
BEYOND SOUNDNESS OF MIND: RETHINKING CONTRACTUAL CAPACITY, COMPARATIVE JURISDICTIONS, AND PROPOSING LEGAL REFORMS FOR INDIVIDUALS ON THE AUTISM SPECTRUM IN INDIA

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ABSTRACT

Autism Spectrum Disorder (ASD) estimated effects about eighteen million individuals in India, yet Indian contract law has not evolved to address their unique realities. The Indian Contract Act, 1872, assess the contractual capacity entirely through the binary standard of “sound” vs “unsound” mind under Sections 11 and 12 of the act. Autism is not a uniform condition but a spectrum which differs from person to person and cannot be classified as ‘sound’ or ‘unsound’. On one hand, autistic individuals risk being wrongly excluded from contracts by being presumed “unsound”. On the other, they risk being exploited, since the law does not mandate accommodations or safeguards. The rigid framework overlooks this spectrum nature of autism which can lead to exploitation of this vulnerability. This research argues that Indian contract law must shift towards a functional, context-specific understanding of capacity, inclusive of disability rights frameworks and international standards such as the UN Convention on the Rights of Persons with Disabilities (UNCRPD). Through this, comparative analysis and the inclusion of psychological perspectives on neurodiversity, the paper highlights the need for reforms. It proposes the integration of reasonable accommodation, supported decision-making mechanisms, and a spectrum-based test of contractual capacity into Indian law and studies existing laws in other foreign jurisprudence. Such reforms would not only protect autistic individuals from unfair disadvantage but also promote their autonomy and dignity.

Keywords: Autism Spectrum Disorder, Contractual Capacity, Sound and Unsound Mind

I. Introduction

Contracts form the backbone of the economy and society, it enables individuals to exchange goods, services, and promises on the basis of consent. The Indian Contracts Act, 1872 is based off on the principle of free consent and assumes that the parties possess the mental ability to understand the terms of the contract and its consequences. The section 12 of Indian Contracts act fails to account for autistic individuals where contractual capacity is heavily dependent on the complexity of condition. The current act relies on a rigid, binary approach assuming that a person either has full contractual capacity or none at all. This framework remains to be outdated and ill-suited to realities of autism.

Current data suggests that About 1 to 1.5 per cent of children aged two to nine years are diagnosed with ASD. According to a report by EThealthWorld conducted in 2023, about 18 million people in India are diagnosed with autism. About 1 to 1.5 per cent of children aged two to nine years are diagnosed with ASD.¹ Despite such prevalence, Indian law has failed to evolve to addresses the lived experiences of these individuals with autism. In contrast, modern disability legislations like the Rights of Persons with Disabilities Act, 2016 and the National Trust Act, 1999 explicitly recognize autism and adopt more nuanced approaches, including supported decision-making and limited guardianship. The divergence between these progressive disability rights laws and the outdated sections of contract law creates risks of exclusion and exploitation of persons on the spectrum of autism.

This disposition creates a legal vacuum with substantial implications. It tends towards two extremes of a scale where, on one hand, autistic individuals risk being unfairly excluded from entering into contracts including necessary employment agreements, service contracts, financial transactions etc., due to rigid interpretations of contractual capacity. On the other hand the spectrum of their autism can be exploited making them vulnerable due to lack of legal safeguards. This paper brings light on how the Bridging of this gap requires harmonizing contract law with disability rights legislation and international norms such as the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD)², under which India is a signatory. This research aims to argue for a spectrum-based and functional approach to

¹ *Economic Times*, “World Autism Awareness Day 2024: Theme, Date, History, Significance and Other Details,” Apr. 1, 2024,

² Convention on the Rights of Persons with Disabilities article 12, Dec. 13, 2006, 2515 U.N.T.S. 3.

contractual capacity that reflects the realities of autism.

II. Objectives

1. To examine how Indian contract law defines contractual capacity through the sound/unsound mind definition.
2. To analyse the psychological dimensions of autism and their implications for decision-making in contracts.
3. To propose reforms to Indian contract law to make it more inclusive for autistic individuals by studying international models like the UK Mental Capacity Act, UNCPRD for learnings India can adopt.

III. Research Problem

Autism in spite of being legally recognized under disability law, the Indian Contract Act, 1872 operates on a two-way understanding of capacity. This leads to a situation where autistic individuals may either be excluded from contracting or exposed to exploitation.

IV. Research Questions and Hypothesis

1. How does the Indian Contract Act conceptualize capacity, and why is it inadequate for autism?
2. How do the RPwD Act and National Trust Act provide a more refined approach?
3. What comparative lessons can India adopt from global frameworks like the UK Mental Capacity Act and UNCPRD?
4. What reforms are necessary for the Contract law to evolve to include remedies for this unfairness?

V. Research Methodology

This research adapts a doctrinal methodology. Primary sources include Indian Contract Act, RPwD Act, National Trust Act and articles while the secondary sources consist of WHO reports, disability law commentaries and editorials. This paper also entails comparative

analysis and utilises a qualitative approach, focusing on legal analysis and policy recommendations.

VI. Literature Review

This research focuses on the analysis of existing legal frameworks related to Contractual Capacity of People with Disability, specifically Individuals with ASD. The literature read to formulate and understand the topic of this paper is as follows;

1. The Indian Contract Act, 1872
2. Rights of Persons with Disabilities Act, 2016
3. The United Nations Convention on the Rights of Persons with Disabilities
4. NeuroLaunch Editorial Team, *Autism and Consent: Can Autistic People Give Informed Consent?*, Aug. 11, 2024
5. Adv. Tushar Deswal, *Autism – A Socio Legal Study of Mental Healthcare Laws in India*, 11 IJCRT 303 (2023)

VII. Legal Frameworks

i. Rights of Persons with Disabilities Act, 2016:-

This Act marks a major legislative shift in India by explicitly recognizing Autism Spectrum Disorder (ASD) as a disability under 2nd Section in its schedule. This recognition is crucial as autism remained largely invisible within Indian legal frameworks. Section 13 of the act specifies that that persons with disabilities have the right to own and inherit property, control their financial affairs, and access financial credit. This sections also affirms that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as any other person before the law. Section 14 introduces the concept of limited guardianship, which enables joint decision-making between a person with autism and their guardian.

The Act also emphasizes non-discrimination of Pwd under Section 3, protection from

abuse and exploitation (Section 7), and the provisions inclusive of education and employment opportunities with reasonable accommodations (Sections 16, 19, and 34). The Contract law should be harmonized with the RPwD Act as it is transformative and ideates persons with autism as capable of making decisions and entering into legal relationships.³

ii. The National Trust Act, 1999:-

The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act, 1999 is a statute relevant to autism. This Act was created to safeguard the welfare of individuals with these conditions. Its main mechanism is guardianship. It states under Section 14 that guardians may be appointed by Local Level Committees to take decisions regarding shelter, medical care, and property on behalf of autistic persons.⁴ While this arrangement provides protection, it leans toward paternalism, with broad guardianship powers that may undermine autonomy and independence of decision-making. The Act also focuses on empowering independent living by creating support systems such as group homes, community care, and financial assistance schemes for autistic individuals.

iii. The United Nations Convention on the Rights of Persons with Disabilities:-

The UNCRPD was adopted in 2006 and ratified by India in 2007. It is a landmark treaty that redefines disability through a rights-based lens. Instead of portraying disability as a medical condition requiring welfare or charity, this Act frames it as a matter of human rights and equality. Article 12 guarantees persons with disabilities the right to legal capacity on an equal basis with others in all aspects of life. Legal capacity under is not limited to holding rights, it extends to exercising them. This includes entering contracts, owning property, and controlling financial decisions similar to the RPwD Act, 2016. The Act also sheds light on supported decision-making and requires states to provide mechanisms that respect the will and preferences of individuals rather than replacing their choices with those of the guardians. This approach ensures that persons with disabilities, including those on the

³ The Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016 (India).

⁴ The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, No. 44, Acts of Parliament, 1999 (India).

autism spectrum, are not stripped of their agency by blanket assumptions of incapacity.

The Articles 5 (equality and non-discrimination), 9 (accessibility), 12 (legal capacity), and 21 (freedom of expression and access to information) allows autistic individuals to participate fully in social, legal, and economic life⁵. By ratifying the UNCRPD, India has committed to these standards, but the Indian Contract Act, 1872 continues to apply notions of “soundness of mind,” creating a gap between international obligations and domestic law.

iv. International Approaches to Contractual Capacity for Autistic Individuals: -

Countries all around the world have developed legal frameworks that address the contractual capacity of individuals with autism, emphasizing supported decision-making to balance autonomy and protection. The below table entails the frameworks adapted by different countries

Countries	Legal Frameworks
Canada	Canada has Representation Agreement Act (British Columbia) which enables individuals with disabilities to appoint a representative to assist in decision-making without court involvement. It adapts the article 12 of UNCRPD facilitating supported decision-making, allowing autistic individuals to make binding decisions with assistance.
United Kingdoms	Mental Capacity Act 2005 (England & Wales) mentions comprehensive frameworks for ascertaining an individual's mental capacity and making decisions on their behalf if it is necessary. The law allows supported decision-making in cases needing assistance and it also recognises independent decision-making, enabling persons with autism to enter contracts with appropriate assistance.
South Africa	The South African Contracts Law recognizes individuals with limited mental capacity may require assistance in entering contracts, and such contracts may be voidable unless made with assistance or approval.

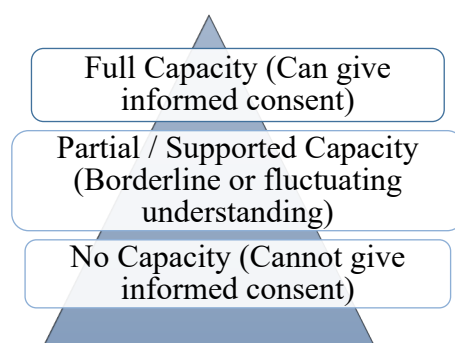
⁵ *Convention on the Rights of Persons with Disabilities*, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Dec. 13, 2006)

Australia	States have implemented supported decision-making frameworks which allows individuals to make financial and legal decisions with support rather than substituted judgment by guardians.
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VIII. Reforms that can be Implemented

The discrepancies between the RPwD Act, The National Trust Act, and The Indian Contract Act highlight the need for harmonization. The Contract law relies on the rigid test of “sound” versus “unsound” mind, while disability law advances and recognizes autonomy and legal capacity of Autistic individuals. To bridge the gap, India needs to implement reforms that align contract law with the principles of the RPwD Act and the UNCRPD.

The introduction of qualitative tests to firstly determine the mental capacity of Individuals would prove to be beneficial as this would set a boundary to categorise the spectrums of Autism distinguishing those who can give informed consent and make independent decisions from those who cannot. A classification into a three-tiered system involving the following tiers;



The first tier consists of individuals who can understand the terms, appreciate consequences, and can make independent choices. In this case standard contract principles apply. Individuals can freely enter into agreements with full legal effect and they shall be binding under the Contract Law.

The second tier consists of individuals who can understand some information but need assistance to weigh options or to communicate. In this case a legal supporter, advisor, or guardian shall be appointed who will assist in the understanding, communicate and interpret and express consent for the contract. The consent in these cases are valid only if consent is given with support, ensuring autonomy with safeguards, if the standard are not met the contract shall be voidable.

The Third tier consists of Individuals unable to comprehend information or appreciate consequences. Contracts entered without proper representation and guardians shall be considered void or voidable. Decisions require full legal guardianship or court-appointed representation. This ensures protection of vulnerable individuals from exploitation and unfair obligations.

IX. Discussion and Analysis

Autism presents unique challenges for contract law, in contrary to conditions that permanently impair capacity, autism varies by context as it is a spectrum. One autistic person may understand simple employment contract but struggle with complex financial instruments while the other may struggle to communicate but understand and ace complicated financial instruments. Indian contract law's rigid and binary notion of "soundness" and "unsound" is not compatible with these realities. Disability laws acknowledge autism, but contract law has not been updated to include the unique reality of these individuals.

International frameworks such as the UK's Mental Capacity Act have adopted a functional, decision-specific capacity model. This study proposes reform to the Contract Act to align with RPwD Act and UNCPRD while adopting principles from other jurisdictions. Such reforms would bridge the gap between autonomy and protection, ensuring that autistic individuals are neither unfairly excluded nor exploited.

X. Conclusion

Autism affects millions of Indians, but Contract law remains blind to their needs. The Indian Contract Act's rigid definition of capacity excludes many citizens from legal and economic participation and equality. By harmonizing contract law with disability rights frameworks like the RPwD Act and UNCPRD and introducing reforms to ensure that the rights of Autistic persons are safeguarded, India can ensure that contract law reflects the diversity of human capacity.

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