a source of original evidence.

Even in Canon law, as in the law of the Italian State, the expert's opinion cannot and must not replace that of the judge who remains the peritorum expert (the expert of experts).

Experts can provide their services at the regional ecclesiastical courts in the first and second instances and at the Tribunale della Rota Romana.

Most of the specialists on the expert lists are psychologists and psychiatrists.

In smaller quantities we find specialists in neurology, gynecology, andrology, endocrinology and graphology.

Unlike other professional categories, to the psychiatrist or psychologist is required, in addition to expertise in his own science and solid experience, also a certain moral straightness.

In this sense they do not satisfy only the knowledge about marriage and its essential properties derived from Catholic teaching, but the expert should share that Christian anthropological doctrine for which man is created in the God's image and likeness, endowed, therefore and until proven otherwise, intrinsically of free will, naturally called to conjugal love and commitment to the other person, obligation, this, freely chosen.

The assessment appointed during the course of the case by the judge is called ex officio evaluation and his work is called judicial evaluation.

The expert may be allowed to employ a collaborator, for example a testist, who administers and interprets the tests, who must have adequate professional and personal ethical requirements.

Where appropriate, the court may accept that one or both parties propose their own expert, in this case a private or party expert.

Otherwise, if the plaintiff, at the time of the introduction of the case, allements health records drawn up by a specialist, it is called an out-of-court report.

If the expert has received the canonical qualification of peritore, he will, in accordance with this qualification, have the task of examining the reports drawn up in extrajudicial proceedings or those of the office drawn up previously, not limited to their scientific content, but will have to explain the reasons for his consent or dissent, he will have to assess if the other evaluation appears to be consistent with the principles of Christian anthropology and whether it is structured according to a necessary internal consistency, so that certain premises logically correspond to certain conclusions [1].

The questions that can be asked concern three types of evaluation.

The first is the diagnostic and prognostic evaluation on the parts, where, with regard to the diagnostic phase, the psychic condition and possible current psychopathology must be examined at the time of the wedding, while in relation to the prognostic phase the psychic suitability of one or both parties to access any new marriages must be assessed (in the situation in which the previous bond was declared null and void).

Unlike the diagnostic evaluation, of a purely retrospective type, it's the case of the prognosis of a predictive judgment, similar to that relating to the violence risk assessment. This evaluation is useful and debated in the scientific field, involving various problems that cannot be addressed here.

The second assessment that could be requested responds to the possible need to appoint a trustee or guardian of the party during the canonical procedure.

In the same way as provided for competence to stand trial, in this case it is necessary to examine the psycho-physical conditions of the individual and, in case of psychopathology, evaluate whether this affects a "sufficiently" adequate participation [2] to the process or whether it makes necessary the appointment of a curator or guardian to represent him.

The third question refers to the evaluation of the clinical and/or expert documentation present in acts, both in cases of impossibility of visiting the party or both, as in the case of non-present, and if the expert is qualified peritore and must, as already mentioned above, examine expert reports drawn up in extra-judicial proceedings and/or previous expert reports.

Whatever assessment the expert has to make, he must still rely on a scientific model and refer to it in the expert's report.

Among the different orientations, in the canonical field the psychodynamic model, the bio-psycho-social model and the anthropo-phenomenological model are given priority. Other orientations, including cognitive ones, equally scientifically valid and not at odds with the Christian anthropological vision, may also be useful.

In any case, despite the approach referred to, in agreement with Bandini, Fornari and other prestigious authors, it is considered essential, for practical reasons, to have a common language that can be accepted not only by the specialists of different orientations, but also by the judge, adopt a classification of linear pathology, clear, understandable and simple [3], a classification shared by the majority of the scientific community such as that of the DSM of the APA (American Psychiatric Association) or the ICD of the WHO (World Health Organization).

The performance of the canonical assessment is similar to that of the other cases, and consists of: evaluation of the clinical documentation, relating to the documents of court case and/or other type of interest in the judicial procedure; clinical examination of the individual, where the clinical-forensic interview and the objective examination produce the most significant information, that is, anamnesis, careful, analytical and current description of the individual psychic structures and personality structure [3], using both the typical tools of psychiatry/clinical psychology and medical-legal semeiotics; any specialist examinations (neurological, gynecological, etc.) and/or instrumental investigations such as traditional radiological examinations (XR), ultrasound (ECO), computerized brain tomography (CT), nuclear magnetic resonance imaging (MRI), district cerebral fluetry (RCFB), positron emission tomography (PET), single photon computer tomography (SECT), electroencephalogram (EEG); Psychodiagnostic examination consisting in the administration of mental reagents such as WAIS level tests and Raven's PM 38 Progressive Matrices test, MMPI-2 and MCMI-III questionnaires and Rorschach projective tests (preferably the Exner method), TAT and graphs for personality assessment, psychiatric symptoms assessment scales for the detection of specific disorders.

In order to arrive at a correct scientific conclusion from a psychiatric-forensic or psychological-forensic point of view, it is essential to know and use a certain psychopathological-forensic criteriaology, which takes place in the following phases:

- Ascertain the current presence and prior to the celebration of the marriage of psychopathological symptoms, describing them from both a qualitative and quantitative point of view (psychopathological criterion).
- Relate the diagnosis to the best and most accredited scientific acquisitions of the time (nosological criterion).
- Examine whether psychopathological disorder was suitable to affect marital capacity (functional criterion)
- Check for a causal relationship between that psychopathological disorder and marital capacity (medical-legal criterion)
- Specify the type and degree of capacity impairment (forensic criterion).

As regards the general structuring of the assessment and its contents, this must contain the following points:

1. Date of assignment and by whom, expert data, questions received, data on the individual subject of the expert report, calendar of expert sessions, elements related to the experts of the party and their activities during the evaluation;
2. Carrying out the perital operations;
3. Examination of the documents and description of the fact that they are being carried out;
4. Family anamnesis;
5. Physiological and personal anamnesis;
6. Remote and upcoming pathological anamnesis;

7. Psychopathological anamnesis;
8. Objective examination;
9. Any other tests (neurological, neuroendocrine, andrological, gynecological, etc.);
10. Summary of clinical trials;
11. Psychic examination (aspect of the individual, mode of access and acceptance of the interview; physiognomy expression, mimicry, gesticulation, posture etc.; eloquence; sense-perceptions, attention, memory; affectivity and instinctive functions; will; consciousness, ability to criticize and judgment; intellectual capacity);
12. Psychodiagnostic examinations;
13. Psychopathological and psychiatric-forensic considerations;
14. Conclusions and answers to questions.

Finally, it is necessary to address the issue of the certainty of the conclusions reached by the expert, a certainty which must be sufficiently argued in his report.

There is absolute certainty when the conviction and knowledge of the expert are total; this is not easily found in psychiatric and psychological sciences, not to say impossible. This higher level of certainty is not, however, necessary for the process of marital nullity.

Another level of certainty is almost certainty or quasi-security, which is clearly not enough for the declaration of invalidity, but it is only a probability.

The expert is always asked the question of the moral certainty of his conclusions. This certainty does not constitute a mere personal conviction, but is the product of a series of elements which, individually considered, do not justify it realistically, but which, taken as a whole and in their congruence, still succeed in justifying it beyond any reasonable doubt [1].

The moral certainty of the scientificity of the expert conclusions becomes a goal achievable only to the extent that this is the consequence of a technically correct approach at the epistemological, methodological and ethical level [2].

Psychiatric and psychological-forensic evaluation

The psycho-forensic evaluation methodology in the field of canon law differs little from the evaluations that are carried out in other areas.

In summary it consists of an investigation of the mental state of the idividual, current and at the time of the celebration of the marriage, in a broad sense: anamnesis, examination of personality, detection of the cognitive level, evaluation of possible symptomatology or presence of psychopathology and the possibility of simulation/dissimulation.

Of course, the information that emerged from the evaluation must be integrated with those themes typical of the object of the evaluation such as individual history, relationship with the family of origin, history of the couple etc.

In agreement with Picardi (2002) we can consider aspects of canonical interest:

- The use of reason;

- Discretion of judgment;
- Psychological and affective maturity;
- Forms of immaturity in adolescence and adults;
- Deviant or diverted personalities, due to discomfort, abnormalities or diseases;
- Psychopathological disorders.

The use of reason implies those processes such as the examination of reality and an unstructured state of consciousness, which involve the ability to perceive and adhere sufficiently appropriately to the concrete world [2].

The discretion of judgment is represented by the complete attribution of meaning, critical evaluation and autonomous choice of matrimonial rights-duties, which the spouses transmit to each other [2], therefore understood as critical and not only abstract knowledge of the object of the contract and freedom of choice, absolute expression of inner freedom [4].

The concept of psychic and affective maturity is highly controversial and debated, varying in relation to the theoretical perspective of reference. Here it is enough to highlight those aspects of integration of the various psychic components, independence from parental figures, autonomy of judgment, adequate interpretation of reality and a sufficient understanding of one's own experiences, a certain control of emotion and will, ability to set goals and invest energies in a realistic way for their pursuit.

Harnessed to psychic maturity we find sexual maturity, understood not only from the biological point of view, but also in its psychological and social aspects, where there is space for awareness, impulse control, affective communication and the ability to establish relationships of free mutual expression.

Psychic maturity, recalls the Magisterium of the Church, is the point of human arrival, while canonical maturity is the minimum starting point for the validity of marriage.

This maturity implies an adequate evaluation and full understanding of the living conditions to which the nubendi are going to engage (knowledge of the object), a certain pre-marital behavior indicating the maturation of an authentic conjugal project characterized by love, the ability to welcome the other and know how to give, and the prerequisite of the free will to choose.

In addition to the immaturity present in adolescence and adulthood, personality alterations and disorders and axis I psychopathologies of DSM IV can also compromise the use of reason, discretion of judgment and assumption of marriage obligations.

Finally, the alteration of the willful sphere may depend on discomforts induced by external factors, even transients related to life events, cultural, presence of high stress, pharmacological therapies, drug intake, etc.

Below are the conditions and clinical frameworks that can affect marital abilities as defined by the Canns. 1095 and 1084.

Invalidity of consent and fulfilment of obligations (Can. 1095)

Those who lack sufficient use of reason

With regard to this capacity, greater psychiatric pathologies such as: severe mental retardation (IQ from 20-25 to 35 - 40) and very serious (IQ under 20 or 25) are of greater importance; the different forms of dementia in a state that would lead to significant cognitive

deterioration; psychotic spectrum disorders such as schizophrenia and organically based psychosis; severe mood disorders such as bipolar disorders with the possible presence of psychotic symptomatology; severe epileptic forms; chronic alcohol intoxication accompanied by alcoholic psychosis such as delirium tremens, alcoholic hallucinosis, alcoholic paranoia, Korsakoff syndrome; significant deterioration and alterations due to drug intoxication.

Among the transient disturbances of the psyche we can also find obsessions, temporary neurosis, psychopathies, hypnosis, acute intoxications from alcohol or drugs, but also emotional transient states, perhaps linked to existential contingencies (e.g. unexpected pregnancies, threats from the partner, etc.).

Those who seriously lack discretion of judgment as to the essential marriage rights and duties to be given and accepted by each other

Clinical frameworks that affect this ability are represented by both previous clinical conditions and the following: moderate mental retardation (IQ from 35 - 40 to 50 - 55); moderate dementia; psychotic disorders even in the non-acute phase; mood disorders even in the absence of psychotic symptomatology such as depressive episode and major depressive disorder, manic episode and manic disorder, bipolar disorder I and II; epilepsy; eating disorders such as anorexia nervosa and bulimia nervosa, which involve a perceptual and derealistic alteration of one's body image, especially in relation to the partner, and the presence of phobias and obsessions that affect intelligence and will [1]; severe anxious forms such as phobias, obsessive-compulsive disorder and somatoform disorders; dissociative disorders; severe personality disorders such as schizoid, schizotypic and manic; impulse control disorders; chronic intoxication by alcohol or drugs.

In addition, conditions that can determine a condition not suitable for the responsible assumption for the commitment of marriage are given by totally or predominantly homosexual orientation, psycho-affective immaturity and strong narcissistic traits, in relation to critical discernment about the value of marriage and the responsible acquisition of the consequent objectives.

Those who, for reasons of a psychic nature, cannot assume the essential obligations of marriage

Beyond the critical and estimative understanding of the essential obligations to be assumed in marriage, it is also necessary to project the intellect on the bond and the marital duties that derive from it [4].

It is necessary that the previous and following clinical frameworks significantly affect the relationship between spouses in those obligations that characterize and substantiate the marriage such as affective exchange, fidelity, sexual cooperation, conception and education of offspring, but also communication, reciprocity, integration and complementarity.

We therefore find psychiatric disorders, albeit in less serious forms, such as: moderate mental retardation (IQ from 35 - 40 to 50 - 55); psychotic feral disorders; depressive, manic or mixed mood disorders; epileptic diseases; eating disorders; phobic, obsessive-compulsive disorders, hypochondria and somatoform disorders; dissociative disorders; pathological personalities of various types; impulse control disorders; chronic ethylism and chronic drug intoxication.

In addition, homosexual orientation and all those sexual disorders such as to prevent marital obligations (prior to marriage) such as sexual dysfunctions and paraphilias with consequences on the fidelity and respect of the partner (fetishism, masochism, sadism, etc.) can affect homosexual orientation and all those sexual disorders.

Finally, involutive forms with mental deterioration, psycho-affective immaturity, serious feelings of guilt can also find their place.

Invalidity by impotence (Can. 1084)

Can. 1084- "The impossibility of physically join, prior and perpetual, whether it concerns the man or that it concerns the woman, or whether it is an absolute or relative condition, settle, by its nature, the marriage".

Sterility neither prohibits nor invalidates marriage in the name of Can. 1098.

In this case we speak of coeundi impotentness, that is, impossibility of physically join, therefore of a non-generative copulative disorder (impotentia generandi).

Specifically, these are problems that prevent the sexual intercourse achieved "modo umano", that is, by eretion, penetration and ejaculation in the intravaginal stage by man, and by receiving the manly rod in the vagina and containing the spermatic fluid on the female side.

The object of The Can. 1084 therefore does not concern the possible sterility of one or both spouses and indeed this type of investigation is not permitted by canon law.

Impotence must be earlier or present before the celebration of the marriage, therefore, as is often the case in the evaluation context, a backdated of any disturbance is required.

Another element to be evaluated is the perpetuity of impotence, which is not easy, but of high importance not only for the specific diagnostic purposes of the evaluation question, but also for prognostic purposes, especially in the event of being able to access new marriages in the event that the nullity of the previous marriage bond is recognized.

It is defined as perpetual that irremediable impotence, that is not amendable, referring to scientifically valid therapeutic possibilities.

If the impediment to physically join, both in men and women, can be eliminated therapeutically, there is no nullity.

In addition, impotence can be absolute, which makes joining impossible in all cases, or relative when reunification is impossible only with the partner, which is significant for diagnostic purposes.

The problems related to impotence are different and are part of the sexual response cycle of the individual, in whole or only at certain stages.

The major conceptual and semantic articulation of impotence can be found in the nosography of DSM-5, which, within the category sexual dysfunctions, includes:

- Delayed ejaculation
- Erectile disorder
- Female orgasm disorder
- Female sexual desire and sexual arousal disorder
- Pelvic pain and penetration disorder

- Male hypoactive sexual desire disorder
- Early ejaculation
- Substance/drug-induced sexual dysfunction
- Sexual dysfunction with other specification
- Sexual dysfunction without specification.

It is said that the etiology of the disorder can not always be framed precisely and exclusively on an organic or psychic basis, being that of sexual dysfunction a problem where, by its very nature, components as well as biological and intrapsychic components, also relational and social, that feed on each other, come into play.

Exemplify: An erectile deficit on an organic basis can be followed by an anxious state, a condition that will interact with the deficit, reinforcing it in a vicious circle.

Traditionally, clinicians have identified three types of causes in erectile dysfunction (but the same applies to other dysfunctions), organic, psychic or mixed, thus highlighting how biological or intrapsychic factors, independently or jointly, may hesitate in such a symptom [5].

Currently it seems decidedly more functional a holistic sexological approach, centered on the subject, with the possibility of being able to distinguish diseases for which biological, toxic-infectious, traumatic or genetic factors have a greater weight and diseases for which psychosocial factors, in the form of current or remote emotions and conflicts, are decisive: then we arrive at a diagnosis with organic prevalence or psychological prevalence [2].

It is therefore preferable to embrace a biopsychosocial model where physical and physiological, psychic, relational and social factors interact synergistically.

The diagnostic protocol must therefore include specialist medical examinations, psychological and psychiatric assessments, such as clinical interviews and psychodiagnostics, and psychophysiological assessments.

For the simplicity of the exhibition and for the purposes of this article, the following are summarized what may be the organic causes or psychic causes of a condition of impotence.

Organic causes, which lead to absolute organic impotence: absences, mutilation or gross malformations of the penis and testicles; congenital or acquired malformations of the vagina; alterations in the neighbouring parts which in some way make coitus impossible [3]; vascular physiopathologies; neuroendocrine physiopathologies such as hyperprolactinemic hypogonadism, acromegaly, GH hormone deficiency, hypothyroidism or hyperthyroidism, Cushing syndrome, hypocortisolism; metabolic physiopathologies such as diabetes mellitus, dysplidemies (hypercholesterolemia), obesity, metabolic syndrome; neurogenic physiopathologies such as encephalic, midollar and peripheral diseases; iatrogenic physiopathologies due to drugs such as antihypertensives, antiandrogens and psychopharmaceuticals such as antidepressants, mood tone stabilizers and neuroleptics; surgical iatrogenic physiopathologies resulting from radical prostatectomy and cystoprostatectomy, transvescial adenomectomy and transurethral endoscopic resection, urethral, rectal, vascular surgery of the abdomen and penis; kidney failure, hemodialysis and kidney transplantation; chronic intoxication.

Instead, they are psychogenic causes, which determine impotence in an absolute or relative sense: difficulties of socio-sexual identification and in the construction of one's gender identity; homosexuality; traumas and intrapsychic conflicting experiences; lived

of intellectual, affective, sexual, socio-relational, economic inadequacy; exercise of an overcompensatory and violent eroticism or on the opposite side, defective, unsatisfactory, avoided, failed sentimental erotic tests [3]; mutation and/or expiry of the relationship with the partner for unavailable attitudes, uneaded expectations, pregnancy, diseases, conflict; stress due to work problems and other conditions that can generate anxiety; psychic, affective and/or sexual immaturity of one or both spouses.

These motivations can be aggravated by and in a socio-cultural context that does not solicit and reward tenderness, compassion, understanding, tolerance [2].

In addition, sexual dysfunction can be explained by a mental disorder of which it is a symptomatic manifestation, leading, according to the criteria of the DSM, therefore to a different diagnosis.

Generally the correlation between sexual dysfunctions and mental illness is found with the following disorders: mood disorders, especially depressive disorders; anxiety disorders; dissociative disorders, psychotic disorders and schizophrenia; paraphilias such as transvestism; personality disorders, more represented by borderline and narcissistic disorder.

Conclusion

The psychiatric and psychological evaluation in the canonical field despite the different similarities with the evaluations that take place in other areas such as civil and criminal justice systems, has peculiarities determined by the Canon Code.

It is therefore necessary that the professional who intervenes there has knowledge, not superficial, of the vision of man and marriage as defined by the Christian magisterium and of the canonical legislation relating at least to topics of direct interest.

In addition, it is necessary the knowledge of the forensic method and an adequate competence in one's own professional area (psychiatry or psychology), for a more correct interpretation and application of one's subject to the specific case, and in general for a work whose conclusions are the most scientifically reliable.

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