



THE ROLE OF GOOD FAITH IN CONTRACTUAL RELATIONS: A COMPARATIVE PERSPECTIVE

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CHAPTER 1: INTRODUCTION

1.1 ABSTRACT

The doctrine of good faith has been a 'long-contested principle in contract law, blurring the line between moral obligation and enforceable legal duties'.¹ Having existed for millennia, it is one of the most fundamental principles in contract law which ensures fairness, equity and honesty in commercial dealings. 'If good faith has been taken away, all intercourse among men ceases to exist.'² Nations with civil law jurisdiction, such as Germany and France, embrace good faith as one of the cornerstones of their laws, with Article 1104 of the French Civil Code³ and Section 242 of the German Civil Code (also known as the Treu and Glauben)⁴, respectively, explicitly dealing with the same. On the other hand, countries such as the USA and England, which follow the common law system, have traditionally been reluctant to impose such a duty, intending to prioritize freedom of contract. 'Good faith is a general principle of law recognized by civilized nations, and as such is a formal source of international law'.⁵ Hence, this paper will explore the effect of good faith, its historical evolution, theoretical foundations and practical implications across different legal traditions and systems. It seeks to

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¹ Poddar Business School, The Role of Good Faith in Contractual Relations: A Comparative Study (Poddar Business School, n.d.), <https://www.poddarbschool.com/articles/the-role-of-good-faith-in-commercial-contracts-a-comparative-study#:~:text=Good%20faith%20is%20a%20fundamental,remain%20skeptical%20about%20its%20enforceability>.

² Grotius Hugo, De Jure Belli Ac Pacis (1625) bk III, quoted in J. F. O'Connor, Good Faith in International Law (Dartmouth 1991) 56.

³ French Civil Code, art 1104, translated in LegiFrance, http://legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070716?init=true&page=1&query=1104&searchField=ALL&tab_selection=all.

⁴ Bürgerliches Gesetzbuch (BGB), s 242, translated in *Gesetze im Internet*, https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p0742.

⁵ Procès-verbaux of the Proceedings of the Advisory Committee of Jurists, 16 June–24 July 1920 (League of Nations Publications 1920) 335 (comments by Lord Phillimore on art 38 of the Statute of the PCIJ).

compare the Indian, European and American along with the common and civil law jurisdictions. The paper further examines the challenges posed by subjectivity, uncertainty and commercial resistance to the broader idea of good faith. It concludes by assessing whether India should incorporate into its contract law framework the principle of good faith and then proposes recommendations to balance contractual freedom with fairness in modern commerce.

Keywords: Pre-contractual Relations, the Principle of Good faith, Civil law, Common law, Freedom of Contract.

1.2 Research Questions

- i) What is the role of good faith in international instruments?
- ii) Is the general duty of good faith needed in modern contractual relations, or do existing doctrines and statutory provisions sufficiently address fairness and justice?
- iii) In different jurisdictions, particularly in India, civil and common law countries, how is the notion of good faith treated?
- iv) What are the major hurdles and criticism with regard to recognizing a general principle of good faith in contractual relations?

1.3 Objectives of the Research

This research is undertaken with the following aims:

- i) **To examine the historical evolution and theoretical foundations** of the duty of fair dealing and good faith in contractual relations.
- ii) **To analyse and compare the treatment of good faith across jurisdictions**, with a special emphasis on India, American and European nations.
- iii) **To evaluate whether an overall responsibility of good faith is genuinely needed in contractual relations**, or whether existing legal doctrines are sufficient to ensure justice, honesty and fairness.
- iv) **Finally, to assess the relevance of good faith in the Indian contractual framework**, and to suggest whether India should incorporate a broader duty of good faith, drawing lessons from comparative jurisprudence.

1.4 Scope of the Study

This paper explores the extent to which the principle of good faith has been recognized in Indian under the Indian Contracts Act, 1872, after delving into a comparative legal analysis of the existing contractual frameworks of good faith in India, civil law countries (France, Germany), and common law systems (United States, United Kingdom). Thereafter, it analyses its subsequent judicial interpretation. However, the research is confined to contractual relations, excluding broader applications of good faith in the administrative legal system or labour law. With an emphasis on the doctrinal, judicial and policy perspectives, this research relies on statutory provisions, case laws, academic commentaries and crucial instruments such as the '*UNIDROIT Principles of International Commercial Contracts*,'⁶ followed by the '*United Nations Convention for the Sale of International Goods (CISG)*.'⁷ Providing possible relevance and adoptions of a general duty of good faith in India, the comparative scope of this research allows for an evaluative understanding of the divergences and convergences across judicial systems.

1.5 Research Methodology

The methodology of this research is doctrinal in nature. The study is carried out mainly through the analysis of legal texts, statutory provisions, and judicial decisions. It does not involve any field study, interviews, or surveys. The comparative methods have also been used, where the treatment of good faith in different jurisdictions, such as India, common law countries and civil law nations, is studied side by side.

The research is qualitative, relying on interpretation and discussion of legal materials rather than numerical data. Primary sources include legislation and case law, while secondary sources such as textbooks, academic articles, journals and commentaries are referred to for scholarly views and criticism. International instruments like the CISG and UNIDROIT Principles are also consulted to analyse the global perspective effectively. The method adopted is descriptive as well as analytical in nature, aiming to explain the existing position of and, lastly, to examine whether reforms are required in India.

⁶ UNIDROIT Principles of International Commercial Contracts, (International Institute for the Unification of Private Law 2016).

⁷ United Nations Convention on Contracts for the Sale of International Goods (opened for signature 11 April 1980, entered into force 1 January 1988) 1498 UNTS 3.

1.6 Literature Review

The ever-burgeoning boundaries of the modern world's global markets require resolving certain conflicts among various existing legal systems to facilitate contracts among multinational parties. Pre-contractual liability is often one of the most discussed areas, whose pertinent facet is *good faith*. Article 1.7 (1) of the UNIDROIT Principles provides that '*each party must act in accordance with good faith and fair dealing in international trade*'.⁸ This statement provides that, at the time of the formation of the contract or during its performance, neither party must harm the other with the intention of receiving undue gains. It mandates that the parties to a contract avoid acting against the spirit of a contractual relationship. The concept of good faith deals with the loopholes in contracts and is treated as a '*moral obligation for the parties involved*'. It may exist in various forms, such as pre-contractual obligations, performance and enforcement of contracts, and remedies for the breach of contract. '*Its main goal is to avoid unfair outcomes and help interpret specific contract terms to prevent undesirable results*'.⁹ This principle plays a 'key role in contracts, preventing exploitation and filling gaps or clarifying ambiguities.'¹⁰ '*Through the fulfillment of the obligation to negotiate in good faith, requiring parties to act fairly and transparently, social fairness and loyalty in commercial relationships are strengthened, which contributes to the maintenance of the integrity of contractual agreements*'.¹¹ Good faith endeavors to promote and encourage two main objectives, mainly justice and openness on equal footing. It includes a comprehensive sense of ethical responsibility with regard to negotiations. In civil law countries, scholars emphasize the philosophy of the doctrine of good faith, which ensures fairness and justice among the contracting parties. *Article 1104 of the French Civil Code*¹², *Section 242 of the BGB*¹³ and *Article 1.106 of the Principles of European Contract Law*¹⁴ are often cited in literature as examples where good faith has been explicitly recognized as a legal duty. German comparative law scholar Reinhard Zimmermann, who has also served as the Director at the Max Planck Institute for Comparative and International Private Law, along with Simon

⁸ UNIDROIT, Principles of International Commercial Contracts art. 1.7, (International Institute for the Unification of Private Law 2016), <https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf>.

⁹ S. Jorbenadze, Scope of Freedom of Contract in Civil Law (Tbilisi 2006) 67.

¹⁰ T. Mepharishvili, The Principle of Good Faith in Contractual Relations (2025), European Scientific Journal, ESJ, 21 (39), 162. <https://doi.org/10.19044/esj.2025.v21n39p162>.

¹¹ L Spagnolo, 'Opening Pandora's Box: Good Faith and Precontractual Liability in CISG' (2007) Temple International and Comparative Law Journal.

¹² French Civil Code, art 1104 (n 3).

¹³ Bürgerliches Gesetzbuch (BGB), s 241 (n 4).

¹⁴ Commission on European Contract Law, *Principles of European Contract Law* (1999) art 1.106.

Whittaker (former professor of European Comparative Law and an emeritus research fellow at St John's College), highlight in their comparative studies that good faith acts as a guiding principle that supplements written terms and prevents wrongful abuse of contractual rights.¹⁵ In contrast, legal literature on common law systems gives weight to flexibility of contracts. This freedom is, nonetheless, not completely unrestricted since there exist certain legal protections that tackle situations where due to the injury or statements by one party lead to harm suffered by the other.¹⁶ In India, the leading legislation for contracts, the Indian Contracts Act, 1872, does not explicitly deal with the general duty of good faith. However, authors in Indian law reviews point out to Supreme Court cases where fairness and reasonableness were emphasised, without directly referring to the specific term of 'good faith.' In '*Central Inland Water Transport v. Brojo Nath Ganguly*,'¹⁷ the legal principle was that the court must restrict the enforcement or validity of unfair and unreasonable contracts, especially when there exists a significant imbalance in bargaining power between the parties involved was asserted. In the case '*ONGC v Saw Pipes*'¹⁸, the ambit for judicial review for arbitration awards was widened. Though not directly related to contractual law, it strengthened the principle of public policy.

CHAPTER 2: CONCEPT AND EVOLUTION OF GOOD FAITH

2.1 Historical Development and Philosophical Basis

The word 'good faith' has been derived from the Latin term 'bona fides' or the genitive terms 'bonae fidei' and 'bona fide'. As early as the year 1659, good faith was mentioned in an international peace treaty called as 'the Treaty of Pyrenees' signed on 7 November 1659, on the Pheasant Island to end the Franco-Spanish War, which had started in 1635. This landmark treaty marked the decline of Spanish power and the rise of France as a dominant European power.¹⁹ Before that, as mentioned in the above paragraphs, Hugo Grotius had referred to Aristotle's statement, '*if good faith has been taken away, all intercourse among men ceases to exist.*'²⁰ For Isocrates, an influential Greek rhetorician and educator, the principle of good faith was common to the entire mankind. This meant that all social intercourse, including his

¹⁵ GOOD FAITH IN EUROPEAN CONTRACT LAW (Reinhard Zimmermann & Simon Whittaker eds., Cambridge Univ. Press 2000).

¹⁶ Amal Machaka, Precontractual Liability and the Duty of Good Faith in International Contracts: A Comparative Analysis Between Civil Law and Common Law, *Record of Law*, https://recordoflaw.in/pre-contractual-liability-and-the-duty-of-good-faith-in-international-contracts-a-comparative-analysis-between-civil-law-and-common-law/#_ftnref1.

¹⁷ *Central Inland Water Transport Corporation Ltd. & Anr. v/s Brojo Nath Ganguly & Anr.*, (1986) 3 SCC 156.

¹⁸ *Oil & Natural Gas Corp. Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705.

¹⁹ Julia Costa Lopez, Research Gate (1659), Treaty of Pyrenees, <https://share.google/Yt7sshECqUQ6ElviF>.

²⁰ *Ibid* pg. 1.

philosophy of good and fair, of equality and justice, is based upon the very requirement of good faith. As an intrinsic quality of justice, good faith is strictly against the legal formalism over-emphasizing the written law and codified structures instead of keeping the very idea of legal order in mind. For the Romans, the concept of good faith was a key element, especially for contract law and public law. It was conceived as a material source of law and was related to the divine sphere; breaching good faith meant acting against the will of the Gods. In a more rational perspective, Cicero (a Roman statesman and lawyer) described good faith as a foundation of justice, the very basis on which law functioned.²¹ Furthermore, the principle of good faith being an indispensable aspect to attain fair and just results is also deeply rooted in Christian and secular law doctrine. Early modern classics of public international law, such as Grotius, Suárez, de Vattel, Pufendorf, or Wolff were some of the most important scholars of this natural law concept. Nature was closely connected with reason and this strong trust in human reason became an epoch-making paradigm. Good faith became, to an extent, a spirit of legal order. It formed an obligation for international transactions and relations. This led to a rule of reason-based method of treaty interpretation, way before the creation of the Vienna Convention on the Law of Treaties (1969).

2.2 Common Law and Civil Law Traditions

Most of the nations in today's era follow two types of legal traditions- the common law or the civil law system. While the common law systems emerged in England during the Middle Ages and were later applied to the British colonies, the latter came into being primarily in European countries such as the imperial powers of Spain and Portugal. *'In these terms, the civilian tradition covers legal systems that trace their origins to Roman law, whereas the common law tradition, those historically deriving from English law.'*²² Common law is a legal system that develops through judicial precedents. It is uncodified, meaning it lacks a comprehensive compilation of rules and statutes. Here, the judges have an enormous duty in shaping the American and British laws. However, on the other hand, the civil law tradition is generally codified. Judges rely on set rules and updated legal codes to pronounce judgments. Their job

²¹ Markus Kotzur, *Good Faith (Bona Fide)*, Oxford Public International Law, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1412?d=%2F10.1093%2F1aw%3Aepil%2F9780199231690%2F1aw-9780199231690-e1412&p=emailAar%2F%2FL3J%2FZX4s&print#>.

²² Longchamps de Bérrier, 'Common law' (n 11) 26; Smith (n 12) 228; Cartwright (n 12) 3, 9, 13; see also Martin A Hogg, 'Codification of Private Law: Scots Law at the Crossroads of Common and Civil Law' in Kit Barker, Karen Fairweather and Ross Grantham (eds), *Private Law in the 21st Century* (Hart Publishing 2017) 107.

is mainly to ascertain the facts of the case and apply them to the relevant legal code.²³ The principle of good faith is firmly established in the legal framework of the European continent. In the German-speaking area, *Treu und Glauben*, a figurative term that implies fairness, justice and good faith, has a firm legal value. For instance, Article 5(3) of the constitution of Switzerland states that the '*State institutions and private persons shall act in good faith.*'²⁴ Article 1104 of the French Civil Code²⁵, Section 242 of the German Civil Code²⁶ and Article 1.106 of the Principles of European Contract Law²⁷ all talk about good faith. This leads to the assumption, for example, in contracts, that all parties have signed in good faith, so that any missing or unclear aspect of a contract is to be interpreted based on an assumption of the good faith of all parties. In the Netherlands, Article 6:248 of the Dutch Civil Code establishes the principle of '*redelijkheid en billijkheid*',²⁸ which means 'reasonableness and fairness.' The notion obligates the parties to act in a manner that is just and honest. It expands the scope of contracts beyond explicit terms and agreements to include consequences arising from the breach of reasonableness and fairness. In India, the Indian Penal Code (1860) described 'good faith' under Section 52 as '*nothing is said to be done or believed in good faith which is done or believed without due care and attention.*'²⁹ In the case of *Muhammad Shah v The Emperor*³⁰ (1914), the then privy council expanded on its meaning and held that '*an action taken by the defendant based on a belief that the decree was passed in favor of him was illegal since he found out that he did not enjoy any such favorable decree if he had inquired with a little more care and attention.*'³¹ Section 30 of the Bharatiya Nyaya Sanhita³² deals with a broader definition of good faith. It acts as a general exception, stating that '*an act causing harm to another person is not an offence if done in good faith.*'

Now moving on to the common law system, the principle of good faith is not codified but instilled in the legal conscience. For instance, in Australia, the notion of good faith, also known

²³ Robbins Collection, *The Common Law and Civil Law Traditions* (UC Berkeley Law 2010) <https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf>.

²⁴ Bundesverfassung [BV] [Constitution] 18 April 1999, SR 101, art 5(3) (Switzerland) <https://www.fedlex.admin.ch/eli/cc/1999/404/en>.

²⁵ French Civil Code, art 1104 (n 3).

²⁶ Bürgerliches Gesetzbuch (BGB), s 241 (n 4).

²⁷ Commission on European Contract Law, *Principles of European Contract Law* (1999) art 1.106 (n 5).

²⁸ Dutch Civil Code, art 6:248 (1992), <http://www.dutchcivillaw.com/civilcodebook066.htm>.

²⁹ Indian Penal Code 1860, s 52 <https://indiankanoon.org/doc/1180351/>.

³⁰ *Muhammad Shah v. The Emperor* AIR 1945 PC 118.

³¹ S. Pavithra, Dr. P. Brinda, Ensuring fairness: The Crucial Role Of Good Faith in the Transfer of Immovable Property (2015) 2(2) Journal of Emerging Technologies and Innovative Research, <https://www.jetir.org/papers/JETIR2502403.pdf>.

³² Bharatiya Nyaya Sanhita 2023, s 30 <https://www.indiacode.nic.in/bitstream/123456789/20062/1/a2023-45.pdf>.

as *'uberrimae fidei'* in Latin, was established in the insurance industry following the case of *Carter v Boehm* (1766)³³. The judgment was delivered by Lord Mansfield. The case revolved around an insured governor who failed to disclose the fort's vulnerability to a likely French attack, a fact he was aware of but failed to disclose this specific information to the insurer, Mr Bohem. This was later argued upon, stating that Carter had committed a fraudulent concealment by withholding material facts that increased the risk. Despite the judgement favouring Carter, Lord Mansfield articulated the broader principle of *uberrimae fidei*. He established that the insured has a duty to disclose all facts known to them that are material to the risk. It is also enshrined in Section 13 of the Insurance Contracts Act (1984) that is the *'obligation of all parties within a contract to act with utmost good faith'*³⁴. The case of *Renard Constructions v Minister for Public Works* (1992)³⁵ started the discussions on the notion of good faith. In this case, the Minister for Public Works (the principal) hired Renard Constructions (the contractor) to build sewerage pumping stations. The contract said under Clause 44.1 that if the contractor delayed or failed, the principal could either take over the work or cancel the contract. After the contractor commenced the work, delays happened, but part of the delay was because the Minister himself hadn't provided some materials that he was supposed to. Renard reasoned that once they were provided the materials, they could complete the work. Yet, the Minister wasn't satisfied and upon the recommendation of the Superintendent, he cancelled all the contracts and took over the works. Renard argued that the Minister's cancellation was unreasonable and unfair, and that it amounted to wrongful termination.³⁶ This case went through arbitration, the Supreme Court and finally the New South Wales Court of Appeal. The judge, Justice Priestly JA, most empathetically addressed the application of good faith and fair dealing at 268 of the judgment 268, whereupon he stated:

'... that people generally, including judges and other lawyers, from all strands of the community, have grown used to the courts applying standards of fairness to contract which are wholly consistent with the existence in all contracts of a duty upon the parties of good faith and

³³ *Carter v. Boehm* (1766) 97 ER 1162 (KB).

³⁴ Insurance Contracts Act 1984 (Cth) s 13 https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ica1984220/s13.html.

³⁵ *Renard Constructions (ME) Pty Ltd v Minister for Public Works* (1992) 26 NSWLR 234.

³⁶ Doyles Construction Lawyers, *'Renard Constructions (ME) Pty Ltd v. Minister for Public Works* (Case Report, Sept. 2015)', <https://doylesconstructionlawyers.com/wp-content/uploads/2015/09/Renard-Constructions-v-Minister-for-Public-Works.pdf>.

*fair dealing in its performance. In my view this is in these days the expected standard, and anything less is contrary to prevailing community expectations.*³⁷

The above statement makes it clear that the existence of the duty of good faith has increasingly been recognized and applied by the courts. Priestly JA also expresses that this must be the norm, the ‘*expected standard*’, in contractual relationships.³⁸ This case is important because it shows that courts’ gradual readiness towards recognizing the duty of good faith as a fundamental concept that should be implied into contracts.

In the case of ‘*Burger King Corporation v Hungry Jack’s Pty Ltd (2001)*’³⁹, the New South Wales Court of Appeal pronounced that ‘*Burger King Corporation had violated the principle of good faith and reasonableness, which the court implied into the contract.*’⁴⁰ In this case, Hungry Jack (the largest franchisee in Australia) had an obligation as per the ‘development agreement’ to open four new stores annually, subject to Burger King’s (franchisor of the second largest fast food chain in the world) financial and operational approvals. However, Burger King denied these approvals, forcibly impeding Hungry Jack’s ability to perform. The court held that Burger King could not validly terminate its development agreement and that its refusal to cooperate, done to force Hungry Jack’s out of the market, breached the implied duty of good faith and reasonableness, rendering the termination invalid.⁴¹

The question pertaining to whether the common law of England recognizes the general duty of the doctrine of good faith and what such good faith hereby involves, is in the spotlight among the contemporary debates in the UK. *Paula Giliker*, a professor of Comparative Law at the University of Bristol, examined the evolution of the doctrine of good faith in the countries of Canada, Wales and England in her paper. She asserted that the fundamental principles agreed upon by the courts of England and Canada to encourage good faith could be expanded till the ‘negotiation phase, especially in Canada, where the Supreme Court has been much more open in its acceptance of this principle as an obligation in the performance of contracts.’ Nevertheless, she maintains that any responsibility to broker in good faith ‘*will, more*

³⁷ *Renard Constructions (ME) Pty Ltd v Minister for Public Works* (1992) 26 NSWLR 234, 268 (Priestley JA).

³⁸ *Crisp Law Newsletter*, *Renard Constructions (ME) Pty Ltd v. Minister for Public Works* (1992) 26 NSWLR 234 (Oct. 2024), <https://crisplaw.com.au/wp-content/uploads/2024/10/Newsletter-Renard-Constructions.pdf>.

³⁹ *Burger King Corporation v Hungry Jack’s Pty Ltd* (2001) 69 NSWLR 558, [2001] NSWCA 187 [153].

⁴⁰ Andrew Wallis & Melanie Maslem, *The Scope and Operation of the Duty of Good Faith and Reasonableness*, 79, *Australian Construction Law Newsletter* Aug./Sept. 2001, <https://www.austlii.edu.au/au/journals/AUConstrLawNlr/2001/58.pdf>.

⁴¹ *Burger King Corporation v Hungry Jack’s Pty Limited* [2001] NSWCA 187 (21 June 2001), https://www.trusts.it/admincp/UploadedPDF/200902261300200.jAustralia_BurgerKingCorpvHungryJack20010621.pdf.

significantly, be difficult to measure and remedy.' She advances that, maybe, the farthest common law will go with respect to 'pre-contractual dealings is the prohibition of the willful act of misleading or deceiving another person and providing reliance damages later.'⁴²

Analysing good faith's holding in the legal position in the American jurisdiction, the principle of 'freedom of contract' is considered one of the foundational principles of the contractual system, where the parties are free to enter negotiations and withdraw from them whenever they want without risk arising from their contractual responsibility. Except for the state of Louisiana,⁴³ where 'Article 1759 of the Louisiana Civil Code'⁴⁴ declares that '*good faith shall govern the conduct of the obligor and the obligee in whatever pertains to the obligation*,'⁴⁵ the US legal system functions on the principle of '*Caveat Emptor*', which states that 'the buyer alone is responsible for checking the quality and suitability of the products before it is purchased.' This principle was decided in several cases, for example, in the case of *Swinton v. Whitinsville Saving Bank*⁴⁶, Mr Swinton had purchased a house and two years later he was forced to make significant repairs since it significantly eroded due to the home's termites. The claimant alleged that the bank was aware of the termites, yet it concealed this from the buyer. The Court rejected the case, stating that '*unless there is an obligation to inform, the seller is not obliged to disclose the defect*'. The court referred to the state law of Massachusetts, which states that '*non-disclosure and notification is not a justification to annul the contract, and the buyer has to be careful and seek to protect himself/herself so that the law cannot solve the problem of the parties in a case where the contractor failed in his/her deal*.'⁴⁷ However, today, in the U.S.A., the principle of good faith is founded in statutes, for instance, 'Section 1-203 of the Uniform Commercial Code (UCC)',⁴⁸ states, '*every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement*.'⁴⁹ In a similar manner, the *Restatement (Second) of Contracts (1981) at section 205*⁵⁰ says that, '*every contract imposes*

⁴² M Kumar and M Heidemann, 'Contract Law in Common Law Countries: A Study in Divergence' (2022) 43(2) *Liverpool Law Review* 133 <https://doi.org/10.1007/s10991-022-09312-8>.

⁴³ William Tetley op.cit. p.37.

⁴⁴ The Louisiana Civil Code of 1870 (itself the successor to earlier codifications in 1808 and 1825) has been virtually recodified piecemeal since 1987

⁴⁵ Louisiana Civil Code (A.N. Yiannopoulos, ed., 2001).

⁴⁶ *Swinton v. Whitinsville Savings Bank*, 311 Mass 677, 42 NE2d 808 (1942).

⁴⁷ Dr. Abdullah M. Aldmour, The Role of Good faith in the Pre-Contractual Responsibility in International Contracts: a Comparative Study between Common Law and Civil Law, SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2751072.

⁴⁸ EA Farnsworth, 'Good Faith Performance and Commercial Reasonableness Under the Uniform Commercial Code' (1963) 30 *University of Chicago Law Review* 666.

⁴⁹ American Law Institute and National Conference of Commissioners on Uniform State Laws, *Uniform Commercial Code* (online), <https://www.law.cornell.edu/ucc>.

⁵⁰ *Restatement (Second) of Contracts* (1981).

*upon each party a duty of good faith and fair dealing in its performance and its enforcement.*⁵¹

This particular doctrine has also been mentioned in Comment (a) to section 205 as *'faithfulness to an agreed common purpose and consistency with the justified expectations of the other party.'*⁵² It also specifies that *'good faith and fair dealing in the performance of a contract requires more than mere honesty.'*⁵³

2.3 Applications and Recommendations for India

Paul H. Robinson, a renowned American criminal law scholar, defined good faith as *'a state of mind where a person acts honestly and without the intent to defraud, deceive, or harm others.'*⁵⁴ An act which is done with due care and caution, without mala fide intention, is said to have been done in good faith. *The General Clauses Act, 1897* in Section 3(22) defines good faith as *'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.'*⁵⁵ In Indian law, consent and good faith serve as very important principles for contractual relations.

In the case of *Doraswami Pillai v The King-Emperor (1903)*,⁵⁶ *'a police officer, along with another constable, went to the accused's home at midnight and subsequently knocked to verify his presence. They were acting on behalf of the magistrate's order to monitor the accused because of his suspicious actions. The accused reacted by verbally abusing them and after that, he brought a stick from inside the house, threatening to attack them. The court ruled that while the officer had official orders, it did not justify trespassing at midnight. It held that the police officer's actions could not be excused as done in good faith. The court found the accused guilty of assault and held the officer liable for trespassing under Section 442 of the Indian Penal Code, as he exceeded his authorized duties.'*⁵⁷

In the case of *Dharam Pal v. State of Haryana*⁵⁸, the Court passed the decree stating that *'good faith is a state of mind and must be judged based on the facts known to the person at the time of the act.'* The Court also stressed the fact that good faith *'does not require a person to be free*

⁵¹ Id. § 205. Note that both the UCC and Restatement only seek to aid and assist with the law on contracts; they are not binding.

⁵² Restatement (Second) of Contracts § 205 cmt. a (Am. L. Inst. 1981).

⁵³ William Tetley, 'Good Faith in Contract: Particularly in the Contracts of Arbitration and Chartering' (2004) 35(4) *Journal of Maritime Law & Commerce* https://docs.rwu.edu/law_ma_jmlc/vol35/iss4/4/.

⁵⁴ PH Robinson, *Criminal Law Defenses*, (West Academic Publishing, 2005).

⁵⁵ General Clauses Act, s 3(22) (India) <https://share.google/0AvPgPM9hBiNBqNBw>.

⁵⁶ (1903)13MLJ285

⁵⁷ *Doraswami Pillai v. King-Emperor*, (1903) 13 Mad. L.J 285 (Madras HC) (India).

⁵⁸ AIR 2013 SC 3018

from error in judgment.' These judgments emphasize the intricacy attached with understanding of the concept of good faith and simultaneously, 'shed light on the importance of honest intention, belief, due care and attention in determining whether an act was done in good faith or not. The Courts also explained that the notion of good faith is 'subjective' and varies based on the facts and circumstances of each individual case, but mere assertion of good faith without supporting evidence is not sufficient.'⁵⁹ In the Indian Contracts Act, 1872⁶⁰, good faith is not specifically defined; however, it can be interpreted that it is indirectly inferred here and there in several sections of the act. The quintessence of the notion of fair dealing or good faith is honesty, and this principle has time and again been interpreted by the courts in various cases.

In '*Kailas Sizing Works v. Municipality of Bhivandi and Nizampur*'⁶¹, the honorable Supreme Court delivered a landmark judgement and held that- '*to act in good faith, a person must act honestly. A person cannot be said to act honestly unless he acts with fairness and uprightness. A person who acts in a particular manner in the discharge of his duties in spite of the knowledge and consciousness that injury to someone or group of persons is likely to result from his act or omission or acts with wanton or willful negligence in spite of such knowledge or consciousness cannot be said to act with fairness or uprightness and; therefore, he cannot be said to act with honesty or in good faith.*'⁶²

In furtherance, to analyse the scope of good faith in contracts, one must take into understanding the essence of contracts and what the parties exactly meant when they entered into it. In the case of '*Swarnam Ramachandran v. Aravacode Chakungal Jayapalan*'⁶³, the Supreme Court held that the '*intention of the parties can be determined from (i) the express words used in the contract; (ii) the nature of the property which forms the subject-matter of the contract; (iii) the nature of the contract itself; and (iv) the surrounding circumstances.*'⁶⁴

⁵⁹ Sonu Agarwal & Albin Anto, Comparative Analysis of Good Faith in India and Other Jurisdictions, 2024 CONF. INT'L DR. 158 (2024), <https://heinonline.org/HOL/Page?handle=hein.journals/cidstue2024&collection=journals&id=158&startid=&enddid=166>.

⁶⁰ Indian Contracts Act, No. 9 of 1872, India Code (1872).

⁶¹ *Kailas Sizing Works v. Municipality of Bhiwandi & Nizampur*, AIR 1968.

⁶² *Kailas Sizing Works v. Municipality of Bhiwandi & Nizampur*, (1969) 1 S.C.C. 274 (India), <https://indiankanoon.org/doc/765875/> (last visited Sept. 4, 2025).

⁶³ Pollock & Mulla: Indian Contract & Specific Relief Acts (12th edn, 2001) 1086.

⁶⁴ Ramyani Bhattacharya, *The Doctrine of Good Faith in Indian Contracts: Indispensable but Ignore*, International Journal of Advanced Legal Research.

CONCLUSION

Hence, it can be concluded that the Indian Contracts Act, 1872, implies good faith to be '*reasonable diligence by an ordinary, prudent person.*' Though a general interpretation can be derived from a few of its provisions, there is a gap in the recognition and implementation of good faith; it cannot be used as a separate ground for the breach of contracts under Indian law. India's legal system still gives importance to the broader and more liberal interpretation of the scope and freedom of contract, despite having been inherited from the common law system of Britain. It though has incorporated certain features of the civil legal tradition but values the liberal understanding of the scope of interpretation of the terms. In consideration of the enforcement of the doctrine of good faith in contractual relations, India is positioned on a very unclear stance. While the Indian Penal Code, 1860 recognizes this principle, although differentiating it with the 'General Clauses Act, 1897,' it scarcely mentions good faith under the Indian Contracts Act, 1872. While the courts have time and again tried to enforce this doctrine, there still exists is huge lacuna in its perceived legal interpretation and actual application. This paper proposes that the Indian Contracts Act, 1872 clearly demarcate the boundaries of good faith and clearly defines it. It has been analyzed and understood from various cases that good faith serves as a cornerstone in law and upholds contractual morality. It must be established as a separate, recognizable legal principle since it will establish clear standards for ethical and moral actions, promote accountability, alongside protect the rights and interests of individuals from misuse of law.