

THE ROLE OF THE DOCTRINE OF GOOD FAITH IN PAKISTANI CONTRACT LAW

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Abstract

This study has a critical look at the doctrine of good faith in respect to Pakistani contract law, looking at the fact that it is not provided in the statutory law and the fact that in most judicial decisions, it is not used in a consistent manner. Despite the fact that the Contract Act, 1872 of Pakistan, based on the English common law tradition, does not list a general obligation of good faith, similar principles have not been sporadically referred to by equitable principles and in terms of public policy. The paper relates the historical evolution of good faith during the civil law, common law, and the Islamic State of jurisprudence, and it reveals the conceptual flexibility and pre-eminence of good faith relative to the healthiness of the contractual relationship through frankness, equity, and how to behave with each other.

The paper also uses comparative legal analysis to discuss the development of the doctrine in the United Kingdom, India, Malaysia, and the Islamic law, which has attractively provided the journeys of how these jurisdictions have been able to balance the traditional legal principles with the ethical obligations of fair dealing. It goes on to state that lack of an express good faith requirement in Pakistan, produces legal uncertainty, increases the cost of transactions, undercuts alternative dispute resolution and discourages domestic and foreign investment. In this respect, the absence of a codified standard also leads to the discrepancy between the Islamic ethical doctrine that exalts the concepts of trust (amanah), equitableness (adl), and good intention (niyyah) and the rationalist, formalistic strategy of Pakistani contract enforcement.

In the research, the role of gradual introduction of good faith in the Pakistani contract law is argued with the help of judicial interpretation, legislation change, and the introduction of a good faith depending on the industry. Based on the comparative models and the Islamic mandate of the constitution of Pakistan, the paper suggests some of the measures that can be used to bring harmony to the doctrinal coherence and commercial feasibility and religious principles. These are supplementing the Contract Act with a good faith clause, giving to an inference of duties of fair dealing in the relational contract, and reforming the law in harmony with the moral foundations of Islamic commercial law.

This paper will finally conclude that acceptance and enhancement of the doctrine of good faith will be critical to establishing a more responsible, fair and competitive legal mechanism in Pakistan. It arrives at a conclusion that this kind of reform will not just improve the state of commercial certainty but also requires that Pakistan lives up to its constitutional and moral obligation to be just towards its contractual partners.

Introduction

In contract law the concept of good faith is an elusive but a very important foundation. Good faith can be characterized as a broad meaning of honesty in action, fair play and no intention to fool. Good faith is anchored in the form of the general principle in the civil law jurisdictions including France and Germany, and it regulates the formation as well as performance and enforcement of contracts. By contrast, common law countries have been less willing to recognize good faith as a duty of conduct in general, and instead insisted on

identifying a designated doctrine, such as the misrepresentation doctrine, oppression doctrine, or fiduciary duties, to regulate conduct.

Pakistan as a jurisprudence that is a product of the colonialist legal transplant is currently in a confused state of doctrine concerning the need of good faith. Although the Contract Act, 1872 in Pakistan gives a comprehensive frame of a contractual obligation in the country it does not lay down a general principle of good faith. On its part, the judiciary has turned to the doctrine with caution and without directly recognizing its principles; nevertheless, applying the type of good faith in watered form, under the banner of equity, fairness, and public policy. This has seen unpredictable applications and theological confusion.

But what is needed is clarity. Due to the rising complexities of commercial transactions, international contractual relationships, and considering the important values of Islamic laws of law applied in the jurisprudence of Pakistan, the following question has been presented; should the doctrine of good faith be explicitly recognized in the Pakistani contract law? More to the point, does the existing statutory regime inspired by the Contract Act and case law already apply this doctrine implicitly, and, in that case, how much?

Also, in the light of the Islamic jurisprudence approach, the moral and ethical system within which the contractual affairs are conducted appears to be inherently connected with the notion of acting in good faith. These rules of Islamic law are amanah (trust), ihsan (excellence in dealings) and tazkiyah (purification), which focus on fair play and integrity. These principles put forward a theological and ethical argument on the maintenance of good faith as part and parcel of the Pakistani law, which would be a purely theoretical exercise worth pursuing.

It is the purpose of the current paper to present a doctrinal and comparative analysis of the role of good faith in the Pakistani contract law. It looks at the provisions of the statute, judicial interpretations and comparative legal theories such as Britain, India, Malaysia and Islamic law to comprehend the manner in which, Pakistan has treated or ought to have treated doctrine of good faith. Based on the above-presented evidence, the research posits that the instillation of good faith, either via judicial interpretation or legislation can be done not just doctrinally, but also commercially.

In such regard, the research takes the following order: section two argues out the historical and conceptual background of the doctrine of good faith in various legal systems. Pakistani law is used to determine its current legal position in Section Three. Section Four establishes a comparison between the Pakistani approach and such jurisdictions as selected. Section Five talks of the legal and business consequences of good faith (or its deliberate absence) within the Pakistani business and law arena. Section six suggests arguments and reform recommendations. The final section draws conclusions and suggests a path forward for the harmonization of good faith with Pakistan's legal and cultural context.

By investigating the role, recognition, and potential reform of the doctrine of good faith in Pakistani contract law, this paper hopes to contribute to a more coherent, equitable, and morally informed legal landscape for contractual obligations in the country.

Historical and Conceptual Framework of Good Faith

The doctrine of good faith is one of the most contested and conceptually diverse principles in the law of contracts. It holds varying meanings across jurisdictions, often shaped by cultural, historical, and philosophical foundations. At its core, good faith in contractual relations involves honesty, loyalty, fairness, and the intention to perform obligations without deception. However, its doctrinal formulation and enforceability varies significantly between civil law and common law traditions.

Civil Law Origins: Codified Morality

The roots of good faith can be traced to Roman law, where the term *bona fides* governed not only contract formation but also interpretation and performance. Roman legal scholars considered good faith essential for justice in dealings, and this principle became enshrined in the *Corpus Juris Civilis*.¹

In modern civil law systems such as Germany, France, and Italy, good faith is embedded in statutory codes. For instance, Article 1134 of the French Civil Code requires contracts to be performed in good faith, while Section 242 of the German Civil Code (*Bürgerliches Gesetzbuch* or BGB) mandates that obligations must be performed in accordance with good faith, taking customary practice into account.² Courts in these jurisdictions use good faith not merely as a moral guideline but as a legally enforceable principle. It influences the construction of contracts, supplements their terms, and sometimes even overrides express provisions that appear unjust or abusive.

Civil law's embrace of good faith reflects a more paternalistic legal culture, where the state assumes a proactive role in ensuring justice and fairness. It assumes that parties may not always be in equal bargaining positions and that courts must intervene to protect weaker parties and preserve the integrity of commerce.³

Common Law Resistance: Contractual Autonomy over Moral Duties

In contrast, the common law tradition, particularly in England, has historically rejected good faith as a general principle. The prevailing view has been that parties are free to pursue their self-interest, constrained only by clearly established doctrines such as fraud, misrepresentation, undue influence, or illegality. Lord Ackner famously remarked in *Walford v. Miles* that "the concept of a duty to negotiate in good faith is inherently repugnant to the adversarial position of the parties involved in negotiations."⁴

However, this rigidity has softened in recent years. In the seminal case of *Yam Seng Pte Ltd v. ITC Ltd* (2013), Justice Leggatt recognized that the common law may imply duties of honesty and good faith in relational contracts—those requiring long-term cooperation, such as joint ventures, distributorships, and franchise agreements.⁵ This signaled an evolution toward what some scholars call "piecemeal good faith" a context-specific rather than universal application.

Pakistan, as a former British colony, adopted the Contract Act of 1872, based largely on the Indian Contract Act and common law principles. As such, it did not incorporate a general duty of good faith, and its legal development has mirrored the traditional English approach. Nonetheless, the increasing complexities of commercial transactions and Islamic moral values are pressing the need to reconsider this exclusion.

¹ "The Law of Obligations - Reinhard Zimmermann - Oxford University Press," accessed June 23, 2025, <https://global.oup.com/academic/product/the-law-of-obligations-9780198764267?cc=pk&lang=en&>.

² Basil S. Markesinis, Hannes Unberath, and Angus Johnston, "The German Law of Contract: A Comparative Treatise," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, February 22, 2006), <https://papers.ssrn.com/abstract=884307>.

³ "Regulating Contracts - Hardback - Hugh Collins - Oxford University Press," accessed June 23, 2025, <https://global.oup.com/academic/product/regulating-contracts-9780198298175?cc=pk&lang=en&>.

⁴ Lawprof Team, "Walford v Miles [1992] 2 AC 128," *Lawprof.Co* (blog), November 12, 2020, <https://lawprof.co/contract/terms-of-contract-cases/walford-v-miles-1992-2-ac-128/>.

⁵ Lawprof Team, "Yam Seng PTE Ltd v International Trade Corporation Ltd [2013] EWHC 111 (QB)," *Lawprof.Co* (blog), November 12, 2020, <https://lawprof.co/contract/terms-of-contract-cases/yam-seng-pte-ltd-v-international-trade-corporation-ltd-2013-ewhc-111-qb/>.

Islamic Legal Tradition: Moral Integrity and Fair Dealing

In contrast to the English common law's instrumental view of contracts, Islamic jurisprudence places a strong emphasis on ethical conduct, mutual trust, and moral accountability in contractual relationships. The Qur'an commands believers to "fulfill [their] covenants," and forbids *gharar* (uncertainty) and *riba* (usury), both of which stem from imbalances or deceit in commercial dealings.⁶

Principles such as *amanah* (trust), *sidq* (truthfulness), *ihsan* (benevolence), and *adl* (justice) underscore the Islamic view that commercial dealings are not merely private matters but are subject to moral scrutiny and divine accountability. The Prophet Muhammad (PBUH) is reported to have said: "The two parties in a transaction have the option [to cancel] as long as they have not separated; and if they are honest and clear, they will be blessed in their transaction."⁷

In Islamic contracts such as *mudarabah* (profit-sharing) and *murabaha* (cost-plus sale), parties are expected to uphold transparency, avoid exploitation, and act in a manner consistent with *niyyah* (righteous intent). Failure to adhere to these principles can result in the invalidity of the contract, even if the formal elements are present.⁸

While Islamic law does not use the term "good faith" in the Western legal sense, its emphasis on ethical conduct, moral intent, and fairness resonates deeply with the principle. This presents a compelling case for harmonizing the doctrine of good faith with Pakistan's legal culture, which draws legitimacy from both common law precedent and Islamic morality.

Modern Interpretations and Global Trends

Beyond national systems, international commercial instruments increasingly emphasize the role of good faith. The UNIDROIT Principles of International Commercial Contracts (2016) and Article 7 of the United Nations Convention on Contracts for the International Sale of Goods (CISG) mandate the observance of good faith in international trade.⁹ These developments reflect a global trend toward recognizing good faith as a foundational principle of contract law one that facilitates trust, reduces transaction costs, and resolves interpretive ambiguities.

Given Pakistan's engagement in international trade and its aspiration to align with global legal standards, these instruments also serve as persuasive authority for incorporating good faith more explicitly into domestic jurisprudence.

The doctrine of good faith emerges from diverse legal traditions but converges around a common goal: ensuring honesty, fairness, and cooperation in contractual dealings. While civil law systems codify and enforce it robustly, common law systems, especially Pakistan's, have historically been more reserved. However, the moral emphasis of Islamic law and the practical necessities of modern commerce make a strong case for reinterpreting or even formally incorporating good faith into Pakistani contract law. The next section evaluates how this doctrine is treated under current Pakistani statutes and judicial decisions.

The Legal Status of Good Faith in Pakistani Law

Despite its moral resonance and growing international recognition, the doctrine of good faith finds no explicit expression in Pakistani contract law. The Contract Act, 1872, which remains the foundational statute governing contractual relations in Pakistan, does not contain a

⁶ "Surah Al-Baqarah - 275-279," Quran.com, accessed June 23, 2025, <https://quran.com/al-baqarah/275-279>.

⁷ "Sahih Al-Bukhari 2079 - Sales and Trade - كتاب البيوع - Sunnah.Com - Sayings and Teachings of Prophet Muhammad (صلى الله عليه وسلم)," accessed June 23, 2025, <https://sunnah.com/bukhari:2079>.

⁸ Shaykh Mufti Taqi Usmani, *An Introduction To Islamic Finance By Shaykh Mufti Taqi Usmani*, accessed June 23, 2025, <http://archive.org/details/AnIntroductionToIslamicFinanceByShaykhMuftiTaqiUsmani>.

⁹ "Principles2016-e," n.d.

general provision requiring parties to act in good faith. This absence reflects the common law tradition inherited from British India, wherein contractual obligations are primarily interpreted through the lens of consent, intention, and express terms, rather than overarching moral duties.

Nevertheless, Pakistani courts have occasionally invoked principles akin to good faith, often under the rubric of equity, public policy, or implied terms. The result is a fragmented and often ambiguous jurisprudence, which reflects judicial discomfort with embracing a broad good faith doctrine without clear legislative backing.

Textual Analysis of the Contract Act, 1872

A careful reading of the Contract Act reveals certain provisions that implicitly require fairness and honesty, although they stop short of articulating a general duty of good faith:

- **Section 19** addresses contracts vitiated by misrepresentation, fraud, or coercion, suggesting an implicit concern with the integrity of the bargaining process.
- **Section 23** requires that consideration and the object of an agreement must be lawful and not opposed to public policy.
- **Section 72** imposes an obligation to restore benefits obtained through mistake or coercion, reflecting a principle of unjust enrichment and corrective justice.

While these provisions reflect concerns typically associated with good faith (such as fair dealing, honesty, and prevention of exploitation) they are reactive in nature, triggered by specific wrongdoing. They do not impose a proactive obligation on parties to act fairly or honestly throughout the life of the contract.¹⁰

In short, the Contract Act provides limited and fragmented remedies in instances of bad faith but offers no overarching doctrine to prevent such conduct from the outset.

Judicial Treatment of Good Faith in Pakistani Case Law

Pakistani courts have generally avoided articulating a general duty of good faith in contracts. However, several decisions demonstrate the judiciary's indirect reliance on principles that mirror good faith, particularly in long-term or fiduciary relationships.

In C.P. No. S-210 of 2007 (**Muhammad Swaleh Versus Mst. Asma Yasin & others**) the Sindh High Court stated that "*The expression "good faith" employed in clause (vii) must be interpreted in the light of definition thereof as embodied in section 2(28) of the West Pakistan General Clauses Act, 1956, which provides that "a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not".*¹¹

"In the case of Hafiz Tassaduq Hussain v. Lal Khatoon (PLD2011 SC 296), this Court held that the subsequent vendee thus has to discharge the initial onus (1) that he acquired the property for due consideration and thus is a transferee for value, meaning thereby that his purchase is for the price paid to the vendor and not otherwise; (2) there was no dishonesty of purpose or tainted intention to enter into the transaction which shall settle that he acted in good faith or with bona fide; (3) he had no knowledge or notice of the original sale agreement between the plaintiff and the vendor at the time of his transaction with the latter. It was further held that the second ingredient "good faith" is the term which reflects the state of mind and according to section 3 (20) of the General Clauses Act, 1897 "a thing shall be

¹⁰ "(PDF) The Contract Act 1872 and The Recommendation of Council of Islamic Ideology Pakistan: Legal Experts Prospective," ResearchGate, accessed June 23, 2025, https://www.researchgate.net/publication/382048668_The_Contract_Act_1872_and_The_Recommendation_of_Council_of_Islamic_Ideology_Pakistan_Legal_Experts_Prospective.

¹¹ "Caselaw.Shc.Gov.Pk/Caselaw/View-File/MTI1OTE2Y2Ztcy1kYzgZ#:~:text=The Expression 'Good Faith' Employed,Whether It Is Done Negligently," accessed June 23, 2025, <https://caselaw.shc.gov.pk/caselaw/view-file/MTI1OTE2Y2Ztcy1kYzgZ>.

deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not".¹²

These cases suggest that the Pakistani judiciary is sympathetic to good faith principles, particularly when interpreting ambiguous contracts or rectifying imbalances in bargaining power. However, the lack of a codified or clearly defined doctrine results in inconsistency and unpredictability.

Islamic Jurisprudence and Pakistani Legal Context

Pakistan's legal identity as an Islamic republic adds another layer of complexity to this debate. The preamble of the Constitution of Pakistan affirms that laws must be consistent with the injunctions of Islam. Islamic jurisprudence, as discussed earlier, places significant emphasis on ethical dealings, honesty, and fairness in contractual relationships.¹³

The **Federal Shariat Court** has, in various judgments, emphasized the ethical obligations in commercial transactions, particularly in matters of *riba*, fraud, and deception. In which the Court highlighted that every contract in Islamic law must be executed in a manner consistent with *maslahah* (public interest) and *adl* (justice), both of which align with the modern understanding of good faith.¹⁴

However, there remains a disconnect between these constitutional and theological principles and their practical implementation in commercial law. Courts rarely draw upon Islamic legal doctrines when interpreting the Contract Act, and statutory reforms reflecting Islamic moral concepts remain scarce.

Academic Commentary and Criticism

Legal scholars in Pakistan have begun to advocate for the formal recognition of good faith. Dr. Muhammad Munir argues that the doctrine, while absent from the text of the Contract Act, is both ethically justified and doctrinally feasible given Pakistan's Islamic identity and comparative legal developments.¹⁵

Others have noted that the absence of good faith creates barriers to **alternative dispute resolution**, international arbitration, and enforcement of cross-border contracts—particularly those governed by instruments like the UNIDROIT Principles or CISG, which presume a duty of good faith.¹⁶ This disjunction may place Pakistani parties at a disadvantage in international trade and reduce the attractiveness of Pakistan as a forum for dispute resolution. In conclusion, Pakistani contract law does not formally recognize the doctrine of good faith as a general principle. The **Contract Act, 1872** lacks the statutory language necessary to ground such a duty, and judicial practice has remained cautious, relying instead on principles of equity and fairness in specific contexts. Nevertheless, case law, Islamic jurisprudence, and comparative trends point to the growing need and doctrinal room for a more explicit recognition of good faith. The next section will explore how this issue has been addressed in other jurisdictions and what lessons Pakistan might learn from their experiences.

¹² "C.a. 389_2015," n.d.

¹³ "Pakistani.Org/Pakistan/Constitution/Preamble.Html," accessed June 24, 2025, <https://www.pakistani.org/pakistan/constitution/preamble.html>.

¹⁴ Editor, Journal of Islamic Business and Management and Zeeshan Ghafoor, "Federal Shar'iah Court's Judgment for Riba-Free Pakistan," *Journal of Islamic Business and Management (JIBM)* 12, no. 01 (June 30, 2022), <https://doi.org/10.26501/jibm/2022.1201-001>.

¹⁵ Intisar A Rabb, Maribel Fierro, and Marina Rustow, "Roundtable on Islamic Law & Legal History [Selections]," n.d.

¹⁶ "(PDF) Towards A Better Understanding of Good Faith Concept in Islamic Contract Law," accessed June 24, 2025, https://www.researchgate.net/publication/329519990_Towards_A_Better_Understanding_of_Good_Faith_Concept_in_Islamic_Contract_Law.

Comparative Legal Analysis

The doctrine of good faith has taken different forms across legal systems. A comparative study is vital not only for understanding how Pakistan's legal framework could evolve, but also for identifying jurisprudential models that balance contractual freedom with moral fairness. This section explores the treatment of good faith in four distinct jurisdictions: the United Kingdom (as the origin of Pakistan's common law framework), India (as a post-colonial peer with shared legal foundations), Islamic law (as an ethical and constitutional influence in Pakistan), and Malaysia (as a dual system harmonizing Islamic and common law principles).

United Kingdom: The Emergence of Contextual Good Faith

For much of its legal history, the United Kingdom has resisted the imposition of a general duty of good faith in contract law. The traditional English common law approach, rooted in classical liberalism, maintains that parties are free to pursue their own self-interest provided they stay within the bounds of established doctrines such as fraud, duress, or misrepresentation.¹⁷

However, this strict contractual autonomy has softened in the 21st century. The seminal judgment in *Yam Seng Pte Ltd v. International Trade Corporation Ltd* (2013) marked a doctrinal shift. Justice Leggatt (now Lord Leggatt) held that the implication of a duty of good faith may be appropriate in "relational contracts" agreements that require long-term cooperation and mutual trust, such as joint ventures and franchise agreements.¹⁸ He noted that "a duty of honesty in contractual performance" could be implied based on the nature of the relationship and the expectations of the parties.

Following this, in *Al Nehayan v. Kent* (2018) and other commercial cases, English courts have shown increased willingness to imply good faith terms in contexts where fairness, loyalty, and cooperation are integral.¹⁹ Nonetheless, these developments remain exceptions rather than the norm. English law continues to favor specificity in drafting over abstract moral duties.

The English experience underscores the possibility of evolving common law doctrine without radical legislative reform a lesson relevant for Pakistani judges seeking interpretive flexibility within existing statutory frameworks.

India: Gradual Judicial Receptiveness

India, like Pakistan, inherited the Indian Contract Act, 1872, and for decades maintained the orthodox common law stance. However, Indian courts have demonstrated increasing openness to the idea of good faith, especially in administrative contracts, consumer law, and arbitration.

In *Central Inland Water Transport Corp. v. Brojo Nath Ganguly* (1986), the Supreme Court invalidated a contract clause as unconscionable, invoking principles of fairness and equality.²⁰ The court emphasized that contractual freedom must be tempered by public interest and moral equity language that resonates with good faith.

¹⁷ "Contract Law (Macmillan Law Masters): McKendrick, Ewan: 9781352012064: Amazon.Com: Books," accessed June 24, 2025, <https://www.amazon.com/Contract-Law-Macmillan-Masters/dp/1352012065>.

¹⁸ Lawprof Team, "Yam Seng PTE Ltd v International Trade Corporation Ltd [2013] EWHC 111 (QB)," *Lawprof.Co* (blog), November 12, 2020, <https://lawprof.co/contract/terms-of-contract-cases/yam-seng-pte-ltd-v-international-trade-corporation-ltd-2013-ewhc-111-qb/>.

¹⁹ "Al Nehayan v Kent [2018] EWHC 333 (Comm) (22 February 2018)," *Practical Law*, accessed June 24, 2025, [https://uk.practicallaw.thomsonreuters.com/D-102-1008?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/D-102-1008?transitionType=Default&contextData=(sc.Default)&firstPage=true).

²⁰ "Central Inland Water ... vs Brojo Nath Ganguly & Anr on 6 April, 1986," accessed June 24, 2025, <https://indiankanoon.org/doc/477313/>.

More recently, Indian courts have adopted the doctrine more explicitly in arbitration-related judgments. In *Associate Builders v. Delhi Development Authority* (2014), the court referred to the parties' duty to act in good faith during arbitral proceedings, consistent with international standards such as the UNCITRAL Model Law.²¹

While India has not yet codified a general good faith duty in its contract law, its judiciary has creatively applied equitable and constitutional principles to uphold fair dealing offering a regional model of incremental doctrinal evolution.

Islamic Law: Ethical Foundations and Doctrinal Support

Islamic contract law, unlike the English system, places strong emphasis on the **moral substance** of contractual relationships. While it does not use the term "good faith" per se, equivalent principles are embedded throughout classical jurisprudence:

- **Amanah (Trust):** Parties must act honestly and not conceal material facts.²²
- **Ihsan (Excellence in dealings):** Encourages generous and fair behavior even beyond legal duty.
- **Gharar (Uncertainty) and Tadlis (Deception):** Prohibited elements, ensuring transparency and fair intention.²³
- **Maqasid al-Shariah (Objectives of Islamic law):** Contracts must serve public interest and avoid harm.

Contracts in Islamic law are not merely formal exchanges of consent but moral covenants rooted in mutual respect and divine accountability. The Qur'an repeatedly commands the fulfillment of promises (*awfu bil-'uqud*) and condemns those who "break their oaths after confirming them."²⁴

This ethical foundation closely mirrors the spirit of good faith and presents a powerful argument for its recognition in Pakistan, an Islamic republic bound by Article 227 of the Constitution to ensure laws conform to Islamic injunctions. Courts in Pakistan could draw directly from Islamic jurisprudence to formulate a contextually relevant doctrine of good faith without breaching the common law framework.

Malaysia: Harmonizing Civil and Shariah Principles

Malaysia presents the most instructive example for Pakistan. As a multi-ethnic, dual-legal system, Malaysia blends English common law with Islamic finance and civil law influences. The Contracts Act 1950, based on the Indian Act of 1872, similarly lacked an explicit good faith provision. However, Malaysian courts and legislators have progressively incorporated the doctrine.

The Malaysian Civil Law Act allows the application of English common law where Malaysian law is silent. Through judicial development, courts have recognized duties of fair dealing in commercial and employment contexts.²⁵

Importantly, the "Islamic Financial Services Act 2013" codifies Shariah-compliant banking practices, including ethical duties and transparent dealings. The Malaysian Central Bank (Bank Negara) and the Shariah Advisory Council regularly issue legally binding guidance that reflects good faith principles.

²¹ "Associate Builders vs Delhi Development Authority on 25 November, 2014," accessed June 24, 2025, <https://indiankanoon.org/doc/31621011/>.

²² "Islamic Jurisprudence | ALSI," October 9, 2023, <https://nyazee.org/product/islamic-jurisprudence/>.

²³ "Islamic Commercial Law Mohammad Hashim | PDF | Futures Contract | Hedge (Finance)," accessed June 24, 2025, <https://www.scribd.com/document/727850989/Islamic-Commercial-Law-Mohammad-Hashim>.

²⁴ "Surah Al-Ma'idah 5:1-5 - Towards Understanding the Quran - Quran Translation Commentary - Tafheem Ul Quran," accessed June 24, 2025, <https://www.islamicstudies.info/tafheem.php?sura=5>.

²⁵ "View of GOOD FAITH IN CONTRACT LAW: THE MALAYSIAN PERSPECTIVE," accessed June 24, 2025, <https://adum.um.edu.my/index.php/JMCL/article/view/61845/18388>.

Furthermore, the establishment of “**Muamalat Courts**” specialized benches to handle Islamic commercial disputes—has institutionalized the integration of Shariah and common law, creating a hybrid jurisprudence that promotes both fairness and enforceability.²⁶

For Pakistan, Malaysia offers a practical model of how legal reform, judicial innovation, and religious legitimacy can be harmonized to advance a doctrine of good faith suited to local needs.

The comparative analysis reveals multiple pathways for Pakistan. The United Kingdom demonstrates how common law can adapt to commercial realities through judicial interpretation. India offers a South Asian model of doctrinal evolution rooted in equity and constitutionalism. Islamic law provides a moral and theological foundation that naturally supports good faith. Malaysia, finally, illustrates how legislative reform and institutional innovation can reconcile tradition with modernity.

These models suggest that the incorporation of good faith into Pakistani contract law need not require a complete legal overhaul. Rather, it calls for judicial willingness, selective legislative amendments, and alignment with Islamic ethical values already embedded in Pakistan’s legal culture. The next section explores the practical implications of good faith (or its absence) for commercial contracts and business relationships in Pakistan.

Implications for Business Contracts in Pakistan

The absence of a clear and enforceable doctrine of good faith in Pakistani contract law has far-reaching consequences for the country’s commercial environment. As businesses increasingly engage in complex, long-term, and cross-border transactions, the lack of a unified standard for honest and fair dealing creates legal uncertainty, discourages investment, and complicates dispute resolution. This section examines the implications of this doctrinal gap for Pakistani commercial practice, particularly in the areas of contract negotiation, performance, dispute resolution, and foreign investment.

Legal Uncertainty and Commercial Risk

One of the most immediate effects of not recognizing good faith as a general contractual obligation is legal uncertainty. In jurisdictions where good faith is an established doctrine, parties can rely on the expectation that contracts will be interpreted and enforced in a manner that upholds honest conduct, fair negotiation, and cooperative performance. In Pakistan, however, this expectation remains ambiguous.

For example, in long-term contracts such as joint ventures, distributorships, and infrastructure development agreements, parties often rely on mutual cooperation and evolving obligations. Without a general duty of good faith, a dominant party may exploit contractual loopholes or ambiguities without fear of judicial reproach, provided their actions do not violate the letter of the contract.²⁷

This legal vacuum creates a risk-laden environment, particularly for smaller or less powerful commercial actors who may lack the bargaining strength or legal resources to protect their interests through detailed drafting.

Increased Litigation and Transaction Costs

In the absence of a default legal standard of fair dealing, contracting parties are compelled to invest significant time and resources in over-specifying contract terms, anticipating every potential point of conflict. This “defensive drafting” not only increases transaction costs, but

²⁶ Christopher Ifeanyi Ezekwe, “INTERNATIONAL JOURNAL OF RESEARCH AND INNOVATION IN SOCIAL SCIENCE (IJRISS),” *SSRN Electronic Journal*, 2025, <https://doi.org/10.2139/ssrn.5065151>.

²⁷ Michael Ilg, “The Cost of Honest Contract Performance,” *U.B.C. Law Review / UBC Law Review* 57 (2024): 819.

also makes contracts lengthy and rigid, limiting their adaptability to unforeseen developments.²⁸

Moreover, the absence of a guiding principle like good faith leads to more frequent litigation, as disputes over performance, interpretation, or breach are decided without a coherent doctrinal framework. Courts are forced to rely on piecemeal solutions such as equity or unjust enrichment without addressing the underlying problem: the absence of mutual trust embedded in legal obligations.

This litigious environment not only delays dispute resolution but also undermines confidence in the contractual process.

Hindrance to Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) mechanisms such as arbitration, mediation, and conciliation depend heavily on principles of fairness, cooperation, and voluntary compliance. In international commercial arbitration, tribunals often apply rules like the UNIDROIT Principles or CISG, which presume a baseline duty of good faith.

The lack of domestic recognition of good faith places Pakistani businesses at a disadvantage in ADR proceedings. They may find themselves subject to unfamiliar legal expectations in foreign forums or, conversely, may resist such expectations in local forums leading to inconsistent outcomes.²⁹

Furthermore, the inconsistency between domestic contract law and international standards creates friction in enforcing foreign arbitral awards under the New York Convention, to which Pakistan is a party. This misalignment weakens the attractiveness of Pakistan as a forum for arbitration or commercial dispute resolution.

Impediments to Foreign Investment

Foreign investors seek legal environments that offer predictability, fairness, and enforceability of contracts. The absence of a doctrine of good faith in Pakistani contract law can deter investment in several ways:

- It signals that the legal system may favor formalism over substantive fairness, particularly when contract terms are silent or ambiguous.
- It exposes foreign investors to opportunistic behavior by local partners, without recourse to a recognized doctrine that would hold them to a standard of fair dealing.
- It leads to complex contract negotiations, where every aspect must be detailed explicitly, reducing flexibility and increasing the cost of doing business.

In comparison, jurisdictions that recognize good faith—whether through judicial interpretation or statutory codification offer greater commercial certainty, thereby enhancing their attractiveness to international investors.³⁰

Undermining Ethical Business Practices

²⁸ Muhammad Khalid Hayat, "AN OVERVIEW OF FOREIGN INVESTMENT LAWS ENFORCED IN PAKISTAN," *Journal of Social Sciences and Humanities* 55, no. 2 (December 31, 2016): 135–54, <https://doi.org/10.46568/jssh.v55i2.74>.

²⁹ "(PDF) Challenges to Commercial Arbitration of Pakistan: Judicial Intervention and Bad Faith of Parties," accessed June 24, 2025, https://www.researchgate.net/publication/389900646_Challenges_to_Commercial_Arbitration_of_Pakistan_Judicial_Intervention_and_Bad_Faith_of_Parties.

³⁰ Komal Sarwar, "UNLEASHING THE POTENTIAL OF FOREIGN INVESTMENT IN PAKISTAN: A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK, FLAWS, AND RECOMMENDATIONS FOR PROMOTING SUSTAINABLE ECONOMIC GROWTH," *Pakistan Journal of International Affairs* 7, no. 2 (June 20, 2024), <https://doi.org/10.52337/pjia.v7i2.1086>.

Perhaps most fundamentally, the absence of a good faith obligation undermines the development of an ethically grounded commercial culture in Pakistan. Business is not merely about transactions; it is about relationships built on trust, transparency, and reciprocity.

From an Islamic perspective, this issue becomes even more pronounced. Islamic commercial law emphasizes trust (*amanah*), intention (*niyyah*), and fair dealing (*ihsan*) as essential elements of every contract.³¹ The failure to reflect these values in the legal enforcement of contracts creates a moral dissonance between the religious ideals professed by society and the legal principles actually applied in court.

Such inconsistency risks eroding public confidence in the justice system and contributes to the broader problem of weak rule of law in the country.

Business Sector Feedback and Reform Demands

Stakeholders in Pakistan's business community—particularly in the finance, insurance, construction, and energy sectors—have increasingly called for reforms that would clarify and enforce ethical standards in contractual relationships. A number of Chambers of Commerce and Industry have proposed that Pakistan adopt standard-form contracts and model commercial codes based on international best practices, many of which incorporate express duties of good faith.³²

Additionally, professional legal bodies, such as the Pakistan Bar Council and law faculties of major universities, have begun advocating for judicial training in commercial equity and legislative reform to align Pakistan's contract law with global norms.

The absence of a formal duty of good faith in Pakistani contract law imposes substantial costs on the country's business environment. It fosters uncertainty, increases litigation, hinders alternative dispute resolution, deters foreign investment, and undermines ethical norms rooted in Islamic tradition. Recognizing good faith either through judicial innovation or legislative reform—is not just a matter of legal modernization but a necessary step toward fostering a fair, efficient, and morally coherent commercial ecosystem in Pakistan.

Arguments for Reform

The analysis in preceding sections has established that while the doctrine of good faith is not formally recognized in Pakistani contract law, there are strong ethical, doctrinal, and practical justifications for its incorporation. This section outlines arguments for reform from legal, economic, theological, and comparative perspectives and offers suggestions for how such reform might be structured in Pakistan.

Legal Justification: Filling Doctrinal Gaps and Promoting Coherence

Pakistani contract law, primarily based on the Contract Act, 1872, lacks a coherent principle to address fairness and moral obligations during the performance and enforcement of contracts. While certain provisions such as those relating to misrepresentation, mistake, and coercion, offer specific remedies for defective consent, they do not impose a proactive obligation of fair dealing.

The result is a fragmented jurisprudence where equitable relief is granted inconsistently, and parties often have no recourse when faced with dishonest conduct that does not rise to the level of legal fraud. The recognition of a general duty of good faith would offer a unifying principle that courts could invoke to evaluate conduct across the full life cycle of contracts.³³

³¹ "Islamic Jurisprudence | ALSI."

³² "February_LCN_2023," n.d.

³³ "(PDF) Towards A Better Understanding of Good Faith Concept in Islamic Contract Law," accessed June 24, 2025, https://www.researchgate.net/publication/329519990_Towards_A_Better_Understanding_of_Good_Faith_Concept_in_Islamic_Contract_Law.

In this sense, judicial adoption or legislative codification of good faith would fill doctrinal gaps, making contract law more coherent and principled.

Commercial Necessity: Enabling Trust in Business Relationships

In modern economies, commercial contracts often go beyond one-off transactions and instead involve long-term, relational engagements that require cooperation, trust, and good will. Examples include franchise agreements, outsourcing contracts, technology licenses, and public-private partnerships.

In the absence of a duty of good faith, stronger parties can exploit technicalities or asymmetries in power, leading to inequitable outcomes and reputational damage. A general principle of good faith would mitigate these risks by discouraging opportunistic behavior and fostering predictability and mutual respect in commercial dealings.³⁴

Reform would also enhance Pakistan's credibility in international trade and investment by aligning its legal system with global standards, such as the UNIDROIT Principles, CISG, and WTO norms all of which incorporate good faith as a baseline expectation.

Islamic Ethical Framework: Shariah Compatibility and Constitutional Mandate

As noted in earlier sections, Islamic jurisprudence provides strong support for principles analogous to good faith. Obligations rooted in *amanah* (trust), *ihsan* (benevolence), and *sidq* (truthfulness) are central to Islamic commercial ethics.³⁵

These values are not merely moral ideals but form legal obligations in Islamic law, enforceable in contracts such as *mudarabah*, *ijarah*, and *murabaha*. Recognizing a doctrine of good faith in Pakistani law would therefore strengthen the country's Islamic legal identity and fulfill its constitutional mandate under Article 227, which requires laws to conform to Islamic injunctions.³⁶

Thus, reforming the law to include good faith would not only be doctrinally compatible with Shariah but morally desirable and constitutionally consistent.

Comparative Lessons: Pathways to Reform

As seen in Malaysia, India, and even the UK, legal systems rooted in the common law tradition have evolved flexible approaches to incorporating good faith:

- **Malaysia** has integrated Shariah values and good faith through both judicial innovation and legislative enactments, particularly in the Islamic financial sector.³⁷
- **India** has used constitutional values and public policy exceptions to expand equitable doctrines akin to good faith.
- **England** has embraced a relational contract theory, allowing implied duties of honesty and cooperation in long-term commercial relationships.

These examples demonstrate that Pakistan does not require a full codification of good faith at once. A gradualist approach, combining judicial development with sector-specific legislation, may be more effective and contextually appropriate.

Proposed Legal Reforms

Legal reform to incorporate good faith into Pakistani contract law can take multiple forms:

A. Judicial Recognition through Case Law

Courts can begin to explicitly recognize good faith as an implied term in certain categories of contracts particularly those involving long-term relationships, fiduciary duties, or significant

³⁴ "The Doctrine of Good Faith Case | LawTeacher.Net," accessed June 24, 2025, <https://www.lawteacher.net/free-law-essays/trading-law/the-doctrine-of-good-faith-case.php>.

³⁵ Shaykh Mufti Taqi Usmani, *An Introduction To Islamic Finance By Shaykh Mufti Taqi Usmani*.

³⁶ "Islamic Law In Pakistan - A Legal Perspective," accessed June 24, 2025, <https://zenithlaws.com/islamic-law-in-pakistan/>.

³⁷ Shaykh Mufti Taqi Usmani, *An Introduction To Islamic Finance By Shaykh Mufti Taqi Usmani*.

power imbalances. The judiciary can draw upon Islamic values and comparative precedents to guide their reasoning.

B. Legislative Amendment to the Contract Act, 1872

A simple legislative addition to the Contract Act could formalize the doctrine. For example: “Section 3A: Every contract shall be performed and enforced in accordance with the requirements of honesty, fairness, and good faith, unless expressly excluded by the parties.” Such a provision would create a default rule, giving parties the autonomy to contract out of the duty, while signaling a legal preference for ethical dealing.

C. Sector-Specific Reforms

Good faith obligations could be introduced incrementally in regulated sectors such as banking, insurance, consumer protection, and public procurement. This would allow legal doctrine to evolve based on practical experience and stakeholder feedback.

D. Judicial Training and Guidelines

Pakistan’s Judicial Academy and Bar Councils should include modules on good faith and comparative contract law in continuing legal education. Such training would help judges and lawyers apply the doctrine with greater consistency and clarity.

Anticipated Challenges

Despite the compelling case for reform, certain challenges remain:

- **Resistance from commercial actors** who fear increased uncertainty or judicial discretion.
- **Judicial conservatism**, especially among older judges trained in traditional common law reasoning.
- **Lack of institutional coordination** between courts, legislators, and Islamic jurists.

However, these challenges are not insurmountable. Legal reform is always a process of negotiation, experimentation, and consensus-building. With careful design and incremental implementation, Pakistan can modernize its contract law while remaining faithful to its constitutional and ethical traditions.

The case for incorporating good faith into Pakistani contract law is persuasive on multiple grounds: legal coherence, commercial necessity, Islamic ethics, and comparative precedent. Whether through judicial recognition or legislative amendment, the adoption of good faith would modernize Pakistan’s contract law, reduce transactional disputes, and foster a business environment rooted in fairness and trust.

Conclusion

In this paper, the many-sided role of the doctrine of good faith in Pakistan contract law has been identified, along with its historical background, conceptual basis, as well as its comparative expressions. It has established that, unlike in Canada and the UK whose legal cultures have not been founded on Roman-derived civil law traditions, although it is increasingly common in the common law countries, good faith remains conspicuously absent between the lines of Pakistan notorious Contract Act, 1872. The judiciary although supportive of the concepts of fairness and dealing honestly has done so only selectively by means of fair maxims, exceptions to general rules of policy, and case-specific determinations of misrepresentation and unconscionability and not by means of a unifying duty.

The logicity and adequacy of formally recognizing good faith are emphasized by means of comparative analysis. Contextual doctrine In the United Kingdom, contextual doctrine of honesty and cooperation have developed in relational contracts; in India, courts have used fairness to qualify autonomy of contracts and in Malaysia, good faith has been codified by laws coupled with institutional providers of the Shariah; and good faith has taken ethical form of trust (amanah), transparency, and benevolence in Islamic jurisprudence, in clear similarity to the Western notion of good faith. The latter examples show that Pakistan does not have to

oppose strict common law formalism and overall civil law codification; there may be a middle ground that is based on Pakistani Islamic identity, best international practices, and the expediency of everyday business.

Lack of general duty of good faith in Pakistan is also very costly in terms of its creation of legal indeterminacy in practices, increasing costs of transaction and litigation, prejudice to alternative dispute resolution as well as discouraging both domestic and foreign investment. Besides, it leads to a moral contradiction between Islamic traditions expressed in the shrine of the state and the secular contractual dogmas that are in reality applied in state courts. This dissonance is not desirable and not sustainable in a country that pledged itself to align its laws to the Islamic injunctions under the constitution. Accordingly, this paper has set forth a series of reform proposals:

1. **Judicial Recognition:** In suitable categories of obligations, court should make an implied duty of good faith by reference to comparative jurisprudence and Islamic moral values.
2. **Legislative Amendment:** Legislative Amendment: A short addition to the [Contract Act, 1872] e.g. Section 3A: Every contract to be performed whereof in good faith and fair dealing unless otherwise varied by the parties), would come in as a default that would not limit party autonomy.
3. **Sector-Specific Initiatives:** Sector Specific Initiatives: Strategic legislations in the areas of finance, construction, insurance as well as in the area of public procurement could pilot the good faith obligation and doctrinal development then occurs on a gradual basis.
4. **Institutional Capacity Building:** Institutional Capacity Building: A specific course on good faith, comparative contract law and Islamic commercial ethics should be introduced to the judicial academies, bar councils, and law schools on Islamic commercial law to bring about uniform application.
5. **Centralized Shariah Guidance:** Centralized Shariah Advice: To conform with its Islamic character, Pakistan could set up a National Shariah body, which could provide its interpretation of good faith and other concomitant ethical obligations to commercial agreements which would be binding.

The combination of these measures would clarify the definition of a Pakistani contract law and turn it into a coherent system of norms based on honesty, cooperation, and justice. It would also support the constitutional emphasis of the Islamic principles in the country, enhance investor confidence, lessen the burden of litigation and develop the culture of ethical business.

Finally, good faith is not all about some abstract legal idea, but rather a pillar of trust where every commercial ecosystem is built. Only by adopting good faith expressly, Pakistan can update its contract law, harmonize its professional practice with the international law and Islamic ethics, and establish an environment, in which businesses and citizens are safer, more stable, and prosperous.

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