

The Concept of 'Aqd (Contract) in Islamic Jurisprudence: An Analytical Study with Reference to the Contract Act 1872

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ARTICLE INFO

ABSTRACT

Keywords

'Aqd, Islamic jurisprudence, contract, agreement, promise, Shari'ah, Contract Act 1872, comparative analysis

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DOI: [2248.vfast-tir.v13i2/21015.10](https://doi.org/10.2248/vfast-tir.v13i2/21015.10)

Article History

Received

September 02, 2025

Accepted

September 26, 2025

Published

October 07, 2025

The concept of contract forms the foundation of legal, commercial, and social transactions, making its study essential for both jurisprudential and practical purposes. This research explores the concept of 'aqd (contract) in Islamic jurisprudence and examines its relationship with the modern legal framework of the Contract Act 1872. The study begins with a lexical and juristic analysis of 'aqd, tracing its Qur'anic foundations, linguistic dimensions, and scholarly interpretations, with particular emphasis on its essential elements: *ijāb* (offer), *qabūl* (acceptance), and *irtibāṭ shar'ī* (legal binding recognized by Shari'ah). It further highlights the role of mutual consent (*tarāḍī*), intention (*niyyah*), and lawful subject matter as fundamental conditions for the validity of contracts. The research then evaluates the legal definitions of contract under the Contract Act 1872, focusing on the distinctions between promise, agreement, and contract, as well as the requirements of enforceability, consideration, and lawful object. A comparative analysis demonstrates that while the Contract Act 1872 is concerned primarily with enforceability under positive law, Islamic jurisprudence emphasizes both the external act of agreement and the internal dimension of Shari'ah compliance. Consequently, Islamic law excludes void (*bāṭil*) contracts that contravene Shari'ah conditions, whereas the Contract Act recognizes validity if statutory requirements are met, even when Shari'ah principles are absent. This study concludes that the concept of 'aqd in Islamic jurisprudence offers a more holistic framework, combining legal enforceability with ethical and spiritual dimensions, thereby providing a balanced approach to justice and accountability in contractual relations.

Contract ('Aqd) in Islamic Jurisprudence

Human beings are, by nature, social creatures (madanī al-ṭabīع-مدنى الطبع). The survival of an individual's life depends upon the principle of mutual cooperation with other members of society. Thus, no person can fulfill all the necessities of life entirely on their own. Every individual is compelled to enter into dealings with others in order to meet their needs. It is this wisdom which lies behind the permissibility and legitimacy of 'uqūd-عقود (contracts) in Islamic law. The Qur'an, at various places, has commanded the making and fulfillment of contracts. Allah Almighty says:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ [1].

“O you who believe! Fulfill the contracts.”

This verse indicates that believers must uphold the contracts they conclude with others and fulfill the responsibilities resulting from them.

Lexical Definition of ‘Aqd

Fundamentally, the root letters “ع، ق، د” (‘Ayn, Qāf, Dāl) are considered the linguistic basis of the word ‘aqd. They convey the sense of binding (al-shadd-الشَّدَّ), establishing connection, joining together two ends of a thing, and tying a knot. Accordingly, the word ‘aqd also includes the meanings of firmness, stability, and confirmation. Through the act of ‘aqd, a composite entity comes into existence—something in which every part becomes necessary for the other, and separating one from the other would dissolve the whole.

Ibn Fāris, along with other renowned linguists such as Ibn Manẓūr and Zubaydī, define ‘aqd as:

(عَقَدَ) الْعَيْنُ وَالْقَافُ وَالذَّالُ أَصْلٌ وَاحِدٌ يَدُلُّ عَلَى شَدِّ وَشِدَّةٍ وَثُوقٍ، وَإِلَيْهِ تَرْجِعُ فِرْعُ الْبَابِ كُلِّهَا [2].

The original root “ع، ق، د” denotes binding firmly and with strength, and this meaning extends to all its derivatives.

Words such as ‘ahd-عهد (covenant) and mīthāq-ميثاق (pact) are semantically related to ‘aqd. At times, they fully convey the meaning inherent in ‘aqd, and at times only partially. However, these related words sometimes emphasize the matter more strongly, while at other times their scope is more limited than ‘aqd.

The Qur’an uses all three words—‘aqd, ‘ahd, and mīthāq—interchangeably and applies them to real matters. Reflecting upon these reveals that all three indicate mutual obligation, fulfillment, establishment, and immutability. The Qur’an, at several places, mentions fulfilling ‘ahd, honoring the mīthāq ghalīz-ميثاق غليظ (strong covenant), and safeguarding agreements. For example:

• يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ [3]

• وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ وَلَا تَنْقُضُوا الْأَيْمَانَ بَعْدَ تَوْكِيدِهَا وَقَدْ جَعَلْتُمُ اللَّهَ عَلَيْكُمْ كَفِيلًا [4]

• الَّذِينَ يُوفُونَ بِعَهْدِ اللَّهِ وَلَا يَنْقُضُونَ الْمِيثَاقَ [5]

• الَّذِينَ يَنْقُضُونَ عَهْدَ اللَّهِ مِنْ بَعْدِ مِيثَاقِهِ [6]

• وَأَخَذْنَا مِنْكُمْ مِيثَاقًا غَلِيظًا [7]

These five Qur’anic texts collectively highlight the formation of ‘aqd, ‘ahd-عهد, and mīthāq ghalīz-ميثاق غليظ, while condemning betrayal, non-fulfillment, and treachery in matters of contract and covenant with God.

Scholarly Explanations of ‘Aqd

Exegetes have clarified the meanings of these terms in light of Qur’ānic texts. For example, Imām Ālūsī, under the verse *يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ* writes:

إن أصل العقد هو الربط محكما، ثم تجوز به عن العهد الموثق، وإن العقد فيه معنى الإستيثاق و الشد ولا يكون إلا بين اثنين [8].

That is, the essence of ‘aqd is to bind firmly, and figuratively it is used for a confirmed covenant. ‘Aqd conveys firmness, confirmation, and intensity, and necessarily involves two parties.

Similarly, Imām Shawkānī explains:

وَالْعُقُودُ: الْعُهُودُ، وَأَصْلُ الْعُقُودِ الرُّبُوطُ، وَاحِدُهَا عَقْدٌ، يُقَالُ: عَقَدْتُ الْحَبْلَ وَالْعَهْدَ، فَهُوَ يُسْتَعْمَلُ فِي الْأَجْسَامِ وَالْمَعَانِي، وَإِذَا اسْتُعْمِلَ فِي الْمَعَانِي كَمَا هُنَا أَفَادَ أَنَّهُ شَدِيدُ الْإِحْكَامِ، قَوِيُّ التَّوْثِيقِ [9].

That is, ‘uqūd is the plural of ‘aqd and means covenant. Its root denotes binding and tying. One may say ‘aqadtu al-ḥabl wa al-‘ahd (I tied the rope and the covenant). The term is applied both physically and metaphorically; in the latter sense, it implies strong confirmation and firm binding.

From the above lexical and exegetical details of ‘aqd, it becomes clear that the primary meaning of ‘aqd is “connection,” and this meaning underlies all its other usages. This is because “connection” (rabṭ) can be both tangible—such as joining and tying one end of a rope with another—and abstract, such as in sale (bay‘), where acceptance (qabūl) is joined and bound with offer (ījāb).

Similarly, in its lexical sense, ‘aqd is also used for yamīn (oath), mīthāq (covenant), and ‘ahd (pledge), because in these matters a person firmly binds their will to doing or abstaining from a certain act. In other words, as a result of an oath or covenant, the contracting person obligates themselves with respect to performing or refraining from something, thereby creating an abstract connection between themselves and that act.

Thus, every act upon which a person firmly resolves and binds himself is, in its lexical sense, termed ‘aqd [10].

Definition of ‘Aqd

From a jurisprudential perspective, the definition of ‘aqd and its related terms have been shaped directly by scriptural texts. Among jurists, both general and specific meanings of ‘aqd are recognized. For instance, some jurists hold that ‘aqd is a broad legal term that brings a contracting party under the scope of binding obligation. Such obligation may be unilateral, bilateral, tripartite, or multilateral.

Imām Abū Bakr al-Jaṣṣāṣ explains:

العقد ما يعقده العاقد على أمر يفعله هو أو يعقد على غيره فعله على وجه إلزامه إياه لأن العقد إذا كان في أصل اللغة الشد ثم نقل إلى الأيمان والعقود عقود المبيعات ونحوها فإنما أريد به إلزام الوفاء بما ذكره وإيجابه عليه وهذا إنما يتناول منه ما كان منتظرا مراعى في المستقبل من الأوقات فيسمى البيع والنكاح والإجارة وسائر عقود المعاوضات عقودا لأن كل واحد منهما قد ألزم نفسه التمام عليه والوفاء به وسمي اليمين على المستقبل عقدا لأن الحالف قد ألزم نفسه الوفاء بما حلف عليه من فعل أو ترك والشركة والمضاربة ونحوها تسمى أيضا عقودا لما وصفنا من اقتضائه الوفاء بما شرطه على كل واحد من الربح والعمل لصاحبه والزمه نفسه وكذلك العهد والأمان لأن معطيها قد ألزم نفسه الوفاء بها وكذلك كل شرط شرطه إنسان على نفسه في شيء يفعله في المستقبل فهو عقد وكذلك النذور [11]...

‘Aqd is the firm resolve of a person to perform an act himself, or to obligate another to perform it, such that the matter becomes binding. Since in the root sense ‘aqd means binding, the term was extended to include oaths and contracts such as sales and the like. Its purpose is the binding of fulfillment. It applies only to matters that are expected and anticipated in the future. Thus, sale, marriage (nikāḥ), lease (ijārah), and all commutative contracts are termed ‘uqūd because each party binds themselves to their fulfillment. Likewise, an oath regarding a future act is termed ‘aqd, because the one who swears obligates themselves to perform or abstain. Partnerships (sharīkah) and muḍārabah are also called ‘uqūd for the same reason—that they impose obligations regarding profit-sharing and work. The same applies to covenants, trusts, and every condition a person places upon themselves for a future act.

Hence, according to al-Jaṣṣāṣ, the word ‘aqd applies to every legal act which aims to impose responsibility for fulfilling a matter in the future—whether one assumes this obligation unilaterally, or whether it arises bilaterally through ijāb (offer) and qabūl (acceptance). Thus, all commutative contracts—such as sale, lease, partnership, and marriage—fall under ‘uqūd because both parties bind themselves to obligations. Similarly, future-directed oaths and vows are also ‘uqūd.

Ibn al-‘Arabī remarks:

إذا ثبت هذا فربط العقد تارةً يكون مع الله، و تارةً يكون مع الآدمي، و تارةً يكون بالقول و تارةً يكون بالفعل [12].

That is, ‘aqd is sometimes a covenant with Allah, sometimes with fellow humans, and it may be concluded through words or through actions.

Jurists who do not include unilateral obligations (irādah munfaridah) in the definition of ‘aqd argue that the existence of ijāb and qabūl between two parties is necessary. Accordingly, Imām Ibn al-Humām defines ‘aqd:

المراد بالعقد مطلقا سواء كان نكاحا أو غيره مجموع إيجاب أحد المتكلمين مع قبول الآخر، أو كلام الواحد القائم مقامهما: أعني المتولي الطرفين [13].

That is, ‘aqd, whether marriage or otherwise, refers to the combination of one party’s offer with the acceptance of the other—or the statement of a single representative acting on behalf of both sides.

This specific definition is also adopted by many Ḥanafī, Shāfi‘ī, and Mālikī jurists [14]. Ḥanbalī authorities such as Ibn Qudāmah [15] and Ibn Rajab [16] do not include unilateral commitments under the category of ‘aqd.

The basic reason for this difference among the jurists lies in their viewing the lexical meaning of ‘aqd from two different perspectives. On the one hand, ‘aqd carries the meaning of connection (rabṭ), while on the other hand it also conveys the sense of firmness and stability. Accordingly, those jurists who focused on the meaning of connection restricted the definition of ‘aqd, holding that the existence of two parties is necessary for its conclusion. Conversely, those jurists who adopted a broader definition considered the notions of firmness, confirmation, and binding force, and thus maintained that the presence of two or more parties is not essential. Rather, any disposition that results in an obligation—even if unilaterally imposed upon a person without the participation of another party—or when two or more individuals mutually agree through offer (ījāb) and acceptance (qabūl) to assume responsibilities upon one another, qualifies as ‘aqd [17].

‘Aqd bi-l-ma‘nā al-a‘amm (the general sense of ‘aqd) is closer to its lexical meaning, since the lexical sense encompasses both tangible and abstract connections. The technical, general meaning of ‘aqd applies to all forms of abstract connections. By contrast, ‘aqd bi-l-ma‘nā al-akhaṣṣ (the specific sense of ‘aqd) is limited only to those cases where the offer and acceptance of two parties are connected in such a way that one or both of them incur obligations and responsibilities as a result.

Moreover, in the Qur’ān, the general meaning of ‘aqd is intended in the context of oaths. For instance, Allah Almighty says:

لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الْأَيْمَانَ [18].

“Allah will not call you to account for what is futile in your oaths, but He will hold you accountable for the oaths which you bind (‘aqqadtum) with firmness.”

Nevertheless, among the jurists, it is ‘aqd bi-l-ma‘nā al-akhaṣṣ (the specific sense) that is most widely recognized and prevalent. Whenever the term ‘aqd is used (under no condition—مطلقاً), this meaning is intended. Although ‘aqd bi-l-ma‘nā al-a‘amm is also found in the books of jurisprudence, such usage is relatively rare.

Legal Definition of ‘Aqd

The legal definition of ‘aqd corresponds to the definition adopted by the majority of jurists (jumhūr fuqahā) who favor the specific sense (‘aqd bi-l-ma‘nā al-akhaṣṣ). For instance, in the Indian Contract Act of 1872, ‘aqd is defined through ijāb (offer) and qabūl (acceptance), provided that such agreements are enforceable [19].

Similarly, in Egyptian Civil Law, ‘aqd is defined as:

توافق إرادتين على إحداث أثر قانوني معين سواء كان هذا الأثر هو إنشاء التزام أو نقله أو تعديله أو إنهائه [20].

‘Aqd is the concurrence of two wills to produce a specific legal effect, whether that effect is the creation of an obligation, its transfer, its modification, or its termination.

Discussion on the legal definition will be elaborated further under the heading of “Law of Contract.”

Among the jurists who adopt the specific definition of ‘aqd, different formulations are found. One of them is the definition offered by Ibn al-Humām, mentioned earlier. Others provide slightly varied expressions, some of which are analyzed below.

In the Majalla al-Aḥkām al-‘Adliyya (Ottoman civil code), Article 102 defines ‘aqd as follows:

العقدُ التَّزامُ الْمُتَعَاقِدِينَ وَتَعَهُدُهُمَا أَمْرًا وَهُوَ عِبَارَةٌ عَنِ ارْتِبَاطِ الْإِيجَابِ بِالْقَبُولِ [21].

That is: In technical usage, ‘aqd is the assumption of an obligation by the contracting parties regarding a matter. It signifies the binding connection of ījāb with qabūl.

Article 104 separately defines in‘iqād (conclusion):

الْإِنْعِقَادُ تَعَلُّقُ كُلِّ مِنَ الْإِيجَابِ وَالْقَبُولِ بِالْآخِرِ عَلَى وَجْهِ مَشْرُوعٍ يَظْهَرُ أَثْرُهُ فِي مُتَعَلِّقِهِمَا [22].

That is: In‘iqād refers to the relation of ījāb and qabūl to one another in a lawful manner such that their effects appear in the subject matter to which they pertain.

This distinction between ‘aqd and in‘iqād in the Majalla corresponds to the distinction in the Contract Act of 1872 between “agreement” and “contract.” In this framework, the Majalla’s definition of ‘aqd equates to “agreement,” while in‘iqād equates to “contract [23].”

In ‘Ināyah Sharḥ al-Hidāyah, ‘aqd is defined as follows:

الْإِنْعِقَادُ هَاهُنَا تَعَلُّقُ كَلَامِ أَحَدِ الْعَاقِدِينَ بِالْآخِرِ شَرْعًا عَلَى وَجْهِ يَظْهَرُ أَثْرُهُ فِي الْمَحَلِّ [24].

Here, in‘iqād refers to the legal connection of the speech of one contracting party with that of the other, such that its effect appears in the object of the contract.

Muḥammad Qadrī Pasha also defines ‘aqd:

العقد هو ارتباط الإيجاب الصادر من أحد المتعاقدين بقبول الآخر على وجه يثبت أثره في المعقود عليه [25].

‘Aqd is the connection of the offer made by one of the contracting parties with the acceptance of the other, in such a way that its legal effect is established in the subject matter of the contract.

Critical Analysis of Juristic Definitions of ‘Aqd

From the foregoing definitions, it becomes clear that each carries certain limitations. For example, Imām Ibn al-Humām’s definition, while it successfully captures the essential reality (ḥaqīqah dhātiyyah) of ‘aqd and encompasses its types (valid, suspended, irregular, and void), still equates ‘aqd solely with ījāb and qabūl. However, ‘aqd is not merely the act of offering and accepting, but rather the binding connection of offer with acceptance (irtibāṭ al-ījāb bi-l-qabūl) in a manner recognized by Sharī‘ah. The very linguistic meaning of ‘aqd already includes the notion of binding connection.

Imām Ibn Nujaym critiques Ibn al-Humām’s definition as follows:

ومقصوده (من بيان معنى الانعقاد) في البابين (النكاح والبيع) تحقيق أن الإيجاب مع القبول عين العقد لا غيره كما يفهم من ظاهر العبارة والحق أن العقد مجموع ثلاثة: الإيجاب والقبول والارتباط الشرعي فلم يكن الإيجاب والقبول عين العقد؛ لأن جزء الشيء ليس عينه [26].

His purpose (in explaining the meaning of in‘iqād) in the two chapters (nikāḥ and bay‘) was to establish that ījāb and qabūl themselves constitute ‘aqd and nothing else—as appears from the wording. But the correct view is that ‘aqd is the combination of three elements: offer (ījāb), acceptance (qabūl), and the legal connection (irtibāṭ shar‘ī). Thus, ījāb and qabūl are not in themselves the ‘aqd, for a part of something is not identical to the whole.

Therefore, Ibn al-Humām’s definition reflects the Ḥanafī perspective, which considers ījāb and qabūl as the primary pillars (arkān) of the contract, excluding other elements such as the subject matter (ma‘qūd عليه-معقود عليه) [27].

The Majalla’s definition also captures the essential reality of ‘aqd, but it suffers from dawr-دور (circularity). The definitions found in ‘Ināyah and Murshid al-Ḥayrān likewise suffer from circularity, as they condition the definition with the clause:

على وجه يظهر أثره في المحل.

That is: “In such a way that its effect appears in the subject matter.”

This condition, however, is not part of the essential pillars of ‘aqd; rather, it excludes void contracts (‘uqūd bāṭilah-عقود باطله). Yet the fuqahā’ themselves use the term ‘aqd for void contracts, e.g., nikāḥ bāṭil or bay‘ bāṭil-بيع باطل. Therefore, these definitions cannot be considered comprehensive.

Nevertheless, a close analysis of ‘Ināyah and Murshid al-Ḥayrān indicates that their definitions emphasize not the essential nature (ḥaqīqah dhātiyyah-حقيقية ذاتية) of ‘aqd, but rather its Sharī‘ah-oriented purpose and effect. In Sharī‘ah, the purpose of ‘aqd lies in producing legal consequences (āthār shar‘iyyah-اثار شرعية).

To elaborate: linguistically, ījāb and qabūl together give ‘aqd an external, perceptible existence. But the Sharī‘ah-based existence of ‘aqd (which is an additional layer beyond its linguistic existence) requires more than just ījāb and qabūl. It requires the presence of

all the essential conditions which, if absent, render the ‘aqd null and void. These include conditions such as the lawfulness of the subject matter (ḥilliyyat al-maḥall).

Thus, the composition of a Sharī‘ah-based ‘aqd requires three elements:

1. Ījāb (offer)
2. Qabūl (acceptance)
3. Irtibāṭ shar‘ī (legal connection in accordance with Sharī‘ah) [28].

Imām Ibn Nujaym also considers the presence of irtibāṭ shar‘ī-ارتباط شرعي essential for the existence of ‘aqd.

From this discussion, the issue is resolved: definitions that exclude irtibāṭ shar‘ī are not fully comprehensive and cannot include ‘uqūd bāṭilah (void contracts). This is because a void contract has external (ḥissī) existence but lacks Sharī‘ah existence.

For instance, in the sale of carrion (bay‘ al-maytah), all external elements of a contract are present: ĵjāb, qabūl, the connection between them, the contracting parties, and the subject matter. Yet the contract remains void because one essential condition—the permissibility of the subject matter—is missing. Hence, such a sale is a contract linguistically, but legally void in Sharī‘ah [29].

In non-Muslim countries, where man-made laws are applied, it sometimes happens that a contract deemed void in Sharī‘ah is still valid under national law, with all its legal effects enforceable [30].

Keeping in view the substantive (Mauzū‘ī-موضوعی) aspect of ‘aqd, scholars have preferred the definition given in ‘Ināyah, stating that this definition encompasses all the essential and necessary elements required by Sharī‘ah for the external existence of a contract, such as:

1. Ījāb (offer) and qabūl (acceptance)
2. Irtibāṭ shar‘ī (legal connection recognized by Sharī‘ah)
3. Muta‘āqidīn (contracting parties)
4. Maḥall al-‘aqd (subject matter of the contract) [31].

The Role of Mutual Consent (Tarādī-تراضي) in the Formation of Contracts

Allah ﷻ has granted human beings freedom in their transactions within the limits of Sharī‘ah. Man has the choice to engage in contracts and dispositions of his wealth according to his will. The very linguistic meaning of ‘aqd carries the sense of firm determination and intention, and this is equally emphasized in its technical sense.

The Qur'an explicitly highlights mutual consent as a necessary condition for contracts:

لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ [32].

Do not consume one another's wealth unjustly, unless it be through trade conducted with mutual consent among you.

Similarly, in explaining the verse: [33] exegetes note:

أى أوفوا بكل عقد تبرمونه بإرادتكم واختياركم لم يوجب الله تعالى الالتزام به و لم يحرمه عليكم [34].

Fulfill every contract which you conclude by your own will and choice, provided Allah has not forbidden or prohibited it.

This indicates that the will (*irādah*) and free consent (*tarādī*) of the contracting parties are fundamental to the validity of contracts.

Sharī'ah also prohibits dispositions arising from corrupt intentions. For example, the Qur'an declares unlawful any bequest (*waṣīyah*) designed to harm the heirs:

مَنْ بَعَدَ وَصِيَّةً يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ [35].

After the execution of any bequest or payment of debt, provided that no harm has been intended thereby.

This reflects that contracts and legal dispositions must stem from legitimate will and not from a harmful or malicious intention.

Furthermore, the Sunnah also emphasizes intention as the foundation of actions:

إنما الأعمال بالنيات، وإنما لكل امرئ ما نوى [36]---

Translation: Indeed, actions are but by intentions, and every man shall have only that which he intended.

Another ḥadīth underscores the centrality of consent:

لا يحل مال مرء مسلم إلا بطيب نفسٍ منه [37].

It is not lawful to take the wealth of a Muslim except with his willing consent.

Thus, it is established that in the enforcement of contracts, the consent and will of the parties is paramount. This is why, contracts may be concluded not only through spoken *ijāb* and *qabūl* but also through any act that clearly indicates mutual consent—such as writing (*kitābah*), gestures (*ishārah*-اشاره), or actual conduct (*ta'āṭī*-تعاطى). However, since *irādah* (intention) is hidden and cannot be directly observed, the Sharī'ah requires its outward manifestation through *ijāb* and *qabūl* [38]. These verbal or practical expressions serve as a reliable means of giving effect to the inner will. From the perspective of Sharī'ah, such a contract will be considered valid and enforceable, provided that the prescribed legal procedure for its formation has been followed.

Although in normal circumstances, outward expressions (*ijāb* and *qabūl*)—also termed *zāhir al-irādah*—are sufficient for the validity of a contract [39], Yet, Sharī'ah does not

entirely ignore inner will (*irādah bāṭiniyyah*). In fact, when there is clear indication of conflict between the two: outward expressions (*ijāb* and *qabūl*) and inner will, priority is given to the hidden will [40]. For instance, if one of the parties is compelled by force or threat to conclude a contract, the real consent is absent, despite the presence of verbal acceptance. Such a contract is considered invalid (*ghayr nāfidh*) unless ratified voluntarily after the removal of coercion. The majority of jurists uphold this principle. Ḥanafī jurists, too, recognize it, with the exception of three matters—*nikāḥ*, *talāq*, and *ʿitāq*-اعتاق (manumission)—where contracts under duress are still considered binding. In all other financial and civil transactions, duress negates validity until consent is restored [41].

There are several other situations where, despite the presence of outward *ijāb* (offer) and *qabūl* (acceptance), the inner intention is given precedence—for example, in the case of an insane person, a non-discerning minor, someone acting in jest (*hāzil*-هازل), or one who gives acceptance without understanding the meaning of the words of offer [42].

Thus, the concept of *ʿaqd* may be defined as: *ʿAqd* is the binding of the wills of two parties through *ijāb* and *qabūl* in such a manner that it produces a legal effect recognized by the *Sharīʿah* [43].

In other words, *ʿaqd* is the process of connecting the determinations of two parties in such a way that it gives rise to obligations, rights, and legal consequences.

Law of Contract (Contract Act 1872)

Regarding *ʿaqd* (contract and agreement), the Contract Act 1872 is followed in Pakistan. In Section 2(h) of this law, a contract is defined as:

Contract: An agreement enforceable by law is a contract [44].

That is, every agreement or undertaking which is enforceable by law is called a contract. Whereas the definition of agreement in Sub-Section (e) of the same section is given as:

Agreement: Every promise and every set of promises, forming the consideration for each, is an agreement [45].

That is, every promise or collection of promises in which there is some consideration or return for each party is called an agreement. Arab jurists interpret agreement (agreement) as *ittifāq* (consent/accord).

The word promise used in the definition of agreement is defined as:

Promise: When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, is called promise [46].

That is, when the second party expresses consent and accepts the offer made by the first party, it becomes a promise.

Thus, in legal terms, the meaning of *ʿaqd* (contract or agreement) is that when a person expresses his will and consent regarding doing or not doing something in such a way that the purpose of this expression is to obtain the consent of another person, and this second person shows his consent to the will and expression of the first, then it becomes

a promise. If, as a result of this promise, some consideration becomes binding upon each party, then it is called an agreement. And if this agreement is also enforceable by law, then it is called a contract.

Of the two parties to the contract, the first party who makes an offer of doing or not doing something to the other party — his offer is called *ijāb* (proposal or offer), and he himself is legally called promisor. The second party, who expresses consent to the offer of the first, his consent is called *qabūl* (acceptance), and he himself is legally called promisee. When, at the wish of the promisor, the promisee or any other person performs an act, abstains from it, or promises to do so, it is called consideration for promise [47].

When an agreement or contract is made orally or in writing, it is called an express contract. Whereas, when a contract is inferred from an act or occurrence, it is called an implied contract.

In addition to *ijāb* (offer) and *qabūl* (acceptance), the essential conditions of contract include adulthood, soundness of mind, free consent, and legal consideration.

Legally, it is necessary to fulfill the obligations that the parties accept as a result of the contract. If a party fails to fulfill its obligation, the other party has the right either to compel the defaulting party to perform the contract or to recover damages (برجانه) from it [48].

From Section 2 and its sub-sections of the Contract Act 1872, it becomes clear that under this law, promise, agreement, and contract are different in meaning. All of them are based on offer and acceptance, but the meaning of promise is more general than agreement and contract, because in a promise there is no necessity of consideration from both parties, whereas in agreement and contract it is essential. Hence, every agreement and contract is, by law, a promise, but not every promise is an agreement or contract. Similarly, the meaning of agreement is more general than contract, because for the existence of an agreement, at least two parties (promisor and promisee), mutual consent (offer and acceptance), a lawful object, and lawful consideration are required [49], while for a contract, in addition to these, it is also necessary that the matter be legally enforceable. Thus, every contract is an agreement, but not every agreement is a contract.

In Egyptian civil law, the definition of contract is expressed in these words:

العقد توافق إرادتين على إحداث أثر قانوني معين سواء كان هذا الأثر هو إنشاء التزام أو نقله أو تعديله أو إنهائه [50]

That is, a contract is the agreement of two wills to produce a specific legal effect, whether this effect is the creation of an obligation, its transfer, its modification, or its termination.

For example, in a contract of sale (عقد البيع - 'aqd al-bay'), each party becomes obliged: the seller must deliver the sold item, and the buyer must deliver the price. Sometimes the legal effect is the transfer of an obligation, such as in the 'aqd al-ḥawālah (contract of transfer), where a debt is transferred from one person to another. Sometimes the agreement of two wills is upon modifying an obligation, such as making a contract conditional or time-

bound. Termination of an obligation means its annulment, as in *iqālah* (rescission), in which a concluded contract of sale is revoked [51].

Dr. ‘Abd al-Razzāq al-Sanhūrī, while explaining this definition, writes that only such an agreement will be called a contract which produces a legal effect. An agreement that does not produce a legal effect cannot be called a contract. For example, if a friend invites another friend to a wedding feast and the latter accepts, here although mutual consent of wills exists, it is not considered a contract, because if the invited person does not attend, no legal responsibility arises upon him. On the contrary, if a company makes an agreement with its employee that during working hours food will be provided by the company, this is a contract, because in this case the company has imposed upon itself a legal obligation, deviation from which will make it liable.

Further specifying the legal contract, he writes that not every agreement having a legal effect is a contract, but only that agreement which falls within private law and financial transactions. Thus, treaties between states and agreements between government and employees will fall outside the scope of contracts, because these agreements are of the category of common law and constitutional law [52].

In comparison with the above legal definition of contract, the definition in Islamic jurisprudence is distinguished in that the legal definition is expressed in terms of the wills of the parties rather than in terms of *ijāb* and *qabūl*. Whereas will (*irādah*) is an internal matter, which cannot be known without offer and acceptance. The mere existence of wills of the parties is not sufficient, but for the formation of a contract, it is necessary that the wills be manifested towards each other in the form of offer and acceptance. Hence, sometimes it happens that there is an agreement of wills, yet a contract is not considered concluded — as in the case of a *wa‘d* (promise), when both parties promise to conclude a sale or another contract in the future. Such a promise is not considered a contract [53].

In addition, the fundamental difference between the juristic (*fiqhī*) and legal definition of *‘aqd* (contract) is that the juristic definition takes into account the *shar‘ī* (Islamic legal) connection in the formation of a contract and encompasses only those contracts which fulfill the conditions laid down by the *Sharī‘ah* for the formation of a contract. Thus, the juristic definition excludes invalid (*bāṭil*) contracts from the category of contracts. Whereas, according to the legal definition of a contract, every contract will be considered concluded as long as it complies with the prevailing laws, even if the requirements of the *Sharī‘ah* have not been observed [54].

Findings and Conclusion

- This study establishes that the concept of *‘aqd* (contract) in Islamic jurisprudence is deeply rooted in Qur’ānic injunctions, Sunnah, and the linguistic essence of binding and obligation. Classical jurists emphasized three constitutive elements of *‘aqd*: *ijāb* (offer), *qabūl* (acceptance), and *irtibāṭ shar‘ī* (a binding legal connection recognized by *Sharī‘ah*). Alongside these, mutual consent (*tarāḍī*), lawful subject matter, and

legitimate intention (niyyah) are indispensable conditions. Thus, in Islam, a contract is not merely a legal arrangement but also a moral and spiritual commitment.

- The Contract Act 1872, however, adopts a purely legalistic framework, defining contract as “an agreement enforceable by law,” with sub-classifications of promise and agreement. Its emphasis lies on enforceability, consideration, and lawful object within positive law, irrespective of Shari‘ah requirements. Consequently, agreements deemed void in Islamic law—for lacking Shari‘ah compliance—may still be valid and enforceable under the Contract Act.

The comparative analysis demonstrates that Islamic jurisprudence provides a more comprehensive framework, integrating legal enforceability with ethical accountability and spiritual responsibility. Unlike the Contract Act, which limits itself to statutory obligations, Islamic law excludes ‘uqūd bāṭilah (void contracts) and stresses justice, consent, and morality. Thus, the Islamic conception of contract offers a holistic balance between law, ethics, and faith, while modern legal systems such as the Contract Act 1872 address only external enforceability.

In sum, every contract in Islamic law is a legally and morally binding covenant, whereas in the Contract Act 1872, a contract is primarily a legally enforceable agreement.

Author Contribution:

Muhammad Zakariya: Conceptualization, Literature Review, Methodology/Research Design, Supervision and Guidance, Data Collection, Translation and Interpretation, Writing – Original Draft, Writing – Review and Editing, and Funding Acquisition.

Conflict of Interest Statement

The authors declare no conflict of interest related to this research.

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