

## CONSIDERATION OF CONTRACT IN ENGLISH LAW & LAW OF BANGLADESH: A COMPARATIVE STUDY

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### **Abstract**

*To make an agreement consideration is essential. An agreement which is enforceable by law is called contract. However, in English law, the ample interpretation regarding consideration makes confusion. The practical benefit, legal benefit, factual benefit or detriment of a person is consideration or not, is under a question mark. It is now, however, up to the discretion of a competent court whether an act amount to be a consideration or not. For the reason in England there is no statutory existing law in order to define consideration. A pre-existing duty exist to a person is not amount to be a consideration. However, there is no specific criterion to define pre-existing duty. In some cases, English common law amalgamated the pre-existing duty with consideration. Even though it has separate meaning from consideration. Nevertheless, some unorthodox interpretation regarding consideration negates the necessity of consideration for make a contract. So the future of English contract law regarding consideration is endangered. Albeit, the rules regarding consideration such as sufficiency of consideration is remain intact. Nonetheless, the contract laws in England vis-à-vis the rule of past consideration, consideration move from promisee have some contradiction with the existing statutory law of Bangladesh.*

**Key words:** *practical benefit, legal benefit/ detriment, factual benefit/ detriment, pre-existing duty, adequacy and sufficiency of consideration, past consideration.*

### **Introduction**

The law of contract deals with bargains. Consideration developed as the ‘proof’ that a contract existed rather than a merely gratuitous promise. By the 17<sup>th</sup> century, in the case of agreements the courts had demand evidence of the ‘proof’ that a

bargain fact existed. It was the *quid pro quo*, the proof that a bargain in fact existed, and if no consideration could be found then the agreement could not be enforced. The English law has developed a doctrine of consideration to engage in recreation principal role in selection those agreements to be given the ‘badge of enforceability’. However, the basis of the doctrine of consideration has been a battleground for leading contract scholars in recent years. The orthodox interpretation of consideration is that it is based upon the idea of ‘reciprocity’; that a promisee should not be able to enforce a promise unless he has given or promised to give something in exchange for the promise or unless the promisor has obtained something in return (Mckendrick, ewan, 2007). In this article set out a picture of plethora in order to use of consideration. It is also demanding to evaluate the scope/basic rules of the consideration, rational as well as grammatical way of interpretation due to define consideration. In addition it accumulate the rule of pre-existing duty of a particular contracting party of which not amount to be a consideration. This article also assess a number of English leading cases in order to make it understand the practical benefits, legal benefit, factual benefit or detriment in contrast with consideration. Last of all, it is envisaged whether part payment as a full satisfaction of debt is amount to be a consideration or not. And finally what is the uncertain future of consideration in English contract law?

### **Methodology**

There was no questionnaire in order to collection data for pragmatic or empirical study on it. However, it is a conceptual analysis on existing rule practice both the Bangladesh, England as well. Most of the concepts plunk to analyses the English leading cases. The other source relied on text books, magazine, journals, judgment made by the competent court and comment from other legal jurist and author. Albeit, it is on the basis of secondary evidence, starting point of the substantiation, it is also interpreted various practical viewpoints. This study merely upholds the indistinct of the existing law relating to the consideration of contract practice in England.

### Objectives of the study

In English law, the liberal interpretations of consideration devastate the prospect of consideration. The focal intents of the study keep remain intake the rule of consideration in contract. However, on the other hand, in Bangladesh, definition of consideration is sparkler unambiguous to make a contract and the rule regarding consideration also remain ingestion. The other objectives of the study are as follows:

- To take some pertinent action in order to define consideration in English law;
- Make a comparative study with regard to consideration of contract between Bangladesh and England;
- Recommend enacting statutory law and suggest taking test of consideration of which countries have the statutory existing law regarding consideration of contract.

### Limitation of the study

This article is not written by the primary evidence and there is no set of questionnaire or a written list of questions to be answered by a large number of people to provide information for a survey or report. It is limited only with the secondary sources and compare with both the English law and Bangladesh regarding the enforcement of contract with consideration. Besides, lack of proper automation and modernization in this regard would make the process of gathering primary information on the subject increasingly difficult.

### Consideration of contract in English law

Initially, consideration was an essential procedural element, but it was poorly defined by English law stated it could involved almost anything that showed some movement of benefit and detriment. It is unavoidable that there was no real attempt at clear definition before the nineteenth century and why it remains a problematic area even now.

The classic definition has expressed (*Currie, 1875*) in the following terms:

‘a valuable consideration, in the sense of the law, may consist either in some right, interest, profit or benefit accruing to the

one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other’.

However, this conventional interpretation is challenged by Professor Atiyah (1986) in (*Mckendrick, ewan, 2007*). Atiyah argues that there is no coherent doctrine of consideration based upon reciprocity. He stated that

‘The truth is that the courts have never set out to create a doctrine of consideration. They have been concerned with the much more practical problem of doctrine in the course of litigation whether a particular promise in a particular case should be enforced — When the courts found a sufficient reason for enforcing a promise they enforced it; when they found that for one reason or another it was undesirable to enforce a promise, they did not enforce it. It seems highly probable that when the courts first used the word “consideration” they meant no more than there was a “reason” for the enforcement of a promise. If the consideration was “good”, this meant that the court found sufficient reason for enforcing the promise’.

However, on the other hand, Professor Treitel counters attack on Atiyah’s thesis. Treitel argues (2003) that English law does, in fact, recognize the existence of a ‘complex and multifarious body of rules known as “the doctrine of consideration”. Even he argued that in some cases the courts have ‘invented’ consideration, that is to say the courts ‘have treated some act or forbearance as consideration quite irrespective of the question whether the parties have so regarded it’. Although Atiyah challenges the orthodox interpretation of consideration, he does recognize that the presence of ‘benefit or detriment is normally a good reason for enforcing a promise’. But, he argues: ‘it does not in the least follow that the presence of benefit or detriment is always a sufficient reason for enforcing a promise; nor does it follow that there may not be other very good reasons for enforcing a promise’.

### Consideration of contract in existing law of Bangladesh

In Bangladesh, in order to define consideration can be distinguished from English common law. Due to more reasonably define consideration, under section 2 (d) (the Contract Act, 1872)<sup>1</sup>

existing law in Bangladesh, state that when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act abstinence or promise is called a consideration for the promise. Here there is no provision of right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other and consequently there is no question whether the presence of benefit or detriment is always a sufficient reason for enforcing a promise; nor does it follow that there may not be other very good reasons for enforcing a promise.

However, in order to make an agreement, the existing statutory law of Bangladesh incorporated both the lawful object and consideration (The Contract Act, 1872). The consideration or object of an agreement is lawful, unless (The Contract Act, 1872) -

- it is forbidden by law; or
- is of such nature that, if permitted, it would defeat the provisions of any law; or
- is fraudulent; or
- involves or implies injury to the person or property of another; or
- the court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful.

The consideration or object is forbidden by law obvious meant any act forbidden by the Penal Code, 1860 (Penal Code, 1860). Of course, beside Penal Code, 1860, there are many other laws which also forbid certain acts to be done; those are also covered by this provision. Defeat the provision of law may an act not directly violation of law but if that is permitted to be done that would defeat the provision of any law, such object or consideration will also be unlawful. In that case, it may defeat the provision of any legislative enactment or any provision of any personal law in force in Bangladesh. Thus, if a Muslim couple enters into an agreement that the wife will live separately after the marriage, the agreement is void, as the agreement is made in violation of

Muslim personal law. If the object or consideration becomes fraudulent, the result of agreement become illegal but what is fraudulent is the question of fact. (The interpretation of injury to the person or property of another, the violation of one's legal right but may not any actual loss or damage. Lastly, the court regards it as immoral or opposed to public policy is a mixed question of law and fact, since the statute does not define directly of these terms so interpretation remains on the discretion of the judges.)

### **Rules of consideration in English Law**

The rules which make up the doctrine of consideration may be divided into three categories.

- The first is that consideration must be sufficient but it need not be adequate;
- The second is that past consideration is not a good consideration; and
- The third is that consideration must move from the promisee.

• Consideration must be sufficient but it need not be adequate: adequacy and sufficiency of consideration is a very confusing statement for a layman because in general terms we would expect adequacy and sufficiency to be the same thing. However, in the circumstance of consideration the two words have very different meaning, 'adequacy' being used in its usual everyday sense and 'sufficiency' having a very clear-cut legal meaning. In *Thomas v. Thomas (Thomas, 1842)* before death one's expressed the wish that his wife be allowed to remain in the house although this was not his will. The executors carried out his desire and charged the widow a nominal ground rent of 1 pound per year. When they later tried to deprive her, they failed. The moral compulsion to carry out the man's desires was not consideration because there is no value in the eye of law. But the payment of ground rent, however too small and apparently inadequate is amount to consideration. The sufficiency is used here as the legal term, and it means that what is promised must: be real, be tangible, have some actual value. However, what is real, tangible and of value is not always easily distinguishable. In *Ward v. Byham (Ward,*

1956) a father of an illegitimate child promised to pay money to the mother for its maintenance if she would keep the child 'well looked after and happy'. The mother would be doing nothing more than she was already bound by law to do in looking after the child. The court was prepared to enforce the agreement, however, since there is no obligation in law to keep a child happy, and the promise to do so was seen as good consideration. Even a trivial act may amount to consideration. *Nestle* offered for sale gramophone records in return for 1s 6d and three wrappers from their chocolate bars. The House of Lords held that the wrappers themselves, although of very trivial economic value, were nevertheless part of the consideration (*Chappell, 1960*). This was so even though *Nestle* threw away the wrappers. Lord Somervell said: 'a contracting party can stipulate for what consideration he chooses'.

- The second rule is past consideration is not a good consideration: a strange-sounding rule is consideration not to be past. Simply means that any consideration given cannot come before the agreement. In *Roscorla v. Thomas (Roscorla, 1842)* an agreement was reached for the sale and purchase of a horse and a price of 30 pounds agreed. After the deal was struck the seller was asked about the horse's character by the purchaser and the seller assured that the horse was 'sound and free from vice'. In fact, the horse had a vicious temperament and bit people. The purchaser tried to sue on the basis of this later promise but he was not succeeded. Since, there was no consideration for the promise (because the promise must be co-extensive with the consideration). The only possible consideration, the price for it, was past in relation to this later agreement. However, the exception of the rule is where one of the parties has requested a service; the law sensibly concludes that he is prepared to pay for it. Even though that service is then carried out without any mention as to payment, or any apparent contractual agreement, a promise to pay coming after the service is performed will be enforced by the courts. This is known as the rule in *Lampleigh v. Braithwaite (Lampleigh, 1615)*. This principle has subsequently been

affirmed and restated by Lord Scarman in *Pao On v. Lau Yiu Long (Pao On, 1980)*.

- The third rule of the consideration is the consideration must move from the promisee. In English law, the person who has not provides any consideration even not a party of a contract can sue to enforce the term of the contract under the Contract (Rights of third parties) Act, 1999.

Under section 1 (1) a person who is not a party to contract (a 'third party') may in his own right enforce a terms of the contract if-

- (a) the contract expressly provides that he may, or
- (b) subject to sub-section (2), the term purports to confer a benefit on him.

And under section 1(3) The third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description but need not be in existence when the contract is entered into.

In a leading case (*Tweddle, 1861*) the father of the bride and the father of the bridegroom agreed with each other that they would both pay a sum of money to the bridegroom on the account of the marriage. They further agreed that the bridegroom should be able to sue either of them if they failed to pay. The bride's father died without paying the money and the bridegroom *Tweddle* sued his father-in-law's executor for the money. It was held that, *Tweddle*, the promisee, had not provided any consideration for his father-in-law's promise. Therefore, he could not enforce the promise. The court further stated that the natural love and affection is not valid consideration.

### **Rules of consideration in Bangladesh**

It has very resemblance with the English law and remains intact in Bangladesh that consideration must be sufficient and need not be adequate. The only point is that whether anything is done at the desire of the promisor? If so, than that will be sufficient to constitute a consideration as required by law for the formation of contract irrespective of the gravity, quality,

quantity or inadequacy of the thing so done. The word 'something' used in the definition of 'consideration' in section 2(d) of the Contract Act, 1872 implies an important principle regarding consideration that it may be anything. It is immaterial whether that is sufficient or not but something means anything which has any value in the eye of law. Even if the parties agree for a transaction with inadequate consideration then the law is not to interfere in it. But the Court will examine side by side whether the consent (SS: 13 & 14 of The Contract Act, 1872) is given freely or not. The provision of law is embodied in the explanation II to section 25 of Contract Act, 1872 which spells out as follows:

'An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given'.

So, the explanation makes it clear that if consent is given freely then the agreement will not be void merely because the consideration is inadequate. But the Court may take into account the amount of consideration to determine the question whether the consent of the promisor was freely given or not. In general, English common law allowed that the past consideration is not a good consideration (*Lampleigh, 1615*). But the dissimilarity with the existing law in Bangladesh, by using the words 'has done or abstained from doing' in section 2(d) of the Contract Act, 1872, the law clearly recognized past consideration as a good consideration. However, in English law is allowed if the service is rendered in the past at the request or desire of the promisor the subsequent promise is recognize as an admission that the past consideration was not gratuitous and which is evidence of the amount of the reasonable remuneration on the faith of which the services were rendered (Re Casey's patents, 1892).

It appears from the clear language used in the definition of consideration that there is no such requirement that a consideration must move from promisee, rather it may be

furnished by the promisee or any other person and as such only material thing to be considered is that whether there is any consideration or not. So, a promise is enforceable if there exists any consideration and it is immaterial that by whom the consideration has been furnished (*Chinaya, 1882*).

### **Consideration and the rule of pre-existing duty**

The most important and very confusing area of consideration is to be distinguished a pre-existing duty from consideration. The pre-existing duty may impose by the following four areas-

- Performance of a duty imposed by contract with a third party;
- Performance of a duty imposed by law;
- Performance of a contractual duty owed to the promisor; and
- Part payment of debt.

• Performance of a duty imposed by contract with a third party:

Performance of a contractual duty due to the third party has been clearly recognized as good consideration for a long period of time. However, it has always been difficult to explain why and in which cases performance of an existing contractual duty owed to a third party can constitute consideration. The claimant, who has engaged to *Ellen Nicholl*, received a letter from his uncle, in which the uncle promises to pay the claimant 150 pounds per year after he has married. The claimant sued to enforce the promise and it was held that he could do so because he had provided consideration for his uncle's promise by marrying *Ellen* (*Shadwell, 1860*). It should be noted here that in *Tweddle v. Atkinson* (above) court considered that marriage is not amount to consideration; surprisingly here court however, almost in similar situation declare amount to a consideration. Along with this proposition has more recently been affirmed by the *Privy Council* (*Eurymedon, 1974*). Considering the above issue *Professor Treitel* has interestingly stated that in some cases court itself invent consideration (*Mckendrick, ewan, 2007*). Because it is not easy to explain in *Shadwell v. Shadwell* even on the practical benefit

test: in what sense did the uncle receive a practical benefit as a result of the marriage of his nephew to *Ellen Nicholl*? Court some cases adopt an inconsistent approach to the identification of a benefit or detriment. In *Foakes v. Beer* (*Foakes, 1884*) the court ignored an obvious factual benefit to the creditor. Yet in *Shadwell v. Shadwell* court found the existence of consideration upon the flimsiest of evidence.

- Performance of a duty imposed by law:

The orthodox position is clear: performance of an existing duty imposed by law do not constitute consideration, while performance of a duty imposed by a contract with third party does constitute consideration. The prior to the decision of *Williams v. Roffey Bros & Nicholls (Contractors) Ltd* (*Williams, 1991*), the law was comparatively clear: performance of (or a promise to perform) a duty imposed by law was not good consideration for a promise given in return (*Collins, 1831*). This rule obviously supported on the ground that it prevented public officials (i.e. police, tax officials, customs officials, land officials etc) extorting money in return for the performance of their existing legal duties. However, this rule gives rise to hardship because it ignored real benefits obtained by the promisor or real detriments incurred by the promisee. So in that sense it is no surprise to learn the rule has come under some scrutiny. The leading case (*Ward, 1956*) the fathers of an illegitimate child promise to pay the mother of the child 1 dollar per week provided that the child was well looked after and happy. The mother was under a legal duty to look after the child. The mother sued the father when he stopped making the payments. The father argued that the mother had not provided any consideration for his promise because, by looking after the child, she was simply carrying out her existing legal duty. *Denning LJ* rejected his arguments on the ground that the father was benefited by the mother's promise to look after the child, just as he would have been benefited if a neighbor had promised to look after the child for reward. *Lord Denning* returned the same view in *Williams v. Williams* (*Williams, 1957*). Although, the other judges of the Court of Appeal in *Ward* case did not expressly approved it.

They stated an 'ample' consideration of it. They emphasis and interpreted on the letter of the father, written and promised to pay the mother the weekly allowance and it could be interpreted as a waiver of the strict legal position between the parties. However, in *Glasbrook Ltd. v. Glamorgan CC* (*Glasbrook Ltd, 1925*) there is some doubt about the application of this rule to the mother's promise to keep the child 'happy' because, as already noted, natural love and affection of itself is not sufficient consideration (*Bret, 1600*). Nevertheless, finally, it is focus upon detriment to the mother and argued she did *more* than she was legally obliged to do. So the performance of a duty imposed by law does not constituted consideration remains intact, at least for now.

- Performance of contractual duty owed to the promisor:

The performance of an existing contract duty due to the promisor is not consideration for a fresh promise given by the promisor. The origin by the rule can be traced back to the old case (*Stilk, 1809*). *Stilk*, a seaman, signed up for a voyage from London to the Baltic and back. During the voyage two seamen deserted. The master of the ship agreed to divide their pay between the remaining members of the crew if they would work the whip back to London without the two deserters being replaced. On their return the master refused to pay *Stilk* and the other seamen. The case was reported twice and unfortunately, the two reports differ as to the reason for the failure of *Stilk's* claim. The first was reported by *Espinasse*, and *Stilk* was unsuccessful on the ground of policy; that the prospect of sailors on the high seas making unreasonable and extortionate demands upon their masters. However, it is not the subject matter of this article.

The second report was given by *Campbell* *Stilk's* claim was failed not on the ground of policy, but because he had provided no consideration for the master promise as he had only done what he was already contractually obliged to do. The *Campbell's* report later accepted into English law (*North Ocean Shipping Co, 1979*). But the existing duty rule laid down in *Campbell's* report of *Stilk* has always been controversial. As a result *Professor Atiyah* (*Mckendrick, ewan, 2007*) has argued that cases such as *Stilk*

and *Ward v. Byham* (mentioned above) can not be accommodated within the 'benefit / detriment' analysis because, as a matter of fact, there was a benefit to the promisor and a detriment to the promisee but nevertheless there was held to be no consideration. In *Stilk* there is little doubt that, as a matter of fact, the master of the ship was benefited by *Stilk's* promise to work the back home, yet the court concluded that there is no consideration had been provided. The defenders of the orthodox interpretation of consideration attempt to meet this argument by asserting that it is *legal* benefit or *legal* detriment which is important and not *factual benefit* or *factual detriment*. Finally court not found anything more done by promisee as obliged to do under this contract. However, in almost the similar cases (*Hartley, 1857*) the plaintiff, an able seaman, signed up with the master of a ship for a voyage from London to Australia and back. There was a crew of 36, but 17 of them deserted on arrival in Australia and only 4 or 5 of the remaining crew were able seamen. The master agreed to pay the plaintiff 40 pounds if he helped to sail the ship to Bombay with the remaining crew. Here court held that master is to be bound to pay the extra 40 pounds to plaintiff because the original contract was terminated and it was risky to sail the ship with the remaining crew where only 4 or 5 were able seamen. Therefore, the plaintiff had entered into a new contract and had to provide a good consideration for the master's promise. It is impressive that the *Court of Appeal* (*Compagnie Noga d' Importation of D' Exportation SA, 2003*) distinguishes the principle in *Stilk v. Myrick* and confirmed that it only applied where the earlier contract was varied. But it is more wide-ranging attraction on *Stilk* as illustrated by the *Court of Appeal* in *Williams v Roffey Bros* (*Williams, 1991*) here court astonishingly held in different from *Stilk*. The plaintiff could recover the additional sum. Because defendant received a practical benefit as plaintiff completed the work on time, and defendant did not have to engage another sub-contractor. It is surprising that here plaintiff did not incur a *legal* detriment nor did the defendant receive a '*legal*' benefit because the plaintiff did not carry out any work in addition to that agreed under the original contract. It may appear that the *factual detriment* and *benefit* would now be a good consideration.

- Part payment of debt:

The rule is that a promise to accept part payment of a debt in discharge of the entire debt is not supported by consideration. This rule can be traced back to *Pinnel's Case* (*Pinnel's, 1602*). The similar principle is affirmed later by the *House of Lords* (*Foakes, 1884*) the plaintiff had obtained judgment against the defendant for 2,090 pounds. However, she agreed to allow the defendant to pay her by installments and not take any proceedings to enforce the judgment. A judgment debt attracts interest from the date of the judgment. The defendant paid the debt, and the plaintiff claimed the interest. Here court held that the plaintiff is entitled to recover the interest. Even if the plaintiff had agreed to relinquish the interest the defendant had not provided any consideration for such a promise. Conversely, in some cases a creditor will, as a matter of fact, be benefited by receipt of part payment because '*a bird in the hand is worth much more than a bird in the bush*'. So therefore it may be interpreted as a practical benefit similarly with the *Williams v. Roffey Bros* case. Although majority of the Lordships decided that such a practical benefit did not constitute a good consideration. Nonetheless, the following circumstances may amount to considered a good consideration-

- Where the earlier payment of a smaller sum as a full satisfaction (satisfaction means consideration in the context of *Foakes v. Beer*)
- Where creditor accept something other than money instead of debt;
- Where creditor accept something together with something else.

### **Essence of consideration in Bangladesh**

In Bangladesh, there is no specific statutory law or any case law relating to the rule of pre-existing duty. However, section 25 of the Contract Act, 1872 lays down the general principle regarding the requirement of consideration to form a contract in this way that-'an agreement made without consideration is void'. From here the rule has sprung that if there is no consideration there is no contract. The same section also speaks of exceptions

to the general principle where there may be valid agreements without consideration. In the following three circumstances there can be valid agreements without consideration:

1) Agreement made out of natural love and affection: section 25(1) while laying down the first exception says that –

‘It is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other’

So, it appears that first exception requires satisfying three conditions (Haque, Muhammad Ekramul, 2004). They are as follows:

- i. The parties stand in a near relation to each other and the agreement is made out of natural love and affection. It may be one between father and son, mother and son, husband and wife and likewise.
- ii. It is written.
- iii. It is registered.

The second exception is mentioned in section 25(2) which is about to compensate past voluntary service.

‘It is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do’.

Two types of promises are covered by this exception: (Haque, Muhammad Ekramul, 2004)

- i. To compensate wholly or in part a person who has already voluntarily done something for the promisor. Suppose, *X* finds the lost dog of *Y* and then *Y* promises to give *X* Tk. 1000, the promise made is enforceable by law without consideration.
- ii. Here, may side an example that if *A* pays the gas bill of *B* and then *B*'s subsequent promise to compensate *A* is enforceable without any consideration.

The third exception is about the promise regarding the payment of time barred debt. Section 25(3) lays down that:

‘It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which

the creditor might have enforced payment but for the law the limitation of suits’.

In that case the following conditions must be satisfied to enjoy the privilege of a contract without consideration according to the above mentioned sub-section, these are: (Haque, Muhammad Ekramul, 2004)

- i. The promise must be about payment of time barred debt. So, if there is any claim which is barred by the law of limitation for the time being in force, then the subsequent promise made to pay the debt is enforceable without consideration if the next condition is satisfied.
- ii. It should be written and signed.

It was held (Daulat Ldt, 39, DLR) that such a document must also be properly stamped. An unconditional promise in writing and signed by the party to pay on demand a time-barred debt though not a fresh transaction comes under Article 49 of Schedule to the Stamp Act, 1899 and hence will require requisite stamp and an unconditional promise to pay a time-barred debt in writing duly signed does not come under section 19 of the Limitation Act, 1908 if it is not made before the expiration of the period of limitation. It directly comes under section 25(3) of the Contract Act (Daulat Ldt, 39, DLR). It was held (Riasatulla, 1968) that when a promise is expressed in writing with signature from which a contract to pay a time barred debt can be spelled out, it amounts to a contract within section 25(3) of the Contract Act, 1872.

### **Conclusion and evolution of consideration for future**

In concluding remarks it may go over the main points that the interpretation of consideration is generous in English law. To be said that the consideration of contract repeatedly fell in confusion to the people even court. The main cause behind the bewilderment is lack of austere definition of consideration in English existing law. A number of technical words used in the name of consideration viz. practical benefit, legal benefit, legal detriment and other should be properly defined in order to remove confusion of consideration and courts autocracy. However, rectification of the law is a matter of Parliament and not for the judges, although it is perhaps doubtful that Parliament will find

time in the immediate future to consider the issue. It should be mentioned here that after the decision of the Court of Appeal in *Williams v. Roffey Bros*, the prospect of consideration in order to make a contract in English law is somewhat vague. The Court of Appeal did not attempt expressly to throw out the doctrine; its stated aim was to 'limit' and 'refine' the rule in *Stilk v. Myrick* by placing emphasis upon the need to identify practical benefit rather than legal benefit. The centrality of consideration to the creation of a contract was therefore thrown into doubt by the court. These doubts were raised once again by *Lord Goff* in his speech (White, 1995) when he said that 'our law of contract is widely seen as deficient in the sense that it is perceived to be hampered by the presence of an unnecessary doctrine of consideration'. It is alarmingly noted that the Principles of European Contract Law, even the UNIDROIT Principles of International Commercial Contracts, which states that 'a contract is concluded, modified or terminated by the mere agreements of the parties, without any further requirement'. This message states that consideration is of nominal practical importance'. The importance of consideration is as a valuable signal that the parties intend to be bound by their agreement, rather than an end in itself. Where the parties who have already made such intention clear by entering legal relations have acted upon an agreement to a variation, in the absence of policy reasons to the contrary, they should be bound by their agreement (*Antons Trading*, 2003). However, it is the accountability of those who campaign the abolition of the doctrine of consideration to formulate a precise set of alternative rules to mark out the limits of the law of contract in England. On the other hand, it is also suggested to take the test of consideration as practice in Bangladesh as defined by its statutory existing law.

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*The Contract Act, 1872* (Act No. IX of 1872), S: 23

*The Contract Act, 1872* (Act No. IX of 1872), S: 13 defined Consent is said to be free when two or more person agree with same thing and same sense.

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