



## **Forced Marriage among Persons with Intellectual Disabilities: Discussion Paper**

Working Paper 27

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## **ABSTRACT**

Global human rights laws grant all individuals with disabilities, including individuals with intellectual disabilities, the right to marry and have families. In those cases however, where marriages are arranged between an individual with an intellectual disability and another (whether non-disabled or disabled) against the will of the intellectually disabled person, such marriages can be considered forced. According to the UK government, a forced marriage 'is a marriage conducted without the valid consent of both parties, where duress is a factor'.

This paper comments on the 'forced marriage' of persons with intellectual disabilities, a practice found within several ethnic and minority communities in the UK, where arranged marriages are common. While arranged marriages are entered into with the consent of both potential spouses, in forced marriages it may well be the case that at least one of the parties is unable to consent due to lack of capacity. In such cases, coercion is implicit. We believe that this practice is not unique to the UK and globalisation and international migration has increased the risk of persons with intellectual disabilities being forced into social contracts such as marriage, of which they have little understanding. The implications of such marriages for persons with intellectual disabilities themselves as well as for their partners and their families are significant and need to be more widely acknowledged and discussed.

### **Key words**

Forced Marriage, intellectual disability, disability, human rights, migration

## **INTRODUCTION**

Global human rights laws grant all individuals with disabilities, including individuals with intellectual disabilities, the right to marry and have families<sup>1</sup>. In those cases, however, where marriages are arranged between an individual with an intellectual disability and another (whether non-disabled or disabled) against the will of the person with an intellectual disability, such marriages can be considered forced. According to the UK government, a forced marriage is ‘a marriage in which one or both spouses do not (or, in the case of some adults with intellectual disabilities, cannot) consent to the marriage and duress is involved. Duress can include physical, psychological, financial, sexual or emotional pressure’<sup>2</sup>.

This paper comments on the forced marriage of persons with intellectual disabilities, a practice found within several ethnic and minority communities in the UK where arranged marriages are practiced<sup>3</sup>. We argue that there are several patterns of forced marriage arrangements that take place for persons with disabilities, each with ensuing concerns. Finally, we note that globalisation and international migration has led to arranged marriages on a new scale – one that places persons with intellectual disabilities at increased risk of abuse.

### **Arranged Marriages and Globalisation**

An arranged marriage occurs when a third party, usually the prospective spouses’ parents, are responsible for the choice of marriage partner. Traditionally, arranged marriages have been the primary means of identifying marriage partners in many cultures. Such marriages work on the assumption that the union involves two people who have an understanding of what it means to marry and the agreement to accept the arrangement remains with the prospective spouses<sup>3</sup>.

Historically, the length and depth of courtship in an arranged marriage differs significantly between cultures. However, in communities where arranged marriages are practiced, clear conventions are laid down in tradition and religious scripture to help ensure that both partners will enter the marriage willingly and that a good marriage will ensue<sup>4</sup>. No cultural or religious groups sanction arranged marriages between persons who do not understand and consent to the union.<sup>2</sup> Arranged

marriages continue to be common in South Asia, the Middle East and East Asia, as well as among groups such as Orthodox Jews.

Globalisation and international migration has led to significant changes in the practice of arranged marriages. Families arranging marriages for couples through distant intermediaries or via internet sites may know significantly less about the potential spouse than when both families lived in the same communities or where marriages are arranged by people who know both families. Today, it is not uncommon that a marriage is arranged between a young man or woman living in Europe and a prospective spouse living in a city or village thousands of miles away. The fact that social networks now extend across continents makes it more likely that, in some cases, the families between whom these marriages are arranged have little or no information about the future husband or wife, or the family into which their child will be marrying. Occasionally, not only is courtship conducted via the internet, but the marriage itself takes place by phone between a bridegroom and bride who have never met in person<sup>2</sup>. While such arranged marriage practices work well for many, there is the potential in this system for abuse.

### **Forced Marriage and the Law**

In the UK, persons with disabilities are protected from forced marriages by the Civil Protection Act, 2007<sup>5</sup>. However, forcing people with impaired capacity into a sexual relationship could also be classified as an offence under Sexual Offences Act, 2003<sup>4</sup>. The Mental Capacity Act, 2005 states that entering a marriage is excluded from the decisions that can be made on behalf of a person who lacks decision making capacity<sup>6</sup>. In 2010, the UK Forced Marriage Unit (FMU) dealt with 1,735 cases, of which 50 concerned persons with intellectual disabilities, as well as 17 that dealt with persons with a physical disability and three that concerned persons who were multiply disabled<sup>3</sup>. By 2012, the number of cases relating to people with intellectual disabilities rose to 114<sup>7</sup>. 97 cases were reported in 2013. Further statistics by the FMU indicate that the majority of cases involved persons from Pakistan (42.7%) followed by persons from India (10.9%), Bangladesh (9.8%), Afghanistan (2.8%), Somalia (2.5%) and Iraq (1.5%)<sup>8</sup>.

The effects of forced marriages have not been extensively investigated. However, case reports indicate that forced marriages may result in significant psychological distress to the involved parties<sup>6, 9, 10</sup>. The courts have only occasionally taken action, for example, in 2008, the UK court of appeal held that the arranged marriage of a man with autism to a woman in Bangladesh, carried out over the telephone, was void as the man lacked capacity to enter into a marriage<sup>11</sup>.

Such cases also come to the attention of the police, social care services, health, education and voluntary organisations. Many others go unreported. With greater awareness of help available, the number of reported cases is likely to increase.

## **PERSONS WITH INTELLECTUAL DISABILITIES AND FORCED MARRIAGES**

Several different patterns of forced marriages among individuals with intellectual disabilities have been observed or reported. The most common type, in our experience, is the marriage of a man with mild-to-moderate intellectual disabilities from the UK to a non-disabled woman from a community in a developing country. In these cases, the woman and her family are usually unaware that the man has an intellectual disability. While less common, the practice of arranging to bring a man with an intellectual disability to the UK to marry a woman also with intellectual disability when the family feels it is time for him or her to start married life is also known. Examples of other patterns, such as a marriage between two individuals with intellectual disabilities both of whom are from the UK also occur. Another variation is marrying of women with an intellectual disability from a 'good family' in the home country to a non-disabled man who is unaware of the woman's disability status.

Another observed pattern is an intergenerational marriage, with an older or elderly non-disabled man in the UK arranging a marriage with a woman with intellectual disabilities from his home region or village. In the cases that we have observed, these men are aware that the bride has an intellectual disability but the expectation is that the younger intellectually disabled woman in these relationships will serve as

a carer, as well as a wife, as he grows old. The quality of life for the woman is of less concern.

### **Impact on persons with intellectual disabilities and their spouses**

The key issue in these cases is not the marriage itself, but the awareness and consent of persons with disabilities to enter into these types of marriages of their own free will.

It is difficult to answer the question as to why parents of adults with intellectual disability would encourage or force their children into such marriages if their children are reluctant to wed or if they are frightened, confused or unable to understand the roles and responsibilities expected of them in marriage. Concerns about capacity assessment and prior preparation for the event are well-founded. Often though, marriage is presented as a positive move towards maturity and normality and such expectations are re-enforced by parents and families. The disabled person will go through the same marriage ceremony and celebration as other young people in the family and in those in their social circles; they will be able to become sexually active and to have children. But how much is understood about the longer term implications of living within a new family structure, as well as the rights and responsibilities that marriage entails, are questions are left unexplored.

Few studies have addressed this question directly, although research reports that in some South Asian communities, marriage confers 'normalisation' to a person with an intellectual disability<sup>3, 9, 12-14</sup>. In the eyes of the community, marriage helps remove the 'stigma' of disability, reflecting a widespread folk belief that intellectual disability can be 'cured' or 'improved' through marriage, thus allowing a person with learning disability to lead a 'normal' life<sup>9, 13, 15</sup>. In such cases, the parents might consider marriage of their children with intellectual disabilities part of their parental responsibility<sup>15</sup>. This attitude is not related to the severity of disability or the socioeconomic status of the parents<sup>15, 16</sup>.

For those partners with intellectual disabilities who are from the UK, it is possible that their UK-based expectations of love and marriage do not match the expectations of their more traditionally-based families. Furthermore, it is not known what the

prospective partners of these individuals know about intellectual disability and whether they have a full understanding of the lifelong implications of their circumstances.

An intellectual or other type of disability can increase a newlywed's vulnerability and may make it more difficult for them to report depression or abuse. For some, their care needs may make them dependent on their carers and so reluctant to speak out about forced marriage or the difficulties encountered once married. Individuals with communication difficulties may have even less opportunity to tell anyone outside the family what is happening to them<sup>2, 3</sup>.

In cases where there are apparent discrepancies between the wishes of the individual with intellectual disability and his or her family, the welfare of the individuals involved is of concern. The stress caused by such marriages on persons with intellectual disabilities who feel they have been married against their will, or who are unsure how to function once married, may be profound. They can become confused, frightened and disillusioned. Clinicians consulted in preparation for this commentary report that some of the people with intellectual disability with whom they have worked have been frightened or anxious about the prospect of marriage or unable to cope as a married individual. It is a scenario fraught with potential problems for both partners.

The well-being of the new spouse is of equal concern. Often young, alone in a foreign country, dependent on a spouse with limitations and in-laws with expectations, such a scenario may increase the risk of domestic violence, depression, social isolation and economic marginalisation for the new couple and for their children.

When spouses come from overseas, cultural differences may compound the ability of couples to settle into married life. For example, in one case with which we are familiar, a new bride arrived unable to speak English, while her English-born, intellectually disabled husband, spoke only English. By the time her growing command of English allowed her to understand her husband's limitations, she was



already pregnant and her husband had not only the responsibility of a wife, but also of a growing family.

When couples meet only shortly before or on the day of the marriage, the ability to assess partners' abilities and willingness to go through with the ceremony is of additional concern. When couples are surrounded by an enthusiastic group of relatives and friends who have gathered in anticipation of a wedding, the ability to make a considered decision, particularly if one or both parties are unsure about the marriage, is limited.

### **Practical supports**

It is important to emphasise that this practice is the exception rather than a rule in communities where arranged marriages are common. Moreover, there may be many instances where the arranged marriage between an individual with an intellectual impairment and a spouse of normal intelligence is entered into willingly by both parties and results in a satisfactory marriage. However, forced marriages of persons with intellectually disabilities, as well as marriages for persons with other types of disabilities, do exist and families that force their children into such marriages may, from the outset, be harder to reach and work with.

For many people with intellectual disability and their families, the community intellectual disability teams are important anchors of long-term support. Assessment prior to marriage would be a helpful practice, however the Foreign and Commonwealth Office Guidance on Forced Marriage and Learning Disabilities reports a case in which an assessment was done and then ignored by the family anxious to have their young man married<sup>3</sup>. Moreover, it is often the case that clinicians and social workers do not know about a marriage being planned until the wedding has taken place. It is then that these community support professionals are called upon to respond to the psychological sequelae that arise out of the responsibilities placed on individuals who have little capacity for coping in complex relationships.

Families, health professionals, case workers and disability rights advocates must all be aware of and sensitive to this potential situation. Opportunities to speak directly to

individuals who may be at risk, clear assessment of their understanding as well as their wishes and concerns, and support and advice to spouses (many of whom will have limited English ability) are all steps that service providers and advocates should anticipate. Support for couples and their children already in such situations should be another area of attention. Greater involvement from community and religious leaders would be a welcome and important contribution to ensuring that arranged marriages reflect the best interests of both parties. There are now available good practice guidelines providing detailed information about steps to be taken, and professionals and practitioners in specialist services for people with intellectual disabilities should be familiar with this<sup>3</sup>.

We recommend the article by Rauf, et al. which gives a detailed account of how professionals may apply tests of capacity, weigh arguments for and against a proposed marriage, recognise warning signs and decide on disclosure to third parties by raising safeguarding alerts<sup>17</sup>. McCarthy, et al.'s article on the abuse of adults with learning disabilities also raises important questions that must be considered<sup>18</sup>.

The Universal Declaration of Human Rights, Article 16 clearly states that 'Marriage shall be entered into only with the free and full consent of the intended spouses'<sup>19</sup>. This should be as true for persons with all types of disabilities, including intellectual disabilities, as all others.

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