
ADHD AND CONTRACTUAL CAPACITY: RETHINKING LIABILITY UNDER THE INDIAN CONTRACT ACT

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ABSTRACT

The Indian Contract Act 1872¹, defines contractual capacity, primarily in terms of age and mental soundness. Section 12² requires that a person must be able to understand the nature of a contract and make a rational judgment about its consequences. This framework becomes problematic when applied to neuro developmental conditions such as Attention Deficit Hyperactivity Disorder (ADHD)³. ADHD such as inattention, hyperactivity, and impulsivity, exists on a spectrum. While many individuals with ADHD are capable of independently functioning and decision making, others may face significant difficulties in evaluating risks and exercising judgment.

The law's rigid binary of 'sound' or 'unsound' mind fails to capture this diversity. This paper argues for a re-evaluation of liability under the Indian Contract Act in light of ADHD. Individuals with ADHD should be automatically disqualified from entering contracts or left vulnerable to unfair obligations when their condition impairs their judgment. Showing on comparative many models, particularly the UK⁴ functional test of capacity, this paper proposes a approach for India.

Such an approach would depend on medical assessments, contextual analysis, and protective safeguards to balance autonomy with protection. This paper explains that, adopting it would not only modernise contract law but also ensure it alignment with the Rights with disabilities Act 2016⁵, and the constitutional principles of dignity and equality. Recognizing ADHD within the legal framework would promote⁶ fairness, reduce discrimination, and contribute to a more inclusive legal system.

Keywords: Attention Deficit Hyperactivity Disorder (ADHD), Indian Contract Act, 1872, contractual capacity, Section 11 and 12, sound mind, neurodevelopmental disorders, autonomy, disability rights, Rights of Persons with Disabilities Act 2016

¹ The Indian Contract Act, No. 9 of 1872

² Section 12, The Indian Contract Act, No. 9 of 1872

³ Attention-Deficit/Hyperactivity Disorder Rajaprakash M, Leppert ML. *Pediatr Rev.* 2022 - PubMed

⁴ UK ACT 2005 Mental Capacity Act 2005 (UKLegislation)

⁵ Rights of Persons with Disabilities Act, 2016

INTRODUCTION

ADHD and Contractual Capacity: Rethinking Liability under the Indian Contract Act

Attention Deficit Hyperactivity Disorder (ADHD) is a neurodevelopmental disorder that affects children from birth and can persist throughout life.⁷ Many studies have illustrated the lifelong impact of ADHD on cognitive and behavioral functioning.⁸ The Indian Contract Act, 1872, requires that parties entering into a contract must be legally competent, which is mainly determined by age and mental capacity.⁹ Section 12 describes a person of “sound mind” as someone who can understand an agreement and make rational decisions about its effects. Rethinking contractual capacity supports constitutional values of equality and dignity highlighted in Articles 14 and 21 of the Indian Constitution. This ensures that individuals with ADHD are treated equally and can freely make their own decisions about contracts. While this rule is meant to protect people from being taken advantage of, it treats mental capacity as either sound or unsound, which does not reflect the complexity recognized by modern medicine. Neurodevelopmental disorders like ADHD make this issue more complicated. ADHD involves symptoms such as inattention, hyperactivity, and impulsivity, which can differ among individuals.

As a result, people with ADHD may have different levels of decision making ability. Some can manage independently, while others may have trouble with risk assessment or impulse control, especially in important contract situations. This paper argues that the current legal rules in India do not fully reflect the understanding of living with Attention Deficit Hyperactivity Disorder (ADHD). This can leave people with ADHD either not protected enough or too restricted.

By looking at other systems, like the UK's functional capacity test, and following the Rights of Persons with Disabilities Act 2016, this research suggests a more flexible and evidence based approach. This approach balances personal freedom with necessary protections. Recognizing ADHD in the legal system is important for fairness, reducing discrimination, and creating a more inclusive contract law system in India.

⁷ Am. Psychiatric *Diagnostic and Statistical Manual of Mental Disorders* 59–66 (5th ed. 2013).

⁸ Russell A. Barkley, *Attention-Deficit Hyperactivity Disorder: A Handbook for Diagnosis and Treatment* 23–30 (4th ed. 2015).

⁹ The Indian Contract Act, No. 9 of 1872, INDIA CODE (1872)

OBJECTIVES OF THE STUDY

ADHD and Contractual Capacity: Rethinking Liability under the Indian Contract Act

1. To analyse the way, Indian Contract Act, 1872 deals with contractual capacity in case of persons afflicted with (ADHD).
2. To evaluate whether the existing “sound or unsound mind” model is sufficiently protective and enabling for people with ADHD.
3. To research comparative legal frameworks to bring about more equal and inclusive Indian contract law through pragmatic rights based suggestions.

RESEARCH PROBLEM

The Indian Contract Act 1872, primarily defines contractual capacity based on age and a strict "sound mind" under Section 12. (Waddams, 2011¹⁰)

This rule treats mental capacity as either **sound or unsound**, ignoring the spectrum of decision-making ability found in conditions like Attention Deficit Hyperactivity Disorder (ADHD).

The issue lies in assessing whether the existing legal framework adequately safeguards and empowers individuals with ADHD and how it can be reformed to balance personal autonomy with appropriate protections.

RESEARCH QUESTIONS

1. Does the current framework of the Indian Contract Act, 1872, sufficiently address the contractual capacity of individuals with ADHD?
2. How can the law be reformed to balance autonomy and protection for individuals with ADHD while ensuring fairness in contracts?
3. Can comparative legal frameworks, such as the UK Mental Capacity Act, 2005, provide guidance for reforming India's contractual capacity standards?

¹⁰ Cambridge University Press September 2011, <https://doi.org/10.1017/CBO9781139005302>

RESEARCH HYPOTHESIS

The current rule that separates minds into either "sound" or "unsound" under the Indian Contract Act, 1872, doesn't work well for people with ADHD, whose ability to make decisions can change over time.

Based on evidence method like the ones used internationally and under the Rights of Persons with Disabilities Act, 2016 can lead to fairer, more respectful, and better protection for people with ADHD in legal agreements.

METHODOLOGY OF RESEARCH

1. Research Design and Approach

This study adopts a **doctrinal research approach**, focusing on legal texts, statutes, case laws. It examines the Indian Contract Act, 1872¹¹, alongside the Rights of Persons with Disabilities Act, 2016¹², to analyse how contractual capacity applies to individuals with ADHD. The study also uses **comparative legal analysis** by looking at international frameworks, such as the UK Mental Capacity Act, 2005.

2. Method of Analysis and Scope

- **Doctrinal Analysis:** Examines the current legal framework, definitions, and interpretations in India.
- **Comparative Analysis:** Identifies best practices and lessons from other countries
- **Critical Evaluation:** Assesses whether the current laws protect and empower individuals with ADHD and suggests evidence-based reforms. The study focuses on ADHD and contractual capacity in India, with a comparative perspective, and is limited to secondary sources without primary surveys or interviews. The aim is to provide a clear, systematic understanding of gaps in law and propose

¹¹ The Indian Contract Act, No. 9 of 1872, INDIA CODE (1872), <https://www.indiacode.nic.in/handle/123456789/2187>.

¹² Rights of Persons with Disabilities Act, No. 49 of 2016, INDIA CODE (2016), <https://www.indiacode.nic.in/handle/123456789/2155>

reforms to ensure fairness, autonomy, and inclusion.

LITERATURE REVIEW

The Indian Contract Act of 1872 states that people who make a contract must be able to understand it and make reasonable decisions about what it means. Section 12 of the Act defines a "sound mind" as the ability to understand an agreement and think clearly about the results of signing it. In the past, legal experts like Pollock and Mulla saw this as a simple yes-or-no question either someone is of sound mind or they are not. This approach was meant to protect people who might not be able to make smart choices from being taken advantage of. However, this strict view does not consider modern medical knowledge about conditions such as ADHD. ADHD affects brain function in complex and different ways. Research from clinical psychology (Garland, 1998)¹³, such as Barkley's (2015)¹⁴ work, shows that ADHD is not just a short-term or simple issue, it is a long-term condition. (De La Fuente et al., 2013)¹⁵ People with ADHD often face challenges such as trouble focusing, acting without thinking, and being overly active. These symptoms can change depending on the situation, stress, or whether they are on medication.

Therefore, a person's ability to make good decisions can change from one time to another and is not a fixed trait. Legal thinking in India is gradually beginning to acknowledge that mental capacity is not a binary concept. The Rights of Persons with Disabilities Act, 2016, is a significant law that safeguards the rights of individuals with disabilities, including neurodevelopmental conditions such as ADHD. This law moves away from an old way of seeing charity or welfare, where people with disabilities were just given help or taken care of, to a new approach that sees them as equal members of society with respect and freedom. It focuses on supported decision-making, which lets people make their own choices with help while making sure their legal rights are protected.

Despite these developments, Indian legal literature remains limited in examining how ADHD specifically interacts with contractual capacity. Most discussions about mental capacity usually talk about things like dementia or serious mental health issues, and ADHD is often ignored.

¹³ Garland, 1998 Mar PubMed

¹⁴ Barkley, R. A. (Ed.). (2015). *Attention-deficit hyperactivity disorder: A handbook for diagnosis and treatment* (4th ed.). The Guilford Press.

¹⁵ De La Fuente A, Xia S, Branch C and Li X (2013) A review of attention-deficit/hyperactivity disorder from the perspective of brain networks. . doi: 10.3389/fnhum.2013.00192

This shows that we need to look again at whether the Indian Contract Act really protects and supports people with ADHD. By incorporating medical studies, disability rights, and laws from other countries, we can make Indian contract law more inclusive, based on real evidence, and better aligned with the constitution.

ANALYSIS AND DISCUSSION

The Indian Contract Act of 1872 still depends on an outdated, binary assessment of mental capacity as either ‘sound’ or ‘unsound’ which does not align with current medical insights into neurodevelopmental disorders like ADHD¹⁶. According to Section 12, an individual must be capable of ‘understanding’ an agreement and making a rational judgment regarding its implications. This creates a simplistic yes-or-no standard, presuming that mental capacity is either entirely present or absent.

However, contemporary clinical studies indicate that ADHD does not conform to this rigid model. Symptoms such as impulsivity, lack of attention, and challenges in maintaining decision-making can fluctuate based on the context, stress, and medication. An individual with ADHD might fully comprehend a contract at one moment but find it difficult to understand it at another.

A law that enforces a constant label of capacity or incapacity risks two types of injustice: it might prevent competent individuals from entering contracts or fail to safeguard those who temporarily lack decision-making capacity. Comparing the Act to the Rights of Persons with Disabilities Act, 2016, shows a clear difference. The RPwD Act includes conditions like ADHD and aims to give people the right to make their own choices, with support if needed. Rather than viewing people only as needing help, it encourages independence while still providing assistance when necessary.

In contrast, the Contract Act does not take this approach. Without a detailed standard, there is a gap between disability rights and general laws, which can leave people with ADHD either over-protected or vulnerable to exploitation. Developments in comparative law offer valuable insights. The UK Mental Capacity Act, 2005 uses a functional, decision-specific test to

¹⁶ The Indian Contract Act, No. 9 of 1872, INDIA CODE (1872), <https://www.indiacode.nic.in/handle/>

determine if a person can comprehend, retain, and evaluate relevant information at the time a decision is made.

This adaptable model safeguards autonomy while permitting intervention when capacity is clearly compromised. A similar strategy could be implemented in India, integrating medical evaluation with legal protections and acknowledging that capacity may differ. In contrast, the Contract Act does not embrace this progressive change.

CONCLUSION

The current framework of the Indian Contract Act, 1872, which evaluates mental capacity as either “sound” or “unsound,” is no longer adequate for modern realities, particularly for individuals with neurodevelopmental conditions like ADHD. ADHD is not a fixed or uniform condition, and decision-making ability can vary depending on the context, stress, and support. By applying a rigid, permanent standard, the law risks two major injustices: preventing capable individuals from exercising their contractual rights and leaving temporarily impaired individuals vulnerable to exploitation.

To address this, India must move toward a flexible rights-based model of contractual capacity. Recognizing that capacity can fluctuate, a system should allow for case-by-case assessments, supported decision-making, and medical evaluations where necessary. Such a framework would protect individuals while allowing them to participate fully in economic and social life when they are capable, instead of being automatically excluded or overprotected by the system. Reforming the Contract Act in this manner would also align private law with constitutional principles. Articles 14 and 21 guarantee equality, dignity, and personal liberty, all of which are compromised when the law applies a one-size-fits-all test for mental capacity.

A spectrum-based functional approach ensures that people with ADHD are treated fairly, their autonomy is respected, and safeguards are available when needed. Comparative examples, such as the UK Mental Capacity Act, 2005¹⁷, show that such reforms are both practical and effective. They demonstrate that legal systems can respect autonomy while still providing protection and balancing freedom with responsibility.

¹⁷ Rights of Persons with Disabilities Act, No. 49 of 2016, INDIA CODE (2016), <https://www.indiacode.nic.in/handle/>

By adopting similar reforms, India can modernize its contract law, bridge the gap between disability rights policy and private law, and create a more inclusive, equitable, and just legal environment. Ultimately, recognizing ADHD within contractual capacity is not just a legal necessity but also a moral and constitutional imperative. Reforming the law will ensure fairness, uphold dignity, and empower individuals with ADHD to participate in society as equal citizens¹⁸.

¹⁸ [Rights of Persons with Disabilities Act, No. 49 of 2016, INDIA CODE (2016), <https://www.indiacode.nic.in/handle/123456789/22460>.]https://www.indiacode.nic.in/bitstream/123456789/15939/1/the_rights_of_persons_with_disabilities_act,_2016.pdf (21 September 2025).