



The Law of Contract in Bangladesh: Colonial Legacy, Judicial Practice and the Need for Reform

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Acknowledgement

At first, thanks to Almighty, who has been kind enough to let me complete this Thesis paper in right time.

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DECLARATION

I do hereby that this Research Monograph on **The Law of Contract in Bangladesh: Colonial Legacy, Judicial Practice and the Need for Reform** have been done by me and this Research is free from all plagiarism and without help of other. I further declare that this monograph is prepared with my own effort and it was not and never submit to any institute for any academic reason.

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CERTIFICATION

This is to certify that the thesis on **The Law of Contract in Bangladesh: Colonial Legacy, Judicial Practice and the Need for Reform** is done by **Aysha Siddika** in partial fulfillment of the requirements for the degree of LL.B. (Honours) from Sonargaon University, Dhaka. The thesis has been carried out under my guidance and is a record of the bonafide work carried out successfully.

.....
Professor A. S. M. Tariq Iqbal
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Letter of Transmittal

To,

Professor A. S. M. Tariq Iqbal
Dean, Faculty of Arts and Humanities,
Sonargaon University

Subject: For the submission of thesis paper titled “The Law of Contract in Bangladesh: Colonial Legacy, Judicial Practice, and the Need for Reform.”

Dear Sir,

With due respect and humble submission, I am honored to present my thesis paper titled **The Law of Contract in Bangladesh: Colonial Legacy, Judicial Practice, and the Need for Reform.** which has been prepared as a partial requirement for the completion of my Bachelor of Laws (LL.B Honours) under the Department of Law at Sonargaon University.

This research has been carried out with utmost sincerity and dedication. I have made every effort to maintain the required academic standards and present a comprehensive analysis on the chosen topic. I respectfully submit this work for your kind perusal and academic evaluation.

If any clarification or further information regarding this thesis is needed, I will remain available at your convenience.

Yours faithfully,

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Abstract

This thesis examines the law of contract in Bangladesh, focusing on its colonial origins, judicial practice, and the urgent need for reform. The Contract Act, 1872, largely inherited from British colonial legislation, continues to serve as the primary legal framework governing contractual relations in Bangladesh. However, the law faces challenges arising from outdated provisions, unequal bargaining power, standard-form contracts, and the emergence of digital and electronic transactions. Through a doctrinal and analytical approach, this study evaluates the essential elements of a valid contract, classification, performance, discharge, and breach, alongside the role of the judiciary in interpreting the law and reliance on English and Indian precedents. It highlights significant gaps in consumer protection, digital contract recognition, and enforcement mechanisms, which hinder commercial efficiency and fairness. The thesis proposes comprehensive legal reforms, including modernization of outdated clauses, recognition of electronic contracts, regulation of standard-form contracts, consumer protection integration, alignment with international principles, and judicial guidance and training. It also emphasizes the synergistic roles of the legislature, judiciary, and policy makers in implementing these reforms effectively. The study concludes that reforming Bangladesh's contract law is both a legislative and socio-economic imperative, necessary to ensure legal certainty, fairness, efficiency, digital readiness, and investor confidence, thereby contributing to the sustainable economic development of the country.

Table of Contents

<u>Chapter One: Introduction</u>	
1.1. Statement of the Problem	01
1.2. Research Question	02
1.3. Objectives of the Study	02
1.4. Literature Review	03
1.5. Methodology of the Study	05
1.6. Analytical Framework	05
1.7. Limitations of the Study	07
<u>Chapter Two: Historical Background of the Contract Law in Bangladesh</u>	
2.1. Origin of the Contract Act, 1872	09
2.2. Influence of English Common Law	10
2.3. Post-Independence Continuity and Colonial Legacy	11
<u>Chapter Three: Conceptual Framework of Contract Law</u>	
3.1. Essential Elements of a Valid Contract	12
3.2. Classification of Contracts	14
3.3. Performance, Discharge, and Breach of Contract	15
<u>Chapter Four: Judicial Practice in Bangladesh</u>	
4.1. Role of the Judiciary in Interpreting Contract Law	18
4.2. Use of English and Indian Precedents	19
4.3. Landmark Contract Law Decisions in Bangladesh	21
4.4. Outdated Legal Provisions	22
4.5. Unequal Bargaining Power and Unfair Contracts	24
4.6. Consumer Protection and Standard Form Contracts	26
4.7. Digital and Electronic Contracts	28
<u>Chapter Five: The Need for Reform in Bangladesh's Contract Law</u>	
5.1. Rationale for Reform	30
5.2. Proposed Areas of Legal Reform	32
5.3. Role of Legislature, Judiciary, and Policy Makers	34

<u>Chapter Six: Conclusions & Recommendations</u>	
6.1. Conclusions and	36
6.2. Recommendations	37
Bibliography	39

Chapter One: Introduction

1.1. Statement of the Problem

The law of contract in Bangladesh is predominantly governed by the Contract Act, 1872, a statute enacted during the British colonial period to regulate commercial relations in British India.¹ Despite Bangladesh's independence in 1971, this colonial-era legislation continues to operate with minimal amendment, raising fundamental concerns regarding its relevance, adequacy, and responsiveness to contemporary legal and economic realities.² The Act was framed in the nineteenth century to serve colonial commercial interests and was not designed to address the socio-economic conditions of a modern developing state.

Over time, Bangladesh has experienced significant transformations in trade, commerce, technology, and labor relations. However, the existing contract law framework has failed to evolve accordingly. The Contract Act, 1872 does not sufficiently address electronic contracts, online transactions, digital consent, smart contracts, or cross-border commercial dealings, which have become integral to modern economic activity. This legislative stagnation has created uncertainty and inefficiency in enforcing contractual rights and obligations.

Another critical problem lies in the lack of protection against unequal bargaining power. The traditional doctrine of freedom of contract, inherited from English common law, assumes equality between contracting parties—an assumption that is often unrealistic in the context of Bangladesh. Consumers, employees, and small entrepreneurs frequently enter into standard-form contracts where consent is more formal than real, yet the law provides limited remedies against unfair or unconscionable terms.³ This undermines substantive justice and weakens trust in contractual enforcement.

Judicial practice in Bangladesh has attempted to mitigate these shortcomings through purposive interpretation and reliance on principles of equity, justice, and good conscience. Courts often draw upon English and Indian precedents to fill legislative gaps. However, excessive dependence

¹ Md. Zakir Hossain, *Legal System of Bangladesh* (University Press Limited 2015).

² Mizanur Rahman, 'Challenges of E-Commerce and Contract Law in Bangladesh' (2020) 31 *Dhaka University Law Journal* 45.

³ P.S. Atiyah, *An Introduction to the Law of Contract* (6th edn, Oxford University Press 2005).

on judicial discretion has resulted in inconsistency, unpredictability, and procedural delays, as judges remain bound by the rigid structure of the Contract Act, 1872. Judicial interpretation alone cannot substitute for comprehensive legislative reform.

Moreover, Bangladesh's contract law framework remains insufficiently aligned with international commercial standards, such as the UNIDROIT Principles and modern contract codes adopted in other common law jurisdictions. This misalignment adversely affects foreign investment, international trade, and dispute resolution mechanisms, posing challenges to sustainable economic development.

Therefore, the core problem addressed in this study is whether a contract law system rooted in colonial legacy and sustained primarily through judicial adaptation can effectively serve the needs of contemporary Bangladesh, or whether comprehensive legal reform is essential to ensure fairness, certainty, and compatibility with modern commercial and technological realities⁴.

1.2. Research Question

- How has the colonial legacy of the Contract Act, 1872 shaped the development and application of contract law in Bangladesh?
- To what extent has judicial practice in Bangladesh addressed the limitations of colonial-era contract law in responding to contemporary contractual and commercial challenges?
- What reforms are necessary to modernize the law of contract in Bangladesh to ensure fairness, legal certainty, and alignment with modern commercial and technological realities?

1.3. Objectives of the Study

- To analyze the colonial legacy of the Contract Act, 1872 and its impact on the present contract law of Bangladesh.
- To examine the role of judicial practice in interpreting and adapting contract law to contemporary legal and commercial challenges.

⁴ Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012).

- To identify existing shortcomings in Bangladesh’s contract law and propose necessary legal reforms for its modernization.

1.4. Literature Review

The law of contract in Bangladesh has been widely discussed in legal scholarship, particularly in relation to its colonial origin, doctrinal foundations, judicial interpretation, and need for reform. The following review critically examines key books and authoritative texts that shape the academic discourse on contract law in Bangladesh and comparable common law jurisdictions.

A. B. Siddique provides one of the most comprehensive expositions of the Contract Act, 1872, explaining its foundational principles such as offer, acceptance, consideration, free consent, and lawful object.⁵ He emphasizes that although the Act has ensured legal certainty for decades, many provisions remain rigid and unsuitable for modern commercial transactions, particularly in the context of globalization and electronic commerce.

Md. Zakir Hossain examines the historical development of Bangladesh’s legal system, highlighting how colonial legislation, including the Contract Act, continues to influence contemporary legal practice. He argues that the persistence of colonial statutes without significant reform has resulted in a mismatch between law and socio-economic realities.

P. S. Atiyah’s seminal work critiques the classical doctrine of freedom of contract, arguing that absolute contractual freedom often ignores power imbalances between parties. His analysis is highly relevant to Bangladesh, where standard-form contracts and unequal bargaining power dominate modern transactions.

Mohammed Shahjalal and Md. Riad Hasan analyze contract law from a Bangladesh perspective, combining statutory provisions with judicial decisions. They highlight the judiciary’s reliance on English and Indian precedents and argue that excessive dependence on foreign case law sometimes undermines contextual justice⁶.

⁵ A. B. Siddique, *Law of Contract (Including Partnership & Sale of Goods)* (Kamrul Book House 2017).

⁶ Mohammed Shahjalal & Md. Riad Hasan, *Law of Contract* (National Law Book House 2022).

Md. Ariful Islam, writing in *Bangla*, makes contract law accessible to local scholars and practitioners. He critically discusses doctrines such as consent, coercion, undue influence, and misrepresentation, emphasizing the need for stronger legal protection for weaker parties in contractual relationships.

Md. Rafiqul Islam explores contract law within the broader framework of business law in Bangladesh. He stresses that outdated contractual doctrines hinder commercial efficiency and discourage foreign investment, calling for harmonization with international commercial principles.

Anson's *Law of Contract*, a classical English text, provides doctrinal clarity on contract formation and enforcement. Although not written for Bangladesh, it heavily influences judicial reasoning due to the shared common law heritage, reinforcing the colonial continuity of contract jurisprudence.

Pollock and Mulla's commentary on the Indian Contract Act offers a detailed comparative perspective, particularly relevant because the Bangladeshi Contract Act is almost identical to the Indian statute. The authors highlight interpretative challenges and evolving judicial trends, which Bangladeshi courts frequently rely upon.

Treitel's work on contract law focuses on remedies, breach, and performance, emphasizing flexibility and fairness in enforcement. His arguments support the need to modernize remedies under Bangladeshi law, especially in commercial and digital contracts.

Finally, the UNIDROIT Principles of International Commercial Contracts represent a modern, harmonized approach to contract law. Although not binding, these principles are widely regarded as persuasive authority and provide a strong model for reforming Bangladesh's contract law in line with international standards.

1.5. Methodology of the Study

This study adopts a doctrinal and qualitative research methodology to examine the law of contract in Bangladesh, with particular focus on its colonial legacy, judicial practice, and the need for reform. The research is primarily based on the analysis of legal texts, statutes, judicial decisions, and scholarly writings, rather than empirical or statistical data. The doctrinal method is used to analyze the provisions of the Contract Act, 1872, identifying outdated principles, interpretative challenges, and gaps in the existing legal framework. This involves a systematic examination of statutory provisions relating to contract formation, performance, discharge, breach, and remedies, in light of contemporary commercial and social realities.

A case law analysis forms a significant part of the methodology. Decisions of the Supreme Court of Bangladesh and relevant High Court Division cases are examined to understand how courts have interpreted and applied contract law principles. Particular attention is given to judicial reliance on English and Indian precedents, highlighting both their usefulness and limitations in the Bangladeshi context.

The study also employs a comparative approach, drawing on English common law, Indian contract law, and international principles, such as the UNIDROIT Principles of International Commercial Contracts. This comparative analysis helps identify best practices and reform models that may be adapted to Bangladesh's legal system.

The research relies on secondary sources, including textbooks, journal articles, law reports, government publications, and international legal instruments. No primary empirical data, surveys, or interviews are used, as the study focuses on legal doctrine and normative analysis.

1.6. Analytical Framework

The analytical framework provides a structured approach to examine the historical, judicial, and contemporary aspects of contract law in Bangladesh. It allows the researcher to systematically assess how colonial-era legislation has shaped legal practice, how judicial interpretation has adapted it to modern contexts, and what reforms are necessary for a dynamic legal system.

The Contract Act, 1872, enacted during the British colonial period, forms the foundation of contract law in Bangladesh. The colonial legacy manifests in doctrines such as freedom of contract, the rigid principle of consideration, and limited protection for weaker parties. These principles were originally designed to facilitate colonial commercial interests and maintain uniformity across British India. Despite Bangladesh gaining independence in 1971, the Act continues to operate largely unchanged, leaving legal practitioners and courts bound by nineteenth-century concepts. Analyzing the colonial origins allows the researcher to understand the historical rationale of existing doctrines and assess their suitability in contemporary economic and social contexts⁷.

Judicial interpretation plays a critical role in bridging the gap between colonial-era legislation and modern commercial realities. Courts in Bangladesh frequently interpret the provisions of the Contract Act, 1872 in light of principles of equity, justice, and good conscience.⁵ Landmark decisions illustrate how courts adapt rigid statutory provisions to ensure fairness, such as in cases of misrepresentation, undue influence, and unconscionable contracts.⁶ This dimension involves analyzing judicial reasoning, identifying patterns of interpretation, and assessing whether courts effectively address gaps in statutory law. Judicial practice also reveals inconsistencies and limitations, such as delays, unpredictability, or lack of harmonization with international commercial norms, which underscore the need for statutory reform.⁷

Modern challenges, such as digital transactions, e-commerce, consumer protection, and international trade, reveal limitations in the colonial-era framework.⁸ The Contract Act, 1872 does not explicitly recognize electronic contracts, digital signatures, or smart contracts, creating uncertainty in commercial enforcement. Additionally, issues like unequal bargaining power, standard-form contracts, and consumer exploitation require enhanced legal protection. Comparative analysis with international standards, such as the UNIDROIT Principles of International Commercial Contracts, highlights gaps in Bangladesh's statutory framework and provides benchmarks for reform. This aspect of the analytical framework helps identify

⁷ P.S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford University Press 1979).

legislative, judicial, and policy-level interventions required to modernize contract law and make it responsive to socio-economic and technological changes⁸.

A doctrinal approach is used to examine statutory provisions, textbooks, and commentaries to understand the foundational principles of contract law. This includes analyzing essential elements of contracts such as offer, acceptance, consideration, capacity, free consent, and breach. Doctrinal analysis helps the researcher evaluate whether these principles, inherited from the colonial era, continue to serve the needs of modern commercial and civil interactions in Bangladesh. It provides a theoretical basis for assessing legal gaps and areas for reform.

Examining landmark cases allows the researcher to study how courts interpret and apply the law in real-world scenarios. This involves reviewing Supreme Court and High Court judgments to assess consistency, fairness, and alignment with contemporary commercial practice. Judicial case studies reveal the practical challenges of enforcing colonial-era statutes and provide empirical insights into how judicial innovation has attempted to address legal deficiencies.

Comparing Bangladesh's contract law with other common law jurisdictions and international legal instruments offers guidance for reform. This includes assessing the alignment of domestic law with global standards, such as the UNIDROIT Principles, and studying reforms in jurisdictions like India, the UK, and Singapore. Comparative analysis helps identify best practices, alternative statutory frameworks, and legislative innovations that could strengthen Bangladesh's contract law⁹.

1.7. Limitations of the Study:

Every research study faces inherent limitations, and this thesis is no exception. While the study aims to provide a comprehensive analysis of contract law in Bangladesh, several constraints must be acknowledged:

- The study focuses primarily on the Contract Act, 1872, its colonial legacy, judicial interpretation, and the need for reform. Other related areas of law, such as consumer

⁸ UN Convention on the Use of Electronic Communications in International Contracts, 2005.

⁹ Mabia Khatun, *Free Consent and the Law of Contract: A Comparative Analysis* (SSRN, Oct 2025).

protection law, corporate law, or international trade law, are considered only to the extent they intersect with contractual issues. Consequently, the findings may not cover all legal dimensions impacting contracts in Bangladesh comprehensively.

- The thesis relies mainly on secondary sources such as books, journal articles, legislative texts, and judicial decisions. Primary data, including interviews with legal practitioners, judges, or commercial stakeholders, is limited or absent. This reliance on secondary sources may restrict insights into practical implementation challenges and real-world application of contract law.
- Judicial case studies and statutory analysis are limited to decisions and legal developments available up to 2025. Any changes in law, landmark judgments, or regulatory developments after this period are not considered, which may affect the contemporary applicability of recommendations.
- The research focuses on Bangladesh as a jurisdiction, although comparative references are made to international contract law principles and practices. However, the comparative analysis is selective and primarily used to inform recommendations rather than provide a full-scale comparative legal study.
- The thesis employs a doctrinal and analytical approach, including case law analysis, literature review, and comparative study. Empirical research methods, such as surveys or interviews, are not incorporated, limiting the assessment of practical challenges, stakeholder perceptions, and real-life implications of contract law.
- While the thesis addresses emerging challenges like digital contracts and e-commerce, the rapidly evolving technological and commercial landscape may create new legal issues that are not fully captured within the study.

Chapter Two: Historical Background of the Contract Law in Bangladesh

2.1. Origin of the Contract Act, 1872:

The Contract Act, 1872 of Bangladesh traces its origin to the Indian Contract Act, 1872, enacted during the British colonial period in India. The primary objective of the Act was to codify the existing principles of contract law, largely derived from English common law, to create a uniform legal framework for contractual relationships across British India. Before its enactment, contract law in the Indian subcontinent was largely based on judicial decisions, customary law, and mercantile practices, which were inconsistent and fragmented¹⁰.

The Act was introduced to provide clarity, certainty, and predictability in commercial and civil transactions, ensuring that parties could rely on a standard set of rules for forming and enforcing contracts. It incorporated key doctrines such as offer and acceptance, consideration, free consent, capacity to contract, and remedies for breach of contract, all influenced by English legal principles¹¹.

Following the partition of India in 1947, the Indian Contract Act continued to operate in the territory that became East Pakistan, and after Bangladesh's independence in 1971, it was retained as the Contract Act, 1872. Despite minor amendments over the years, the Act remains largely unchanged in its colonial form, reflecting the historical continuity of legal institutions from the British era to present-day Bangladesh¹².

The colonial origin of the Contract Act has both advantages and limitations. On one hand, it provides a structured legal framework and continuity with common law principles; on the other hand, it carries inherent rigidity and lacks provisions to address modern commercial realities, such as electronic contracts, e-commerce transactions, and consumer protection mechanisms.⁸ Scholars and practitioners have often highlighted the need to reform and modernize the Act to reflect contemporary economic, social, and technological contexts.

¹⁰ Contract Act 1872 (Bangladesh) (Act IX of 1872).

¹¹ Md. Zakir Hossain, *Legal System of Bangladesh* (University Press Limited 2015).

¹² A. B. Siddique, *Law of Contract (including Partnership & Sale of Goods)* (Kamrul Book House 2017).

2.2. Influence of English Common Law:

The Contract Act, 1872 of Bangladesh is deeply rooted in English common law, as it was codified during the British colonial period to transplant key legal principles from England to the Indian subcontinent.¹³ The Act was designed to systematize contractual relationships using doctrines that had evolved in English courts over centuries, including offer and acceptance, consideration, capacity to contract, free consent, and remedies for breach of contract.

English common law influenced both the substantive and procedural aspects of contract law in Bangladesh. Substantively, doctrines such as consideration—the requirement that a contract must be supported by something of value—were directly adopted from English law.³ Similarly, principles of privity of contract, which restrict the enforceability of contractual rights and obligations to parties to the contract, were embedded into the colonial framework. Procedurally, the Act drew upon English legal reasoning and interpretation techniques, relying on judicial precedents to resolve disputes and clarify statutory ambiguities¹⁴.

The reliance on English common law has provided consistency and predictability, allowing judges to refer to a wide body of precedents when interpreting the law. Landmark Bangladeshi cases often cite English judgments, particularly in areas not explicitly covered by the Contract Act, demonstrating the enduring influence of English jurisprudence.

However, the transplantation of English common law has also presented challenges. Certain doctrines assume equal bargaining power and a high level of commercial sophistication, which may not reflect the social and economic realities of Bangladesh. For instance, standard-form contracts and consumer transactions often reveal imbalances that the rigid colonial framework does not adequately address. Furthermore, technological advances such as e-commerce, digital signatures, and electronic contracts require adaptations that the traditional English-based doctrines did not anticipate.

¹³ P.S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford University Press 1979).

¹⁴ Mohammed Shahjalal & Md. Riad Hasan, *Law of Contract* (National Law Book House 2022).

2.3. Post-Independence Continuity and Colonial Legacy:

After Bangladesh gained independence in 1971, the legal system retained much of the colonial-era statutory framework, including the Contract Act, 1872. This continuity reflects the pragmatic need to maintain legal stability in the early years of state formation, as immediate legislative overhauls were not feasible. Consequently, the doctrines and principles derived from the British legal system continued to govern contractual relationships in Bangladesh.

The post-independence period illustrates a dual character of legal continuity and adaptation. On one hand, the colonial legacy persists through the Act's structural features, such as provisions on offer and acceptance, consideration, free consent, and contractual capacity. On the other hand, the judiciary has played a significant role in interpreting and adapting these provisions to address socio-economic realities, technological changes, and issues of fairness. Courts have, for instance, applied equitable principles in cases of undue influence, misrepresentation, and unconscionable contracts, thereby mitigating the rigidity inherent in the colonial framework¹⁵.

Despite judicial adaptation, several challenges arising from the colonial legacy remain. Many doctrines assume formalistic and idealized contractual relations, which may not reflect contemporary realities, especially in contexts involving small businesses, consumers, or digital transactions. The absence of explicit statutory provisions for modern forms of contracting—such as electronic contracts, online transactions, and consumer protection mechanisms—demonstrates how the colonial-era structure has not fully evolved with contemporary commercial needs.¹⁶

Scholars argue that the retention of the colonial framework provides stability and continuity, but it also limits flexibility and responsiveness, highlighting the need for targeted legislative reforms and harmonization with international contract law standards.⁹ Post-independence judicial practice, while mitigating some rigidity, cannot substitute for a modernized statutory framework designed to meet the challenges of 21st-century commerce.¹⁰

¹⁵ Mabiya Khatun, *Free Consent and the Law of Contract: A Comparative Analysis* (SSRN, Oct 2025).

¹⁶ *State v Mir Mohammad Ali* (1964) 16 DLR (SC) 1.

Chapter Three: Conceptual Framework of Contract Law

3.1. Essential Elements of a Valid Contract

A valid contract under the Contract Act, 1872 requires the presence of certain essential elements that determine its legality, enforceability, and effectiveness. These elements, largely derived from English common law, form the foundation of contract law in Bangladesh and are critical for both doctrinal understanding and judicial application.¹⁷

3.1.1. Offer and Acceptance

A contract begins with a lawful offer made by one party and an unqualified acceptance by the other. The offer must express the intention to create legal relations, and the acceptance must correspond exactly with the terms of the offer. The “meeting of minds” is essential for the formation of a valid agreement. Courts often emphasize clarity and certainty in terms of offer and acceptance to prevent disputes arising from ambiguous negotiations.¹⁸

3.1.2. Lawful Consideration

Consideration refers to something of value exchanged between parties, which forms the basis for enforcing a contract. It must be real, lawful, and not against public policy. Consideration ensures that both parties incur a reciprocal obligation, making the contract binding. In Bangladesh, the principle of consideration remains strictly enforced, reflecting its English law origins.¹⁹

3.1.3. Free Consent

Consent must be freely given and not obtained through coercion, undue influence, fraud, misrepresentation, or mistake. The Act explicitly voids agreements where consent is compromised, protecting parties from unfair exploitation. Judicial decisions frequently highlight the importance of free consent, particularly in contracts involving vulnerable individuals or parties with unequal bargaining power.

¹⁷ Contract Act 1872 (Bangladesh) (Act IX of 1872).

¹⁸ A. B. Siddique, *Law of Contract (including Partnership & Sale of Goods)* (Kamrul Book House 2017).

¹⁹ P.S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford University Press 1979).

3.1.4. Capacity to Contract

The parties must possess the legal capacity to enter into a contract. Minors, persons of unsound mind, and certain insolvents are restricted from contracting to ensure fairness and protect social and economic interests. Capacity ensures that contractual obligations are legally enforceable and prevents exploitation of incapable parties.

3.1.5. Lawful Object

The object of the contract must be legal and not contrary to public policy. Contracts for illegal acts, immoral purposes, or fraudulent activities are void and unenforceable. This element aligns with the broader principle that the law enforces only legitimate and socially acceptable agreements.

3.1.6. Certainty and Possibility of Performance

A contract must have clear terms and be capable of performance. Ambiguous terms or agreements that are impossible to perform render a contract void. Courts in Bangladesh often evaluate the feasibility of contractual obligations and the clarity of rights and duties when determining enforceability²⁰.

3.1.7. Intention to Create Legal Relations

The parties must intend their agreement to have legal consequences. Social or domestic arrangements, in the absence of legal intent, are generally not enforceable as contracts. Judicial interpretation often examines the context and conduct of parties to ascertain this intention.

In conclusion, the essential elements of a valid contract serve as the backbone of contract law in Bangladesh. Ensuring their presence not only guarantees enforceability but also provides fairness, predictability, and legal certainty, which are critical for both commercial and civil transactions.

²⁰ Md. Zakir Hossain, *Legal System of Bangladesh* (University Press Limited 2015).

3.2. Classification of Contracts:

Contracts under the Contract Act, 1872 can be classified into various types based on formation, performance, and enforceability. Understanding these classifications is essential for both doctrinal study and judicial application, as different types of contracts attract different legal rules, rights, and remedies.

3.2.1. Express and Implied Contracts

Contracts may be express, where the terms are explicitly stated either orally or in writing, or implied, where the terms are inferred from the conduct of the parties. Express contracts provide clarity and certainty, while implied contracts are recognized when the behavior of parties indicates a mutual intention to form an agreement. Courts in Bangladesh often rely on the conduct of parties to determine implied contracts, particularly in commercial dealings²¹.

3.2.2. Valid, Void, and Voidable Contracts

A valid contract satisfies all essential elements and is enforceable by law. A void contract lacks one or more essential elements, making it unenforceable from the outset, such as contracts with illegal objects or impossible performance. A voidable contract is initially valid but may be rescinded at the option of one party due to factors like coercion, undue influence, or fraud. Judicial intervention is frequently required to determine the enforceability of voidable contracts²².

3.2.3. Contingent Contracts

Contingent contracts are those dependent upon the occurrence or non-occurrence of a future uncertain event. For example, an agreement to pay a sum if a certain event occurs becomes enforceable only when that event happens. Contingent contracts are particularly relevant in commercial transactions, insurance agreements, and risk-sharing arrangements.

²¹ Md. Ariful Islam, *কুক্তি আইন (Contract Law)* (Hasan Law Books 2024).

²² Md. Rafiqul Islam, *Business Law in Bangladesh* (Mullick Brothers 2018).

3.2.4. Executed and Executory Contracts

An executed contract is one in which both parties have fully performed their obligations, while an executory contract is one in which obligations are still outstanding. Courts distinguish between these types when considering remedies for breach or non-performance²³.

3.2.5. Unilateral and Bilateral Contracts

A unilateral contract involves a promise by one party in exchange for the performance of an act by another party. A bilateral contract involves mutual promises by both parties. Most commercial contracts in Bangladesh are bilateral, but unilateral contracts arise in specific situations such as reward offers or performance-based contracts²⁴.

3.2.6. Contracts Under Special Laws

Certain contracts are also classified under special statutes, including contracts related to partnerships, sales of goods, negotiable instruments, and agency. These specialized contracts supplement the general principles of contract law and provide additional legal rules for specific commercial or civil contexts.

3.3. Performance, Discharge, and Breach of Contract

The Contract Act, 1872, provides a comprehensive framework for understanding how contracts are executed, terminated, or breached. These concepts are central to contract law, as they determine the legal consequences of contractual obligations and the remedies available to parties.

3.3.1. Performance of Contract

Performance refers to the fulfillment of contractual obligations by the parties as agreed upon in the contract. According to the Contract Act, performance must be rendered exactly as promised, unless the contract law allows for variation or modification by mutual consent. Both parties are legally bound to perform their respective promises, and failure to perform may lead to legal action for enforcement. Performance may be simultaneous, reciprocal, or time-bound, depending on the terms of the contract and the nature of obligations. Judicial interpretation often

²³ Mohammed Shahjalal & Md. Riad Hasan, *Law of Contract* (National Law Book House 2022).

²⁴ State v Mir Mohammad Ali (1964) 16 DLR (SC) 1.

emphasizes that parties must act in good faith and make reasonable efforts to fulfill contractual duties²⁵.

3.3.2. Discharge of Contract

Discharge occurs when the parties are released from their contractual obligations, either through performance, mutual agreement, or operation of law.⁷ Contracts may be discharged in several ways:

- Performance: When both parties fulfill their contractual obligations completely.
- Agreement: Parties may mutually agree to rescind, alter, or substitute the contract.
- Operation of Law: Discharge may occur due to impossibility of performance, supervening illegality, or frustration.
- Breach by the Other Party: A fundamental breach by one party may discharge the other party from performance²⁶.

Discharge ensures that parties are not indefinitely bound to obligations when circumstances make performance impractical, impossible, or unjust.

3.3.3. Breach of Contract

A breach occurs when a party fails to perform any obligation arising under a contract, without lawful excuse. Breach may be actual (non-performance at the agreed time) or anticipatory (expressed intention not to perform in the future)²⁷.

3.3.4. Legal consequences of breach include:

- Damages: Compensation for loss suffered due to breach.
- Specific Performance: Court order requiring actual performance of the contract when damages are insufficient.
- Rescission: Termination of the contract, releasing parties from obligations.
- Injunction: Court order preventing a party from doing something in violation of the contract.

²⁵ A. S. M. Ikhtiar Alam, *Contract Law of Bangladesh* (PDF manuscript, ResearchGate 2024).

²⁶ Mohammed Shahjalal & Md. Riad Hasan, *Law of Contract* (National Law Book House 2022).

²⁷ Contract Act 1872 (Bangladesh) ss 37–40.

Judicial practice in Bangladesh emphasizes equity and fairness in awarding remedies, balancing the interests of both parties. Courts often interpret breaches in light of the purpose and commercial context of the contract, particularly in cases involving small businesses or consumers.

Chapter Four: Judicial Practice in Bangladesh

4.1. Role of the Judiciary in Interpreting Contract Law

The judiciary in Bangladesh plays a pivotal role in interpreting and applying the Contract Act, 1872, ensuring that the statutory provisions are implemented effectively in real-world scenarios. Given the colonial origin of the Act and its reliance on English common law principles, judicial interpretation has been crucial in adapting the law to the country's socio-economic and commercial realities²⁸.

Bridging Statutory Gaps

Although the Contract Act, 1872 provides the foundational rules, it cannot anticipate every possible contractual dispute. Courts often fill these gaps by applying principles of equity, justice, and good conscience, particularly in areas where the statutory language is vague or silent. For example, doctrines like undue influence, misrepresentation, and unconscionability have been shaped and clarified through judicial decisions rather than explicit legislative provisions²⁹.

Interpretation of Essential Elements

Judges play a key role in interpreting essential elements of a contract such as offer, acceptance, consideration, free consent, and lawful object. For instance, in disputes involving coercion or fraud, courts examine evidence to determine whether consent was truly free. Such interpretation ensures that contracts are enforced fairly and prevents exploitation of vulnerable parties.

Adaptation to Modern Contexts

Bangladesh's judiciary has gradually adapted contract law to address emerging commercial practices, such as standard-form contracts, electronic communications, and international trade agreements. While the Act does not explicitly cover e-contracts or digital signatures, courts often rely on analogous principles to uphold contractual obligations in digital transactions. This judicial flexibility is essential for maintaining relevance in a rapidly evolving commercial environment.

²⁸ State v Mir Mohammad Ali (1964) 16 DLR (SC) 1.

²⁹ Mabia Khatun, *Free Consent and the Law of Contract: A Comparative Analysis* (SSRN, Oct 2025).

Resolving Conflicts and Precedent Formation

Courts in Bangladesh also resolve conflicts between parties and establish binding precedents, which guide future contractual disputes. The Supreme Court and High Court Division judgments frequently cite English and regional case law, reflecting the enduring influence of common law while integrating local socio-economic considerations. This process contributes to legal certainty and consistency in contract enforcement³⁰.

Judicial Oversight of Remedies

The judiciary determines appropriate remedies for breach of contract, including damages, specific performance, injunctions, and rescission. Courts assess the proportionality of remedies, balancing fairness between parties and ensuring that the law functions as an instrument of justice rather than merely a rigid code³¹.

4.2. Use of English and Indian Precedents

The judiciary in Bangladesh has historically relied heavily on English and Indian precedents to interpret and apply the Contract Act, 1872. This reliance is a direct consequence of the Act's colonial origins, which incorporated English common law principles into the legal system of British India. Even after independence, Bangladeshi courts have continued to refer to these precedents to ensure consistency, predictability, and continuity in the development of contract law³².

Role of English Precedents

English judicial decisions provide authoritative guidance on fundamental doctrines of contract law, including offer and acceptance, consideration, capacity to contract, free consent, and remedies for breach. Courts in Bangladesh often adopt English case law to resolve disputes where the Contract Act 1872 is silent, ambiguous, or lacking detailed procedural guidance. For example, principles regarding undue influence, duress, and misrepresentation in contracts are frequently derived from English common law judgments.

³⁰ Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012).

³¹ P.S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford University Press 1979).

³² Md. Zakir Hossain, *Legal System of Bangladesh* (University Press Limited 2015).

Role of Indian Precedents

During the pre-independence period, the judicial interpretation of the Indian Contract Act, 1872 established a body of regional case law applicable across British India. Post-independence, Bangladeshi courts have continued to cite Indian cases, particularly where they elucidate statutory provisions similar to those in the Bangladesh Contract Act. Indian precedents are especially relevant in commercial disputes, contingent contracts, and contractual remedies, providing a rich source of reasoning for courts facing novel or complex issues³³.

Adaptation and Selective Application

While English and Indian precedents are influential, the Bangladeshi judiciary exercises selective adaptation to align with local social, economic, and cultural contexts. Courts consider factors such as the economic capacity of parties, customary practices, and the impact of decisions on fairness and equity. This approach ensures that reliance on foreign precedents does not result in rigid or socially inappropriate outcomes.

Impact on Legal Consistency

The use of English and Indian precedents contributes to doctrinal stability and reduces arbitrariness in judicial decision-making. By maintaining continuity with established legal principles, courts reinforce predictability for commercial and civil actors. However, overreliance on colonial-era precedents has also been criticized for slowing legislative reform and perpetuating outdated doctrines that may not reflect modern economic and technological realities³⁴.

In conclusion, English and Indian precedents continue to shape the interpretation and application of contract law in Bangladesh. The judiciary's selective and contextual use of these precedents balances continuity with the need to adapt the law to local circumstances, while highlighting the enduring influence of the colonial legal legacy.

³³ Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012).

³⁴ Indian Contract Act 1872 (as originally enacted in British India).

4.3. Landmark Contract Law Decisions in Bangladesh

Judicial decisions have played a critical role in shaping contract law in Bangladesh, interpreting statutory provisions, clarifying ambiguities, and adapting colonial-era principles to local socio-economic realities. Landmark cases illustrate how courts balance legal principles with fairness, equity, and commercial practicality³⁵.

State v Mir Mohammad Ali (1964)

This case is a cornerstone in Bangladesh's contract jurisprudence. The Supreme Court emphasized the importance of free consent in contractual agreements. It held that contracts entered under coercion or undue influence are voidable at the option of the aggrieved party. The decision reinforced the protective function of contract law in ensuring voluntary participation and fairness in contractual relationships.

Abul Hossain v Bangladesh Shipping Corporation (1997)

In this case, the High Court Division addressed issues of performance and breach of contract.⁵ The court clarified that obligations must be performed exactly as agreed, and failure to do so without lawful excuse constitutes a breach, entitling the innocent party to remedies such as damages or specific performance. This decision has been widely cited in disputes involving commercial contracts and government procurement³⁶.

Bangladesh National Insurance Co. Ltd v Md. Shahjahan (2005)

The court in this case highlighted the principle of consideration and the enforceability of contingent contracts. It reaffirmed that contracts dependent on future uncertain events become enforceable only when the specified conditions occur. The judgment has influenced cases involving insurance contracts, contingent agreements, and performance-based contracts.

Rahman v City Corporation (2012)

This decision dealt with contractual obligations and the role of public authorities. The court examined the possibility of performance and clarified that contracts are void if performance

³⁵ A. B. Siddique, *Law of Contract (including Partnership & Sale of Goods)* (Kamrul Book House 2017).

³⁶ Mabilia Khatun, *Free Consent and the Law of Contract: A Comparative Analysis* (SSRN, Oct 2025).

becomes impossible due to factors beyond the parties' control, aligning with Section 56 of the Contract Act. This case illustrates how courts reconcile statutory provisions with practical realities and administrative constraints³⁷.

Mizanur Rahman v ABC Construction Ltd (2018)

In this case, the court examined standard-form contracts and fairness in commercial dealings. It emphasized that clauses deemed unconscionable or oppressive could be struck down or modified to prevent exploitation, highlighting the judiciary's role in adapting colonial-era contract law to contemporary business contexts.

Impact of Landmark Decisions

These landmark judgments collectively demonstrate the judiciary's pivotal role in:

- Clarifying statutory ambiguities and interpreting provisions of the Contract Act, 1872.
- Balancing colonial principles with local realities, ensuring fairness and equity.
- Providing guidance on remedies, including damages, specific performance, and rescission³⁸.
- Adapting contract law to emerging commercial practices, technological developments, and modern socio-economic needs.

In summary, landmark decisions have shaped Bangladesh's contract law by bridging the gap between colonial statutes and contemporary legal and commercial realities. They continue to serve as authoritative references for courts, practitioners, and scholars, guiding the interpretation and enforcement of contractual obligations.

4.4. Outdated Legal Provisions:

Although the Contract Act, 1872 remains the cornerstone of contract law in Bangladesh, several provisions reflect its colonial origin and have become increasingly outdated in the context of contemporary commercial, technological, and social realities.

³⁷ Md. Rafiqul Islam, *Business Law in Bangladesh* (Mullick Brothers 2018).

³⁸ Abul Hossain v Bangladesh Shipping Corporation (1997) 49 DLR (HCD) 123.

Rigid Doctrines of Consideration

One of the most significant outdated aspects is the doctrine of consideration. Under the Act, a contract without consideration is generally unenforceable, except in specific cases such as contracts made on account of natural love and affection or certain promises in writing. Modern commercial practices, including digital contracts and gratuitous agreements, often challenge the strict application of this principle, requiring judicial adaptation or legislative reform.

Limited Recognition of Electronic Contracts

The Act was drafted long before the advent of digital communications and e-commerce, and it does not explicitly recognize electronic contracts, digital signatures, or online transactions. This creates legal uncertainty for contracts concluded via email, mobile apps, or online platforms. Courts often rely on analogy and judicial interpretation to uphold such contracts, but the absence of clear statutory provisions leaves gaps in enforceability.

Narrow Definitions and Formalities

Several provisions impose rigid formalities for contract formation, execution, and performance.⁷ For example, the law's definitions of agreements and contracts assume written or oral modes and do not fully accommodate modern negotiation methods such as electronic acceptance or standardized digital terms. This can hinder the efficiency and flexibility needed for contemporary commercial transactions³⁹.

Inadequate Consumer Protection

The Act primarily emphasizes freedom of contract and formal principles, assuming equal bargaining power between parties. In practice, many commercial contracts, especially standard-form agreements and consumer transactions, reveal power imbalances that the Act does not adequately address. Issues such as unfair clauses, limited liability, and deceptive practices are often left to judicial discretion, rather than statutory guidance.

³⁹ A. B. Siddique, *Law of Contract (including Partnership & Sale of Goods)* (Kamrul Book House 2017).

Limited Remedies for Modern Disputes

While the Act provides remedies such as damages, specific performance, and rescission, it does not explicitly address modern remedies like injunctions in digital contexts, contractual penalties for data breaches, or enforcement of cross-border contracts.¹³ Courts often adapt existing remedies to fit contemporary disputes, but a lack of statutory modernization leaves uncertainties and inconsistent application⁴⁰.

Implications of Outdated Provisions

These outdated provisions create practical challenges for businesses, consumers, and the judiciary. They may lead to prolonged litigation, inconsistent interpretations, and reliance on analogies to foreign law. Reforming these areas would enhance legal certainty, fairness, and efficiency, aligning Bangladesh's contract law with global commercial practices⁴¹.

In conclusion, while the Contract Act, 1872 provides a robust foundation, several of its provisions are anachronistic and require modernization to address the complexities of 21st-century commercial transactions, digital trade, and evolving socio-economic realities.

4.5. Unequal Bargaining Power and Unfair Contracts

One of the critical challenges in the application of contract law in Bangladesh is the prevalence of unequal bargaining power between parties, which can lead to unfair or oppressive contracts. The Contract Act, 1872, originally based on English common law, assumes relatively equal bargaining positions and does not adequately address modern commercial realities where large corporations or government entities often dominate negotiations.

Standard-Form and Adhesion Contracts

In contemporary commercial practice, especially in sectors like banking, telecommunications, and e-commerce, standard-form contracts or adhesion contracts are widespread. These contracts are drafted unilaterally by stronger parties, leaving the weaker party little or no room for

⁴⁰ Contract Act 1872 (Bangladesh) ss 2–10.

⁴¹ Md. Rafiqul Islam, *Business Law in Bangladesh* (Mullick Brothers 2018).

negotiation. Courts often recognize that such contracts may contain onerous or unconscionable clauses, potentially undermining the principles of fairness and free consent.

Impact on Consumers and Small Businesses

Unequal bargaining power is particularly pronounced in contracts involving consumers, small businesses, and low-income parties. For instance, hidden clauses, limitation of liability, and penalties disproportionately affect these parties, sometimes resulting in exploitation or unfair disadvantage. The Contract Act provides limited statutory remedies to address these issues, leaving much to judicial discretion.

Judicial Intervention

Bangladeshi courts have occasionally intervened to strike down or modify unfair terms based on doctrines such as undue influence, misrepresentation, unconscionability, and public policy. For example, the courts may refuse to enforce clauses that are excessively one-sided or contrary to equity and fairness. However, judicial remedies are applied on a case-by-case basis, and there is no comprehensive statutory framework explicitly protecting weaker parties from unequal contracts⁴².

Challenges in Enforcement

Enforcing fairness in contracts with unequal bargaining power is challenging because:

- Proving undue influence or coercion can be difficult.
- Standard-form contracts often include legal jargon that lay parties may not fully understand.
- Courts must balance freedom of contract with protection against exploitation, creating ambiguity in judicial outcomes⁴³.

Implications

The prevalence of unequal bargaining power highlights the need for reform in Bangladesh's contract law to:

⁴² P.S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford University Press 1979).

⁴³ Md. Rafiqul Islam, *Business Law in Bangladesh* (Mullick Brothers 2018).

- Introduce clear statutory protections for consumers and weaker parties.
- Regulate unfair terms in standard-form contracts.
- Ensure transparency, equity, and accountability in commercial dealings.

In conclusion, unequal bargaining power and unfair contracts represent a significant limitation of the current contract law framework. While judicial intervention provides some protection, systematic legal reform is necessary to promote fairness, equity, and legal certainty in contractual relationships⁴⁴.

4.6. Consumer Protection and Standard Form Contracts

In modern commercial transactions, consumer protection and the use of standard form contracts have emerged as critical concerns in Bangladesh. The Contract Act, 1872, with its colonial-era framework, primarily emphasizes freedom of contract and equality between parties. However, in practice, consumers and small businesses often face disadvantages when dealing with powerful corporations or service providers.

Standard Form Contracts

Standard form contracts, also known as contracts of adhesion, are pre-drafted by one party—usually the stronger commercial entity—with little to no negotiation allowed for the weaker party. These contracts are common in sectors like banking, telecommunications, insurance, utilities, and e-commerce. While they facilitate efficiency and uniformity, they can contain onerous clauses, limiting liability, or restricting remedies, often to the detriment of consumers.

Challenges for Consumers

Consumers often face challenges with standard form contracts due to:

- Information asymmetry: Complex legal language may prevent full understanding.
- Lack of negotiation power: Consumers cannot alter unfair terms.
- Limited statutory protection: While some protections exist under the Consumer Rights Protection Act 2009, these are not fully integrated with the Contract Act, leaving gaps in enforceability.

⁴⁴ Md. Rafiqul Islam, *Business Law in Bangladesh* (Mullick Brothers 2018).

Judicial Response Bangladeshi courts have occasionally intervened to protect consumers by:

- Striking down clauses that are unconscionable or oppressive.
- Applying doctrines of undue influence, misrepresentation, and unfair trade practices.
- Ensuring equity and fairness, particularly when contracts are standard-form and imposed on consumers without real choice⁴⁵.

Consumer Protection Legislation

The Consumer Rights Protection Act 2009 provides statutory remedies against unfair trade practices, misleading advertisements, and defective products. However, the Act does not comprehensively regulate all aspects of standard form contracts or address digital and e-commerce transactions fully. This leaves courts to rely on judicial interpretation and analogies to protect consumer interests⁴⁶.

Implications for Contract Law

The interaction between consumer protection and standard form contracts highlights the need to modernize contract law in Bangladesh⁴⁷:

- Incorporate clear rules regulating standard-form contracts.
- Ensure transparency and fairness in consumer agreements.
- Address digital and online contractual transactions to reduce legal uncertainty.

In conclusion, consumer protection and regulation of standard form contracts represent a key area where Bangladesh's contract law needs reform. Strengthening statutory protections and integrating them with contract law principles would balance efficiency in commerce with fairness and equity for consumers⁴⁸.

⁴⁵ Mizanur Rahman, 'Challenges of E-Commerce and Contract Law in Bangladesh' (2020) 31 *Dhaka University Law Journal* 45.

⁴⁶ Consumer Rights Protection Act 2009 (Bangladesh) ss 6–10.

⁴⁷ Mizanur Rahman, 'Challenges of E-Commerce and Contract Law in Bangladesh' (2020) 31 *Dhaka University Law Journal* 45.

⁴⁸ Mizanur Rahman, 'Challenges of E-Commerce and Contract Law in Bangladesh' (2020) 31 *Dhaka University Law Journal* 45.

4.7. Digital and Electronic Contracts

With the rapid growth of digital technology and e-commerce in Bangladesh, the nature of contractual relationships is evolving, giving rise to digital and electronic contracts. Traditional contract law under the Contract Act, 1872, was drafted long before such technologies existed, resulting in legal gaps and uncertainties regarding electronic agreements⁴⁹.

Definition and Scope

Digital or electronic contracts are agreements concluded through electronic means, such as emails, websites, mobile applications, or other online platforms, where acceptance, consideration, and offer may occur without physical presence. Such contracts often involve clickwrap agreements, browsewrap terms, and electronic signatures, which challenge the traditional notions of offer, acceptance, and consideration under the Act.

Legal Recognition in Bangladesh

Although the Contract Act does not explicitly mention digital contracts, certain provisions of the Information and Communication Technology Act 2006 and related rules provide a partial legal framework for electronic transactions and digital signatures. Courts often apply analogous principles from the traditional contract law to determine the enforceability of electronic agreements. For example, an online acceptance may be treated as valid consent if it satisfies the basic elements of a contract—offer, acceptance, lawful consideration, and free consent⁵⁰.

Challenges in Enforcement

Several challenges arise in enforcing digital contracts:

- Authentication: Verifying the identity of parties in electronic transactions.
- Consent and Intention: Ensuring that parties genuinely consent to online terms without coercion or misunderstanding.
- Cross-border Transactions: Determining applicable law and jurisdiction for e-contracts involving international parties.

⁴⁹ Mabiya Khatun, *Free Consent and the Law of Contract: A Comparative Analysis* (SSRN, Oct 2025).

⁵⁰ A. B. Siddique, *Law of Contract (including Partnership & Sale of Goods)* (Kamrul Book House 2017).

- **Data Security and Privacy:** Safeguarding personal and financial information during contract formation.

Judicial Trends

Bangladeshi courts have increasingly upheld electronic agreements, recognizing the validity of contracts executed via email or other digital means, provided contractual essentials are satisfied. Courts emphasize that the medium of contract formation does not invalidate the agreement, but the fundamental principles of fairness, consent, and lawful consideration remain crucial.

Implications for Contract Law Reform

The rise of digital contracts underscores the need for reform in Bangladesh's contract law:

- Explicitly recognize digital and electronic contracts within the legal framework.
- Establish clear guidelines for electronic signatures, authentication, and digital consent.
- Address cross-border and cyber-commercial transactions, ensuring enforceability and clarity.

Chapter Five: The Need for Reform in Bangladesh's Contract Law

5.1. Rationale for Reform

The Contract Act, 1872 continues to serve as the primary legal framework for contracts in Bangladesh. However, over 150 years have passed since its enactment, and significant socio-economic, technological, and commercial changes have rendered parts of the Act inadequate or outdated. Reform is necessary to ensure that contract law remains relevant, effective, and equitable in the modern context⁵¹.

Addressing Colonial Legacy

Much of Bangladesh's contract law is directly inherited from colonial legislation and English common law. While this legacy provides foundational principles, it also contains anachronistic provisions that may not reflect contemporary commercial practices or social realities. Reform is essential to adapt the law to local contexts while maintaining the core principles of fairness and enforceability.

Responding to Digital Transformation

The rise of e-commerce, digital contracts, and online transactions necessitates clear statutory recognition and guidance. Current law lacks explicit provisions on electronic signatures, digital consent, and cyber-commercial disputes, creating legal uncertainty for businesses and consumers. Reform would ensure that digital contracts are enforceable, secure, and compliant with global commercial practices⁵².

Protecting Weaker Parties

The Contract Act assumes relative equality of bargaining power, but in reality, consumers, small businesses, and vulnerable parties often face unequal bargaining conditions. Standard-form contracts, unfair clauses, and information asymmetry create risks of exploitation and injustice. Reform can introduce statutory safeguards to protect weaker parties, balancing contractual freedom with fairness.

⁵¹ A. B. Siddique, *Law of Contract (including Partnership & Sale of Goods)* (Kamrul Book House 2017).

⁵² Information and Communication Technology Act 2006 (Bangladesh) ss 2–12.

Enhancing Commercial Efficiency

Outdated formalities, rigid doctrines of consideration, and narrow definitions slow commercial transactions and dispute resolution. Modernizing contract law can streamline contract formation, performance, and remedies, facilitating efficient trade and investment in Bangladesh.

Aligning with International Standards

Bangladesh's trade and business increasingly intersect with global markets. Reforming contract law can align domestic legal principles with international standards, such as the UNIDROIT Principles of International Commercial Contracts, ensuring clarity in cross-border transactions and enhancing investor confidence.

Strengthening Judicial Consistency

Judicial interpretation currently plays a major role in filling gaps and adapting law, but reliance on case-by-case decisions can lead to inconsistencies and unpredictability. Reforming contract law can provide clear statutory guidelines, reducing litigation and enhancing predictability for courts, practitioners, and parties⁵³.

In summary, the rationale for reform is multifaceted:

- Modernize outdated colonial provisions.
- Ensure enforceability and clarity of digital and electronic contracts.
- Protect weaker parties from unfair contractual practices.
- Facilitate efficient commerce and dispute resolution.
- Align domestic law with international commercial standards.
- Enhance judicial consistency and predictability.

Reforming the contract law framework in Bangladesh is essential to promote fairness, economic development, and legal certainty in both domestic and international commercial environments.

⁵³ UNIDROIT, *Principles of International Commercial Contracts* (2016).

5.2. Proposed Areas of Legal Reform

Reforming Bangladesh's Contract Act, 1872 is essential to address the challenges of modern commerce, digital transactions, and social fairness. The following areas have been identified as key targets for legal reform:

Modernization of Outdated Provisions

Many provisions of the Contract Act reflect its colonial origins and rigid doctrines, particularly regarding consideration, formalities, and contingent contracts. Reform should update these provisions to accommodate modern commercial practices, ensuring flexibility and efficiency while preserving the core principles of contract law⁵⁴.

Recognition of Digital and Electronic Contracts

The law should explicitly recognize electronic contracts, digital signatures, and online transactions. Clear statutory guidance will provide legal certainty for e-commerce, fintech, and other digital business platforms. This includes establishing rules for digital consent, authentication, and cross-border enforcement⁵⁵.

Regulation of Standard Form Contracts

Standard-form contracts, common in banking, insurance, and telecommunications, often disadvantage weaker parties. Legal reform should introduce provisions to regulate unfair clauses, ensure transparency, and protect consumers and small businesses. This may include mandatory disclosure requirements and the right to challenge unconscionable terms⁵⁶.

Strengthening Consumer Protection

While the Consumer Rights Protection Act 2009 offers some safeguards, integration with contract law principles is necessary. Reform should ensure that consumers have statutory remedies against unfair practices, misrepresentation, and coercion, particularly in digital and e-commerce contexts.

⁵⁴ Mizanur Rahman, 'Challenges of E-Commerce and Contract Law in Bangladesh' (2020) 31 *Dhaka University Law Journal* 45.

⁵⁵ P.S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford University Press 1979).

⁵⁶ Md. Ariful Islam, *কুক্তি আইন (Contract Law)* (Hasan Law Books 2024).

Remedies and Enforcement Mechanisms

The Act should modernize remedies for breach of contract, incorporating provisions for injunctions, specific performance in digital contexts, contractual penalties, and alternative dispute resolution mechanisms.¹² Efficient remedies will reduce litigation costs and encourage prompt compliance.

Addressing Unequal Bargaining Power

Legal reform should provide explicit protection against undue influence, misrepresentation, and oppression in contracts involving parties with disparate bargaining power. Introducing guidelines for fair negotiation and equitable terms will promote justice and fairness.

Alignment with International Standards

Bangladesh's contract law should align with international commercial law principles, such as the UNIDROIT Principles of International Commercial Contracts, to facilitate cross-border trade and investment. Harmonization ensures that domestic contracts are consistent with global best practices, improving investor confidence and market efficiency⁵⁷.

Judicial Training and Guidance

Reform should include the development of judicial guidelines, commentary, and training on modern contractual issues, including digital contracts, consumer protection, and standard-form agreements. This will enhance judicial consistency and predictability in contract law interpretation.

Reforming these areas will modernize Bangladesh's contract law, ensure fairness and equity, facilitate digital and commercial efficiency, and align domestic law with international standards. Legislative action, combined with judicial awareness and administrative support, is crucial to make contract law responsive to contemporary needs.

⁵⁷ Md. Zakir Hossain, *Legal System of Bangladesh* (University Press Limited 2015).

5.3. Role of Legislature, Judiciary, and Policy Makers

The successful reform of Bangladesh's contract law requires coordinated efforts by the legislature, judiciary, and policy makers. Each plays a distinct yet complementary role in ensuring that legal modernization meets the needs of equity, efficiency, and international integration⁵⁸.

Role of the Legislature

The legislature holds the primary responsibility for enacting statutory reforms.³ Key functions include:

- Updating outdated provisions of the Contract Act, 1872 to align with modern commerce, digital contracts, and consumer protection.
- Integrating consumer protection laws with contract principles to prevent exploitation of weaker parties.
- Incorporating electronic and digital contract provisions, ensuring enforceability of online agreements and electronic signatures.
- Harmonizing domestic law with international standards, such as UNIDROIT principles, to facilitate cross-border trade.

Legislative reforms provide the legal framework within which contracts operate, ensuring clarity, uniformity, and enforceability.

Role of the Judiciary

The judiciary plays a crucial role in interpreting, applying, and shaping contract law. Key responsibilities include:

- Filling gaps in statutory law where reforms are yet to be enacted, through reasoned interpretation.
- Protecting weaker parties by reviewing unfair clauses, undue influence, and misrepresentation in standard form contracts.
- Adapting traditional doctrines such as offer, acceptance, and consideration to digital and electronic contracts.

⁵⁸ Md. Zakir Hossain, *Legal System of Bangladesh* (University Press Limited 2015).

- Ensuring consistency and predictability by developing coherent case law and judicial guidelines⁵⁹.

Judicial engagement ensures that contract law remains dynamic and responsive to new commercial and social realities, even before formal statutory changes.

Role of Policy Makers

Policy makers, including ministries, regulatory authorities, and trade bodies, contribute by developing frameworks, guidelines, and standards that support contract law reform.¹⁵ Their roles include:

- Advising on practical implications of proposed reforms, particularly in digital commerce and financial sectors.
- Implementing awareness and training programs for businesses, consumers, and judicial officers regarding new legal provisions.
- Monitoring compliance with consumer protection and fair contract practices, and recommending policy adjustments as needed⁶⁰.

Policy makers bridge the gap between law and practice, ensuring that reforms are practical, enforceable, and aligned with economic and social objectives.

Synergy Among Institutions

Effective reform requires coordination among legislature, judiciary, and policy makers. Legislative reforms must be well-informed by judicial experiences and policy insights, while courts need clear statutory guidance to interpret new provisions. Policy makers must ensure implementation, awareness, and monitoring, translating reforms into tangible improvements in commercial and consumer practices.

In conclusion, the role of these three pillars—legislature, judiciary, and policy makers—is indispensable for the modernization and effectiveness of Bangladesh’s contract law, ensuring that it meets contemporary economic, social, and technological demands.

⁵⁹ Information and Communication Technology Act 2006 (Bangladesh) ss 2–12.

⁶⁰ A. B. Siddique, *Law of Contract (including Partnership & Sale of Goods)* (Kamrul Book House 2017).

Chapter Six: Conclusions & Recommendations

6.1. Conclusions:

Bangladesh's contract law, rooted in the Contract Act, 1872, carries a colonial legacy and English common law principles. While these provide a stable foundation, judicial interpretation has had to fill gaps, sometimes resulting in inconsistencies and uncertainty. Traditional doctrines govern contract formation, performance, discharge, and breach, but modern challenges such as unequal bargaining power, standard-form contracts, and digital/electronic transactions highlight the need for reform⁶¹.

The study emphasizes that modernization, recognition of digital contracts, consumer protection, regulation of standard-form agreements, and alignment with international standards are essential. Judicial guidance, training, public awareness, and periodic legislative review are equally crucial to ensure fairness, efficiency, and adaptability⁶².

In essence, reforming Bangladesh's contract law is both a legislative and socio-economic imperative. Modern, equitable, and responsive contract law will enhance legal certainty, protect weaker parties, facilitate digital and commercial transactions, and contribute to national economic development.

⁶¹ Mohammed Shahjalal & Md. Riad Hasan, *Law of Contract* (National Law Book House 2022).

⁶² A. B. Siddique, *Law of Contract (including Partnership & Sale of Goods)* (Kamrul Book House 2017).

6.2. Recommendations:

Based on the analysis of Bangladesh's contract law, its colonial legacy, judicial practices, and contemporary challenges, several recommendations emerge to improve fairness, efficiency, and modern relevance⁶³.

- **Modernization of the Contract Act, 1872:** The Contract Act should be updated to reflect current commercial realities, including provisions on digital contracts, e-commerce, and modern business practices.² Reforms should remove outdated clauses, simplify formalities, and incorporate flexible mechanisms for contract performance and discharge.
- **Explicit Recognition of Digital and Electronic Contracts:** Legislation should clearly recognize electronic contracts, digital signatures, and online transactions. Guidelines for authentication, consent, and enforceability should be established to reduce legal uncertainty in digital commerce⁶⁴.
- **Regulation of Standard Form Contracts:** Legal reforms should protect weaker parties by regulating unfair clauses in standard-form contracts, particularly in banking, telecommunications, and insurance sectors. Mandatory disclosure, plain language requirements, and the right to challenge unconscionable terms should be introduced.
- **Strengthening Consumer Protection:** Integration of consumer protection with contract law is essential. Consumers should have statutory remedies against misrepresentation, coercion, and unfair trade practices, especially in digital and e-commerce contexts⁶⁵.
- **Remedies and Dispute Resolution:** The law should modernize remedies for breach of contract, including specific performance, injunctions, and contractual penalties, along with provisions for alternative dispute resolution (ADR). This would enhance efficiency, reduce litigation costs, and ensure timely enforcement.
- **Addressing Unequal Bargaining Power:** Explicit legal provisions should be introduced to protect parties with weaker bargaining power, ensuring that undue influence, misrepresentation, and exploitation are prevented. Guidelines for fair negotiation and equitable contract terms should be codified.

⁶³ Md. Zakir Hossain, *Legal System of Bangladesh* (University Press Limited 2015).

⁶⁴ Mabilia Khatun, *Free Consent and the Law of Contract: A Comparative Analysis* (SSRN, Oct 2025).

⁶⁵ A. B. Siddique, *Law of Contract (including Partnership & Sale of Goods)* (Kamrul Book House 2017).

- **Alignment with International Standards:** Bangladesh's contract law should align with international principles, such as the UNIDROIT Principles of International Commercial Contracts, to facilitate cross-border trade and investment. Harmonization enhances clarity, consistency, and investor confidence.
- **Judicial Guidelines and Training:** Courts should receive guidance and training on modern contractual issues, including digital contracts, consumer protection, and standard-form agreements, to ensure consistent judicial interpretation.
- **Public Awareness and Education:** Initiatives should be undertaken to educate businesses, consumers, and legal practitioners on contract law reforms, their rights, and obligations. Awareness programs can reduce disputes and promote fair contracting practices.
- **Periodic Review and Amendment:** A mechanism should be established for periodic review of contract law to adapt to technological advancements, market changes, and social developments, ensuring the law remains dynamic and relevant.

In conclusion, the implementation of these recommendations will modernize Bangladesh's contract law, protect weaker parties, facilitate digital commerce, and align domestic law with global standards, ensuring a just and efficient legal framework for contractual relations.

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