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**From Colonial Origins to Contemporary Needs: The Case for Modernizing Pakistan's Contract Act, 1872**

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**Abstract**

One of the colonial era laws, Contract Act, 1872, still remains the centrepiece of the Pakistan legal system, and it is no longer applicable to the demands of the modern technological-driven economy. Its archaic clauses are not applicable in new areas such as digital contracts, investment and Islamic finance. Modernization is therefore required to enhance economic growth to be able to accommodate such principles as liquidated damages, good faith, and fairness, but to also be aligned to the international commercial principles. Following the comparative analysis of the law of contract in India, the English and the United States jurisdiction, the paper illuminates how the jurisdictions have adjusted to the current needs by the reforms of electronic contracting and fair enforcing. It also hypothesizes that Pakistan too must engage in the undertaking of reforming its Contract Act in order to introduce modern nature of contract to provide protection against fraud besides to keep pace with the international legal provisions. This kind of modernization would enhance an increase in contractual justice, investor confidence and sustainable economic development.

**Keywords:** Contract Law, Legal Reform, Pakistan, Comparative Law, India, England, United States, Islamic Finance, Modernization.

**Introduction**

Legal system Law of contract is the foundation of any economic and social exchange regulation. In Pakistan, the Contract Act, 1872 is playing this role, the law of colonial times that remains in use today, over 150 years after its passage into law, to control contractual relationships. Having been framed within the context of the British rule, and being modelled after the nineteenth-century English common law, the Act was actually expected to serve a very simple mercantile economy with face-to-face relations and a localized variety of commercial activities..<sup>1</sup> The socio-economic and technological realities of the twenty first century have however made most of its provisions ineffective as far as meeting contemporary contractual requirements are concerned. Contract act, 1872 was firstly introduced in order to provide predictability and consistency in trading in the colonial era.<sup>2</sup> Its offer, acceptance and consideration principles were also based on the English law in order to ensure commercial stability in the subcontinent.<sup>3</sup> However, regardless of its longstanding establishment and use as a pillar of the private law, the Act has not been significantly modified since the independence

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<sup>1</sup> Atiyah, P.S., An Introduction to the Law of Contract, 6th ed. (Oxford University Press, 2005), p. 22.

<sup>2</sup> Mahmood, T., The Legal System of Pakistan: Historical Foundations and Contemporary Challenges, (Oxford University Press, 2018), p. 47.

<sup>3</sup> Cheshire, Fifoot & Furmston, Law of Contract, 18th ed. (Oxford University Press, 2022), p. 67.

period. Consequently, it does not adjust to modern legal trends like electronic contracting, consumer protection, investment agreements and Islamic finance.<sup>4</sup> The Contract Act also requires modernization, thus it has turned out to be a legal requirement and not just an academic undertaking. The economic development, involvement in global trade, and embracing digital trade in Pakistan requires an economic framework of contract laws that are responsive, flexible, and in line with international laws in relation to contract.<sup>5</sup> Historical experiences in other jurisdictions specifically India, England and the United States importantly show how endless legislative reformation can balance classical teachings of the contract with the new economic realities.<sup>6</sup> The concept of fair dealing, good faith and liquidated damages have been incorporated in the legal systems of these countries hence both fairness and commercial certainty is assured.<sup>7</sup> The paper holds the view that Pakistan needs to carry out a complete overhaul of the Contract Act, 1872 to fill the gaps between what it has inherited during the colonial period and what a modern economy needs. This reform must not just modernize the old provisions, but it should also consider the possibility of integrating Islamic principles of contracts in line with the constitutional and moral provisions of Pakistan. Modernization of the contract law is thus, a vital step towards enhancing the rule of law in Pakistan, enhancing investor confidence, as well as sustainable economic development.<sup>8</sup>

### **Research Objectives**

The main goal of the research is to consider the necessity of the modernization of the Contract Act, 1872 in Pakistan and to find the lessons to apply the practical direction to the work on the reform based on the experience of the Indian, English and United States contract law. The objectives that guide the research are as follows:

1. To identify the key deficiencies and structural gaps within Pakistan's Contract Act, 1872 that limit its effectiveness in regulating modern commercial transactions.
2. To examine how India, England, and the United States have reformed their contract laws to address contemporary challenges, including electronic contracts, consumer protection, and equitable remedies.
3. To assess the impact of outdated contractual provisions on investment, trade, and economic growth in Pakistan.
4. To propose practical reforms for Pakistan's Contract Act, incorporating principles of fairness, good faith, and modern commercial practices, while considering the possible integration of Islamic contractual principles.

By achieving these objectives, the study aims to provide a comprehensive framework for updating Pakistan's contract law, ensuring it aligns with global standards and supports a robust, modern economy.

### **Research Methodology**

The study will take a doctrinal approach in studying the Contract Act, 1872 of Pakistan, by a close examination of primary legal sources such as the Contract act, the statutes and the federal decisions to find out gaps and interpretative difficulties within the legal system in practice. Scholarly articles, commentaries, and reports are also considered as secondary sources in order to put these findings into perspective and aid in critical analysis.

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<sup>4</sup> Malik, S., *Business Law in Pakistan*, (PLD Publishers, 2020), p. 211.

<sup>5</sup> World Bank, *Doing Business Report 2020: Enforcing Contracts*, (Washington D.C., 2020).

<sup>6</sup> Farnsworth, E.A., *Contracts*, 4th ed. (Aspen Publishers, 2019), p. 12.

<sup>7</sup> Unfair Contract Terms Act, 1977 (UK); Uniform Commercial Code (U.S.), §2-302.

<sup>8</sup> Zafar, A., "Contract Law Reform and Economic Development in Pakistan," *LUMS Law Review*, Vol. 7 (2022), p. 89.

## **Historical Background and Colonial Legacy of the Contract Act, 1872**

Contract Act, 1872 was signed with the purpose of ensuring that the law gave a uniform law on commercial activities in India, as seen with the British colonial rule.<sup>9</sup> Prior to its enactment the contracts were ruled by a combination of customary and religious and English mercantile practice to an unequal degree.<sup>10</sup> The Act was based on the English common law of the nineteenth century, which gave importance to the freedom of contract and sanctity of promises, which are associated with the laissez-faire economic doctrine of the Victorian England.<sup>11</sup> The Act was created to suit a basic mercantile economy, which failed to accommodate native business traditions and new types of commerce.<sup>12</sup> Pakistan inherited the Act almost in its original form after independence.<sup>13</sup> It has been based on classical principles like offer, acceptance and consideration, leading to loopholes in controlling the contemporary contexts of electronic contract, consumer protection, and global transactions.<sup>14</sup> The colonial past, therefore, makes formalism a priority over equity, restraining the judge judicial discretion to deal with the modern business conflicts.<sup>15</sup> The Act needs to be modernized to reflect all the new principles such as good faith and equity, and to bring the contract law in Pakistan in line with the present economic and legal realities.<sup>16</sup>

## **Reasons for modernizing the Contract Act, 1872**

**Outdated provisions:** The Act was created in a different era and its principles may not apply to modern business practices, especially those involving digital transactions.

**Lack of modern concepts:** It lacks key concepts that have evolved in common law and are essential for modern commerce, such as liquidated damages, which would provide a clear framework for contractual disputes.

**Need for legal certainty:** The law would be made more certain and clear to businesses and individuals by modernizing its which is essential in attracting investment and economic development.

**Alignment with contemporary needs:** The Act should be revised to reflect new contract types, e.g. those digital, and also better respond to contemporary problems, e.g. privacy and intellectual property.

**Incorporation of Islamic finance:** Some would say that the present act is adequate, however other ones would propose that some elements of Islamic law should be incorporated to suit the religious and cultural setting of Pakistan.

## **Incorporating Islamic Financial Principles in Contract Law**

**Islamic Finance and Its Relevance to Contract Law:** The increased practice of Islamic finance in Pakistan highlights the necessity to incorporate the Shariah-compliant provisions in the Contract Act, 1872.<sup>17</sup> The existing practices fail to specifically acknowledge contracts like mudharabah, musharakah, ijara, murabaha or sukuk which are becoming common in the banks, investment and trade.<sup>18</sup> Such instruments by using specific amendments would give legal assurance, be enforceable, and safeguard all concerned.<sup>19</sup> Besides, incorporation of Islamic concepts like the consideration of riba, the avoidance of gharar and the focus on justice and

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<sup>9</sup> Mahmood, T., *The Legal System of Pakistan: Historical Foundations and Contemporary Challenges*, (Oxford University Press, 2018), p. 41.

<sup>10</sup> Jain, M.P., *Outlines of Indian Legal History*, 7th ed. (LexisNexis, 2019), p. 293.

<sup>11</sup> Pollock & Mulla, *The Indian Contract Act and Specific Relief Acts*, 15th ed. (LexisNexis, 2021), p. 6.

<sup>12</sup> Kamali, M.H., *Islamic Commercial Law: An Analysis of Options and Contracts*, (Islamic Texts Society, 2000), p. 98.

<sup>13</sup> Khan, M., "Modernization of Contract Law in Pakistan: Comparative Lessons from India and the UK," *Pakistan Law Journal*, Vol. 35 (2023), p. 115.

<sup>14</sup> Malik, S., *Business Law in Pakistan*, (PLD Publishers, 2020), p. 209.

<sup>15</sup> Zafar, A., "Contract Law Reform and Economic Development in Pakistan," *LUMS Law Review*, Vol. 7 (2022), p. 92.

<sup>16</sup> World Bank, *Doing Business Report 2020: Enforcing Contracts*, (Washington D.C., 2020).

<sup>17</sup> Kamali, M.H., *Islamic Commercial Law: An Analysis of Options and Contracts*, (Islamic Texts Society, 2000), p. 102.

<sup>18</sup> Ayub, M., *Understanding Islamic Finance*, 2nd ed. (Wiley Finance, 2007), p. 58.

<sup>19</sup> Iqbal, Z., & Mirakhor, A., *An Introduction to Islamic Finance: Theory and Practice*, 2nd ed. (Wiley, 2017), p. 89.

transparency can reinforce ethical adherence in business transactions.<sup>20</sup> Analogous modernization of the Act to accommodate these ideals would not only cater to the growth of the Islamic finance but will also help to align the contract law of Pakistan with the cultural, religious and economic environment, which would be helpful to not only increase investor confidence but also ensure sustainable economic growth.<sup>21</sup>

### **Key Deficiencies and Challenges in the Contract Act, 1872**

Though the Contract Act, 1872 is a fundamental statute, it has a number of structural shortcomings that restrict its suitability in handling modern contractual requirements. The most significant problem is its old definition of the key terms that include offer, acceptance, and consideration.<sup>22</sup> Such provisions fail to support the contemporary contracting models such as electronic contracts, click wrap contracts and electronic transactions.<sup>23</sup> The other difficulty is that of limited scope of remedies and damages. The Act mainly compensates actual losses in Sections 73 to 75 which frequently omits the idea of consequential or anticipatory damages which limits the equitable relief.<sup>24</sup> Conversely, other jurisdictions such as England and the United States have come up with doctrines, such as Hadley v. In the UK, Baxendale and in the U.S. the Uniform Commercial Code permit greater freedom in the award of damages.<sup>25</sup> Another shortfall of the Act is that fairness and good faith are not outlined in it and the courts are left with little to do so to counter abusive standard form contracts or unconscionable contracts.<sup>26</sup> Proper balance, equality or inequality of bargaining power, and fraud in the contemporary business environment are uncontrolled and thus they may bring in a state of injustice in the contractual relationships.<sup>27</sup> In addition, the Act fails to acknowledge emergent contractual frames, including electronic commerce, international arbitration clause, and digital signatures.<sup>28</sup> This is a loophole that makes the contract law in Pakistan unreceptive to the international business practices and makes it less appealing to foreign investors.<sup>29</sup> To conclude, the Contract Act, 1872, in spite of its historical importance, does not offer a flexible and modern legal framework. These shortcomings indicate the immediacy of a change, based on the comparative experience in India, England, and the United States, to make sure that the legislation is pertinent, fair, and financially conducive.<sup>30</sup>

### **Comparative Lessons from Indian, English, and U.S. Law**

Another example of a liberal approach to law is that of the United States under the Uniform Commercial Code (UCC). Commercial practices that are accepted within the UCC, which include anticipatory repudiation, liquidated damages, and implied warranties, as well as the inclusion of electronic contracts, which make the Electronic Signatures in Global a comparative analysis of contract law in India, England, and the United States an important resource in reforming the Contract Act, 1872 in Pakistan. The Contract Act in India has been developed by the judicial interpretation and legislative adaptations to embrace principles that answer the modern business requirements of the state.<sup>31</sup> Indicatively, the Indian judiciary has accepted the electronic contracts provided by the Information Technology Act, 2000 which permits the digital transactions and electronic signatures to be legally binding.<sup>32</sup> Indian courts too have

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<sup>20</sup> Usmani, M.T., *An Introduction to Islamic Finance*, (Idara Isha'at-e-Diniyat, 2002), p. 74.

<sup>21</sup> Khan, M., "Modernization of Contract Law in Pakistan: Integrating Shariah-Compliant Contracts," *Pakistan Law Journal*, Vol. 36 (2024), p. 101.

<sup>22</sup> Contract Act, 1872 (Pakistan), Sections 2(a)-(d).

<sup>23</sup> Information Technology Act, 2000 (India); Electronic Transactions Ordinance, 2002 (Pakistan).

<sup>24</sup> Contract Act, 1872, Sections 73–75.

<sup>25</sup> Hadley v. Baxendale (1854) 9 Exch 341; Uniform Commercial Code (U.S.), §2-715.

<sup>26</sup> Cheshire, Fifoot & Furmston, *Law of Contract*, 18th ed. (Oxford University Press, 2022), p. 134.

<sup>27</sup> Atiyah, P.S., *An Introduction to the Law of Contract*, 6th ed. (Oxford University Press, 2005), p. 145.

<sup>28</sup> UNCITRAL, *Model Law on Electronic Commerce*, 1996.

<sup>29</sup> World Bank, *Doing Business Report 2020: Enforcing Contracts*, (Washington D.C., 2020).

<sup>30</sup> Khan, M., "Modernization of Contract Law in Pakistan: Comparative Lessons from India and the UK," *Pakistan Law Journal*, Vol. 35 (2023), p. 118.

<sup>31</sup> Pollock & Mulla, *The Indian Contract Act and Specific Relief Acts*, 15th ed. (LexisNexis, 2021), p. 15.

<sup>32</sup> Information Technology Act, 2000 (India), Sections 10A–12.

enlarged the remedies of breach of contract such as anticipatory damages and specific performance which has made commercial dispute to be fairer.<sup>33</sup> In England, there have been increasing principles of good faith, fairness and fair relief within the contract law that have been applied in matters concerning consumer protection and in standard form contracts.<sup>34</sup> .. The doctrine of *Hadley v. Baxendale* still regulates the evaluation of harm, though new trends in electronic commerce and consumer legislation have brought the enforcement of contractual duties into further connection with contemporary business reality,<sup>35</sup> and National Commerce Act (E-SIGN).<sup>36</sup> This statutory interpretation and judicial review enables the American courts to strike a balance between predictability and fairness in business disputes.<sup>37</sup> The experience of these jurisdictions proves the usefulness of a flexible and versatile framework of contract law. Pakistan can revise its Contract Act to reflect digital contracts, safeguard weaker parties, strengthen remedies and ensure consistency with international rules by following the same principles. Comparative lessons also indicate the necessity to have codified equitable principles like good faith and fairness, which is still very much lacking in the existing legal system in Pakistan.<sup>38</sup>

### **Impact of Outdated Contract Law on Pakistan's Economy**

The existence of colonial-era provisions in the Contract Act, 1872 of Pakistan has a serious implication on investment, trade, and the general economic development.<sup>39</sup> The risk of lack of enforcement of contracts, fewer remedies and lack of clauses in case of a deal with a complex commercial contract deter both local and foreign investors to make a deal.<sup>40</sup> The legal framework is often viewed by investors as inflexible, sluggish and incapable of delivering predictable results when it comes to solving disputes, which causes an increase in the costs of transactions and reduces the leverage on informal mechanisms.<sup>41</sup> The international trade is also influenced. The Pakistani old-fashioned contract laws do not entirely cover digital agreement, e-commerce, and international transactions, which form the main aspect of international business.<sup>42</sup> Currently, unless the law acknowledges such contemporary contracting practices, the business will lack the legal clarity and may be financially vulnerable, which will minimize the competitiveness of Pakistani businesses in global markets.<sup>43</sup> Besides, the absence of clear remedies of breach of contract, through the law, inhibits economic growth.<sup>44</sup> The modest damages and enforcement terms under the Act deter the entrepreneurship and inventiveness, since business ventures do not have certain methods of securing the rights of a contract and recovering fair redress in new areas of commerce.<sup>45</sup> Moreover, lack of consumer protection and antique against imbalanced bargaining power weakens trust in the contract relations, which further limits the economic development.<sup>46</sup> Overall, this underscores the fact that the Contract Act in Pakistan is outdated and this may directly affect the choice of investment, efficiency of trade and economic development. It is important to reform the Act to suit the modern realities

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<sup>33</sup> *ONGC Ltd. v. Saw Pipes Ltd.*, AIR 2003 SC 2629 (India).

<sup>34</sup> Cheshire, Fifoot & Furmston, *Law of Contract*, 18th ed. (Oxford University Press, 2022), p. 134.

<sup>35</sup> *Hadley v. Baxendale* (1854) 9 Exch 341; Consumer Rights Act 2015 (UK).

<sup>36</sup> Uniform Commercial Code (U.S.), §§2-615, 2-716; Electronic Signatures in Global and National Commerce Act (E-SIGN), 2000.

<sup>37</sup> Farnsworth, E.A., *Contracts*, 4th ed. (Aspen Publishers, 2019), p. 18.

<sup>38</sup> Khan, M., "Modernization of Contract Law in Pakistan: Comparative Lessons from India and the UK," *Pakistan Law Journal*, Vol. 35 (2023), p. 120.

<sup>39</sup> World Bank, *Doing Business Report 2020: Enforcing Contracts*, (Washington D.C., 2020).

<sup>40</sup> Malik, S., *Business Law in Pakistan*, (PLD Publishers, 2020), p. 211.

<sup>41</sup> Khan, M., "Modernization of Contract Law in Pakistan: Comparative Lessons from India and the UK," *Pakistan Law Journal*, Vol. 35 (2023), p. 122.

<sup>42</sup> Information Technology Act, 2000 (India); Electronic Transactions Ordinance, 2002 (Pakistan).

<sup>43</sup> Zafar, A., "Contract Law Reform and Economic Development in Pakistan," *LUMS Law Review*, Vol. 7 (2022), p. 95.

<sup>44</sup> Contract Act, 1872, Sections 73–75.

<sup>45</sup> Cheshire, Fifoot & Furmston, *Law of Contract*, 18th ed. (Oxford University Press, 2022), p. 134.

<sup>46</sup> Atiyah, P.S., *An Introduction to the Law of Contract*, 6th ed. (Oxford University Press, 2005), p. 145.

in commerce to encourage investment and trade, as well as ensure sustainability and growth-driven economy.<sup>47</sup>

### **Recommendations for Modernization of Pakistan's Contract Act, 1872**

**Recognize Digital Contracts and Electronic Signatures:** Electronic signatures and contracts should be legal to implement and be licensed to provide legal guarantees to the e-commerce, online services and even international transactions.

**Enhance Remedies and Damages:** Refine Remedies and Damages: Amend the remedies with anticipatory, consequential and liquidated damages and the specific performance to ensure that the commercial disputes are just and predictable.

**Incorporate Principles of Good Faith and Fair Dealing:** Introduce balanced principles to allow courts to deal with unsociable contracts, predatory standard form agreements and protect disadvantaged parties.

**Protect Against Fraud and Inequality of Bargaining Power:** Enforce better protection against misrepresentation, fraud, coercion, and unfair terms especially in contracts related with consumers and small businesses.

**Integrate Relevant Islamic Contract Principles:** Add guidelines to avoid exploitative or unpredictable contracts, which are in line with the Islamic teachings where warranted, particularly in finance, banking, and trade.

**Align with International Standards:** Control the Act to be in sync with international legal standards, which will enable international trade, cross border investment, and the digital trade.

**Establish a Mechanism for Periodic Review:** Design a system of periodic revision and amendments to the Act, which would allow it to keep up with the changing business practices, technological advancements and economic demands.

**Introduce Clear Rules for Electronic and Smart Contracts:** Grant legal enforceability of contracts based on the blockchain, smart contracts, and other technological innovations to encourage innovation and technology adoption.

**Strengthen Consumer Protection:** Have clear statements on protecting consumers in contracts in the form of rights to rescind, clear disclosure requirements, and redress against unfair practices.

**Promote Alternative Dispute Resolution (ADR):** Prosperate mediations, arbitration, and other ADR strategies to clearly settle the disputes of the contracts, avoiding the overload of the courts and guaranteeing the timely enforcement.

**Facilitate Cross-Border Trade:** Incorporate the provisions, which accept foreign arbitration awards, usual international contracts and UNCITRAL provisions to ensure that legal environment in Pakistan is friendly to trade.

**Support Small and Medium Enterprises (SMEs):** Include provisions that guarantee that SMEs are not disadvantaged by unfair contract terms and delayed payments or exploitative practices by larger corporations, as well as to promote economic growth.

**Encourage Judicial Training and Awareness:** Train judges and legal professionals on modern contract principles, digital commerce, and comparative law to ensure effective interpretation and enforcement of the updated Act.

### **Conclusion**

Contract Act of 1872 is not significant in the history of Pakistan, however, it is becoming more and more irrelevant in the face of the complications of the current commercial world. This is because of the colonial-era provisions, few remedies, and inability to acknowledge digital transactions, good faith, and fair principles, which inhibits investment, trade, and economic growth. The inflexibility of the Act also poses a difficulty to the entrepreneurs, consumers and international business players as it curtails the competitiveness of Pakistan in the international market. When comparing it to India, England, and the United States it has proven that the main

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<sup>47</sup> World Bank, Doing Business Report 2020: Enforcing Contracts, (Washington D.C., 2020), p. 44.

factors in keeping a viable contract law system in place are constant reforms, adoption of modern contractual principles, and adaptability to the law. Such jurisdictions have managed to combine electronic contracts, fair remedies, consumer protection and flexible damage provisions, which can be of great benefit to Pakistan. Going by this analysis, it is clear that the Contract Act of Pakistan needs to be modernized with the adoption of digital contracts, extending the remedies, consideration of the principle of good faith and fairness, protection against fraud, adoption of the international standards, and cautious incorporation of Islamic principles of contracts. Other activities like periodic review, encouragement of alternative dispute resolution and training of judges are also required in order to keep the law pertinent and efficient. The proposed reform of the Contract act, 1872 is not just an exercise in law, but is an important process in terms of improving the economic growth, boosting investor confidence, and ensuring that the legal system in Pakistan reflects the modern-day commercial realities. A revised, adaptive, and just contract law will enhance the rule of law, facilitate trade in the country and abroad, and help in sustainable economic growth.

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