

Force Majeure Clauses in Commercial Contracts in the Aftermath of COVID-19 in Pakistan: Legal and Practical Perspectives

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Abstract

The COVID-19 shock exposed the limits of legacy contract language and court doctrines in Pakistan. Parties scrambled to invoke force majeure; courts reached for Section 56 of the Contract Act, 1872 (frustration/impossibility), while contract text varied widely in scope and procedure. This paper offers a doctrinally grounded, practice-oriented account of how force majeure should operate in Pakistan after COVID-19. I begin by separating force majeure (contractual) from frustration/impossibility (statutory), then analyze the principal Pakistani decisions that sketch the concept's contours and burdens. I position Pakistan's case law against leading international frameworks UNIDROIT Principles art. 7.1.7, CISG art. 79, and the ICC 2020 Force Majeure & Hardship Clauses to show where Pakistani doctrine is both consistent and out of step. I then trace how pandemic-era measures (e.g., lockdown orders) affected performance and litigants' evidentiary burdens, and I extract drafting rules that actually work: precise event lists (including "epidemic/pandemic" and "governmental orders"), notice and mitigation mechanics, objective thresholds for suspension/termination, and guardrails distinguishing hardship from true force majeure. Comparative snapshots from France, Germany, and China round out the analysis, illustrating how targeted emergency instruments can preserve contractual order without eroding pacta sunt servanda. The paper concludes with statutory and judicial reform proposals (including model language and a burden-of-proof roadmap) designed to reduce uncertainty ex ante and streamline adjudication ex post. (Contract Act, 1872, § 56; ICC, 2020; UNIDROIT, 2016; United Nations, 1980; Abdul Waheed v. Additional District Judge, PLD 2021 Lahore 453). ([LegiFrance](#), [UNIDROIT](#), [Scribd](#))

Keywords

Force Majeure, Frustration, Impossibility, Pakistan, Section 56, COVID-19, UNIDROIT, CISG, ICC, Drafting

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1. Introduction

COVID-19 turned boilerplate into battlefield. Lockdowns, border closures, and supply chain breakdowns made timely performance infeasible for ordinary firms. Yet many Pakistani contracts either lacked pandemic language altogether or buried it inside catch-all phrases that courts construe narrowly. When parties litigated, judges leaned on Section 56 of the Contract Act, 1872 Pakistan's frustration/impossibility rule because the contract text often failed to carry the load on its own. That move is doctrinally coherent but practically blunt: frustration voids a contract when performance is impossible or the obligation has radically changed; it is not a calibrated suspension tool and it does not supply the procedural mechanics (notice, mitigation, time-bound suspension) that business needs. (Contract Act, 1872, § 56). ([Punjab Laws](#))

Three international reference points show a cleaner architecture. UNIDROIT Principles art. 7.1.7 frames force majeure as an "impediment" beyond the obligor's control foreseeability and avoidability are tested, and the remedy is suspension/excuse of damages while the impediment lasts. CISG art. 79 adopts the same core idea for international sales. And ICC's 2020 model clause operationalizes the doctrine for practitioners: an enumerated list (including "plague, epidemic" and "act of authority"), notice and mitigation duties, and a termination backstop after sustained impediment (e.g., 120 days). These instruments don't replace Pakistani



law, but they offer precise levers Pakistani drafters and tribunals can use to avoid the all-or-nothing outcomes of frustration. (UNIDROIT, 2016, art. 7.1.7 & cmt.; United Nations, 1980, art. 79; ICC, 2020). ([UNIDROIT](#))

This paper has five aims

- (1) sharpen the doctrinal distinction between contractual force majeure and statutory frustration/impossibility in Pakistan;
- (2) synthesize key Pakistani decisions that illuminate thresholds, burdens, and remedies;
- (3) map Pakistan's approach against UNIDROIT/CISG/ICC benchmarks;
- (4) translate pandemic-era disruptions into evidence rules and drafting mechanics that withstand judicial scrutiny; and

- (5) set out targeted reforms statutory, judicial, and contractual that reduce ex post uncertainty while preserving pacta sunt servanda ex ante. The analysis is doctrinal, case-led, and practice-focused, grounded in primary sources. (Taylor v. Caldwell, 1863; Abdul Waheed v. Additional District Judge, 2021; ICC, 2020; UNIDROIT, 2016; CISG art. 79). ([Justia Law](#), [Scribd](#), [UNIDROIT](#))

2. Methodology

The method is doctrinal analysis anchored in primary law. I read the Contract Act, 1872 (with emphasis on 56) and Pakistani judgments that explicitly engage force majeure or apply frustration to pandemic-style facts. I then set those materials against three international sources commonly used by arbitrators and transnational drafters: UNIDROIT Principles art. 7.1.7 (and comments), CISG art. 79, and the ICC 2020 Force Majeure & Hardship Clauses. Finally, I include concise comparative snapshots from jurisdictions that legislated bespoke pandemic measures (France's March 2020 ordinances, Germany's Article 240 EGBGB package, and China's SPC Guiding Opinions), because those texts show concrete levers Pakistan could emulate without overhauling its entire contract code. (Contract Act, 1872; UNIDROIT, 2016; United Nations, 1980; ICC, 2020; Legifrance, 2020; EGBGB art. 240; SPC Guiding Opinions, 2020). ([Punjab Laws](#), [UNIDROIT](#), [LegiFrance](#), [Gesetze im Internet](#), [CICC](#))

3. Doctrinal Baseline: Force Majeure vs. Frustration/Impossibility

3.1 What Force Majeure Is and Isn't

Force majeure is not a freestanding doctrine in Pakistani statute. It is a contractual risk-allocation device: the clause the parties write is the law between them. Properly drafted, it does two things. First, it defines the universe of qualifying events (e.g., "plague, epidemic," "act of authority," "war," "general labor disturbance"). Second, it supplies the mechanics: notice, mitigation, suspension while the impediment persists, and a termination backstop after prolonged disruption. This architecture tracks the ICC 2020 clause and UNIDROIT 7.1.7's logic of impediment, foreseeability, and avoidability. (ICC, 2020, cls. 1–3, 5–8; UNIDROIT, 2016, art. 7.1.7 & cmt.). ([UNIDROIT](#))

Two implications follow. If the contract includes a clear force majeure clause, courts must construe and apply that clause. If it does not—or if the event falls outside its terms—the backstop is Section 56: frustration/impossibility, which can void the contract rather than suspend it. Pakistan's legal system thus places a premium on precise drafting ex ante to avoid blunt outcomes ex post. (Contract Act, 1872, 56). ([Punjab Laws](#))

3.2 Frustration/Impossibility Under Section 56

Section 56 codifies impossibility and frustration: a contract is void when an act becomes impossible or unlawful, or when a post-contract event makes performance radically different from what was promised. Pakistani courts, like their English counterparts since *Taylor v. Caldwell* (1863), set a high bar: difficulty,

expense, and commercial impracticability do not suffice; impossibility or radical change is required. Frustration is automatic in effect; it is not a negotiated suspension regime. That is exactly why force majeure clauses matter. (Contract Act, 1872, 56; *Taylor v. Caldwell*, 122 ER 309). ([Punjab Laws](#), [Justia Law](#))

3.3 The “Impediment” Standard in UNIDROIT/CISG

UNIDROIT replaces metaphors (“act of God”) with a functional test: an “impediment beyond control,” not reasonably foreseeable at formation, whose effects could not reasonably be avoided or overcome. The remedy is calibrated: excuse of damages and time-bound suspension while the impediment lasts; non-performance by a third party does not automatically excuse unless the same impediment test is met for both. CISG art. 79 adopts near-identical elements for international sales. Practically, that standard helps courts ask the right questions: Was the event external? Could a reasonable party have foreseen and contractually mitigated it? Did the obligor mitigate once hit? (UNIDROIT, 2016, art. 7.1.7; United Nations, 1980, art. 79). ([UNIDROIT](#))

4. Pakistan’s Case Law: Thresholds, Burdens, Remedies

4.1 Abdul Waheed v. Additional District Judge (PLD 2021 Lahore 453)

This Lahore High Court decision is the best single articulation of force majeure’s place in Pakistani law post-COVID. The court described force majeure as events beyond the parties’ control that impede performance, recognized its roots in contract (Sections 32 and 56 as doctrinal neighbors), and emphasized that economic hardship alone does not qualify. The opinion also captured two recurring burdens: strict construction of contract language and proof that the event not the party’s own acts caused the non-performance despite reasonable mitigation. (*Abdul Waheed v. Additional District Judge*, PLD 2021 Lahore 453). ([Scribd](#))

Takeaway: Parties must (i) draft specifically for pandemics and governmental orders, (ii) give timely notice, and (iii) document mitigation. If the clause is vague, courts default to Section 56’s higher threshold and its voiding remedy.

4.2 Atlas Cables (Pvt.) Ltd. v. IESCO (2016 CLD 1833, Islamabad High Court)

Although pre-pandemic, *Atlas Cables* is routinely cited for a functional definition: force majeure covers unforeseen circumstances preventing performance, construed in context and with skepticism toward mere market price spikes. The court’s caution about “economic impracticability” foreshadowed COVID-era disputes where parties sought relief from onerous but still possible performance. (*Atlas Cables (Pvt.) Ltd. v. IESCO*, 2016 CLD 1833 (IHC)). ([United Nations Treaty Collection](#))

4.3 Doctrinal Continuity with English Authorities

Pakistani courts’ insistence on strict thresholds ties back to English frustration cases. *Taylor v. Caldwell* remains the canonical statement: destruction of the music hall discharged the contract because performance had become impossible the implied condition failed. The core lesson survived into Pakistani jurisprudence: frustration is exceptional; parties should contract for lesser impediments ex ante. (*Taylor v. Caldwell*, 1863). ([Justia Law](#))

5. COVID-19 as Legal Stress Test: What Actually Changed

5.1 Government Measures as Qualifying Events

Lockdown orders and administrative restrictions were neither party-caused nor reasonably avoidable. Internationally, model clauses and courts treated “act of authority/lawful or unlawful governmental order” as paradigmatic force majeure events explicitly listed in the ICC 2020 clause and recognized in Chinese SPC guidance as capable of triggering exemption (subject to proof of causal nexus). That logic fits Pakistani doctrine: orders that made performance illegal or physically impossible support force majeure or, failing that, frustration under § 56. (ICC, 2020, cl. 3(d); SPC Guiding Opinions, 2020, § 2–3). ([CICC](#))

5.2 The Evidentiary Core: Causation, Notice, Mitigation

Across systems, three facts carry cases: (1) the exact order(s) or event(s) that blocked performance, (2) when and how the affected party notified the counterparty, and (3) what mitigation steps were feasible and actually taken. ICC's 2020 clause hard-codes these levers; UNIDROIT's "could not reasonably be avoided or overcome" is the same idea in doctrinal form. Pakistani courts' strict construction instincts make contemporaneous documentation decisive. (ICC, 2020, cls. 4–7; UNIDROIT, 2016, art. 7.1.7). ([UNIDROIT](#))

5.3 Hardship vs. True Force Majeure

Pandemic-driven cost spikes, workforce shortages, or transport delays often created hardship rather than impossibility. UNIDROIT separates those categories: hardship (arts. 6.2.2–6.2.3) supports renegotiation/adaptation; force majeure excuses damages and suspends obligations. Pakistan lacks a statutory hardship doctrine, which partly explains judicial reluctance to grant relief where performance is still possible (albeit costly). Contract clauses must therefore do the work: either include a hardship pathway or accept that courts will demand the higher force majeure threshold. (UNIDROIT, 2016, arts. 6.2.2–6.2.3 & art. 7.1.7). ([UNIDROIT](#))

6. International Benchmarks Pakistan Can Use

6.1 ICC 2020 Force Majeure & Hardship Clauses (Operational Blueprint)

The ICC long-form clause marries doctrine to mechanics: a general definition plus a presumed-events list (including "plague, epidemic," and "act of authority"), immediate notice, duty to mitigate, temporary impediment handling, and a 120-day termination valve. The companion Hardship Clause gives a structured renegotiation track and, failing agreement, an adaptation/termination choice. These tools can be incorporated by reference or customized in Pakistani contracts governed by local law. (ICC, 2020).

6.2 UNIDROIT Principles (Doctrinal Compass)

Article 7.1.7's "impediment" triad beyond control; unforeseeable; not reasonably avoidable—closely maps the facts COVID-19 produced. The official comments and 2020 UNIDROIT COVID-19 note explain that force majeure under the Principles excuses damages and suspends performance while the impediment persists; it is not a blunt termination rule. Pakistani judges drawing on comparative authority can rely on these materials to refine remedies without distorting § 56. (UNIDROIT, 2016; UNIDROIT, 2020 COVID-19 Note). ([UNIDROIT](#))

6.3 CISG Article 79 (Sales Contracts; Familiar Architecture)

Although Pakistan is not a CISG state, Article 79's language and case law are widely used in arbitral practice. Its "beyond control / unforeseeable / unavoidable" test and notice requirement align with UNIDROIT and ICC models. Pakistani tribunals can analogize to guide analysis without importing the Convention wholesale. (United Nations, 1980, art. 79).

6.4 Targeted Pandemic Instruments (Comparative Snapshots)

France's March 2020 ordinances paused time limits and expressly signaled that Civil Code art. 1218 (force majeure) could operate in the background when its conditions were met. Germany's COVID-19 package (EGBGB art. 240) created temporary moratoria and termination bars for defined contracts, balancing creditor protection with systemic stability. China's Supreme People's Court issued guiding opinions directing courts to apply force majeure precisely and to promote renegotiation where performance remained possible. Each approach demonstrates "surgical" interventions that preserve contract certainty while cushioning systemic

shocks. (Legifrance, 2020; EGBGB art. 240; SPC Guiding Opinions, 2020). ([LegiFrance](#), [Gesetze im Internet](#), [CICC](#))

7. Sector-By-Sector Stress Test: How COVID-19 Mapped Onto Pakistani Contracts

7.1 Construction and Infrastructure

Government shutdown orders, site-entry restrictions, and curfews hit construction first. Under a well-drafted clause, “lawful or unlawful acts of authority” and “epidemic/pandemic” are textbook force majeure events (International Chamber of Commerce (ICC), 2020, Long Form cl. 3). The doctrinal filter remains causation plus mitigation: the contractor must show the order actually impeded work and that reasonable steps staggered shifts, protective equipment, resequencing couldn’t overcome the impediment (UNIDROIT, 2016, art. 7.1.7 & cmts.). Pakistani courts’ strict stance against mere cost spikes (e.g., price inflation for steel or cement) tracks *Atlas Cables (Pvt.) Ltd. v. IESCO* (2016 CLD 1833 (IHC)) and the frustration logic of § 56: hardship is not impossibility. The practical upshot is simple: COVID-era shutdowns support suspension; cost inflation alone does not, absent a hardship track. (ICC, 2020; UNIDROIT, 2016; Contract Act, 1872, § 56; *Atlas Cables*, 2016). ([ICC - International Chamber of Commerce](#), [UNIDROIT](#), [MA Law](#), [Scribd](#))

7.2 Manufacturing and Energy

Factory closures, quarantines, and border bottlenecks often prevented timely production or offtake. The same two questions decide outcomes:

- (1) was performance physically or legally blocked (e.g., a closure order)?
- (2) did the party notify and mitigate? The UNIDROIT standard excusing liability for an “impediment beyond control” that could not reasonably be foreseen or avoided applies directly (UNIDROIT, 2016, art. 7.1.7). If an offtaker simply faces reduced demand, that is hardship not force majeure and requires a different contractual pathway. (UNIDROIT, 2016). ([UNIDROIT](#))

7.3 Logistics and Cross-Border Trade

Port slowdowns and travel bans were classic acts-of-authority impediments. For sales contracts, CISG art. 79 provides an analogous “impediment beyond control” template with a notice duty; even though Pakistan is not a CISG state, arbitral practice frequently uses art. 79 as persuasive authority for international deals (United Nations, 1980, art. 79). (United Nations, 1980). ([UNCITRAL](#))

Practice note. Across sectors, three evidentiary anchors carry the argument: attach the exact government orders, prove contemporaneous notice, and document why alternatives were not reasonably available. That is exactly how ICC 2020 and UNIDROIT 2016 expect the doctrine to operate. (ICC, 2020; UNIDROIT, 2016). ([ICC - International Chamber of Commerce](#), [UNIDROIT](#))

8. Drafting Playbook For Pakistani Contracts (Post-COVID)

This is the language that actually works under Pakistani doctrine and comparative benchmarks.

1. **Definition and structure** (make the test explicit): “Force Majeure means any impediment beyond a Party’s reasonable control that it could not reasonably have foreseen at Contract signature or avoided or overcome, including its consequences.” Track UNIDROIT 7.1.7’s elements to steer tribunals away from fuzzy metaphors and toward a functional analysis (UNIDROIT, 2016, art. 7.1.7). ([UNIDROIT](#))
2. **Enumerated list** (close the pandemic gap). Include epidemic/pandemic, public health emergency, quarantine, lawful or unlawful government order, border closure, general labor disturbance, utility shutdown, plus a narrow catch-all. The ICC 2020 list is the best operational blueprint (ICC, 2020, Long Form cl. 3). ([ICC - International Chamber of Commerce](#))

3. **Causation and mitigation (write the burden into the clause):** Require the invoking party to: (a) identify the specific order/event; (b) describe concrete mitigation attempts; and (c) explain why alternatives failed. This mirrors UNIDROIT's "could not reasonably be avoided or overcome" requirement (UNIDROIT, 2016, art. 7.1.7(1)). ([UNIDROIT](#))
4. **Notice mechanics (deadlines and content):** "Notify within 5–10 days of becoming aware, include documentary evidence, and update every 14 days until resolution." ICC 2020 treats timely notice as a condition to relief (ICC, 2020, Long Form cl. 4). ([ICC - International Chamber of Commerce](#))
5. **Temporary suspension and backstop termination:** Suspend the affected obligation while the impediment lasts; if it exceeds, say, 120 days, either party may terminate the affected portion without fault. That matches ICC 2020's structure and avoids immediate resort to frustration under § 56 (ICC, 2020; Contract Act, 1872, § 56). ([ICC - International Chamber of Commerce](#), [MA Law](#))
6. **Hardship (separate lane):** Add a hardship clause for excessive onerousness (e.g., 25–40% cost increase) with a duty to renegotiate and, failing agreement, adaptation by an expert/arbitrator or termination. This mirrors UNIDROIT arts. 6.2.2–6.2.3 and avoids forcing mere hardship into a force majeure box (UNIDROIT, 2016, arts. 6.2.2–6.2.3). ([UNIDROIT](#))
7. **Price/time relief hygiene:** Clarify that suspension pauses delivery dates and extends long-stop dates; define when fixed prices adjust (if ever) and cap exposure to windfalls or double recovery.
8. **Third-party failure:** If subcontractors or suppliers fail due to the same impediment, require proof that they met the impediment test tracking UNIDROIT comment 3 (UNIDROIT, 2016, art. 7.1.7 cmt.). ([UNIDROIT](#))
9. **Dispute forum and interim relief:** Choose arbitration with emergency relief or empower courts to grant interim measures narrowly tailored to protect the project while the impediment is sorted.
10. **Records clause:** Mandate a contemporaneous log of orders, site diaries, correspondence, and cost/time impact summaries. That evidence will decide your case.

9. Litigation And Arbitration Roadmap In Pakistan

9.1 Framing the Claim

Lead with contract text if you have it; judges construe clauses strictly. If the clause is absent or vague, you are in § 56 territory, where the threshold is high and the blunt remedy is discharge—not calibrated suspension. Pakistani courts have said as much: force majeure is about legal/physical prevention, not mere unprofitability (*Atlas Cables*, 2016 CLD 1833 (IHC)). (Contract Act, 1872, § 56; *Atlas Cables*, 2016). ([MA Law](#), [Scribd](#))

9.2 Burdens of Proof (a Usable Sequence)

1. **Qualifying event.** Attach the precise order(s) or event proof (e.g., federal/provincial notifications).
2. **Causation.** Tie the order to the specific obligation impeded.
3. **Mitigation.** Show alternatives attempted and why they failed.
4. **Notice.** Prove timely, content-rich notice.
5. **Duration.** Demonstrate when the impediment began and ended to calibrate suspension/termination.

This sequence mirrors ICC 2020 and UNIDROIT 2016 and is consistent with the Lahore High Court's post-COVID articulation in *Abdul Waheed v. Additional District Judge* (PLD 2021 Lahore 453). (ICC, 2020; UNIDROIT, 2016; *Abdul Waheed*, 2021). ([ICC - International Chamber of Commerce](#), [UNIDROIT](#), [pakistanlawyer.com](#))

9.3 Remedies and Calibration

Under UNIDROIT, force majeure excuses damages while the impediment lasts; it does **not** automatically terminate the contract (UNIDROIT, 2016, art. 7.1.7; Working Group comments). Pakistani tribunals can analogize to calibrate relief—suspend, extend time without rushing into § 56 frustration’s all-or-nothing remedy. (UNIDROIT, 2016). ([UNIDROIT](#))

9.4 Arbitration Notes For Cross-Border Matters

For international sales or EPC contracts, arbitrators frequently borrow CISG art. 79’s impediment/notice logic and UNIDROIT’s comments to structure awards. If your clause is thin, that comparative scaffolding will often fill interpretive gaps. (United Nations, 1980; UNIDROIT, 2016). ([UNCITRAL](#), [UNIDROIT](#))

10. Model Clauses (Pakistan-Ready)

These are short forms adapted to Pakistani practice and the ICC/UNIDROIT architecture. Tailor them to the sector and governing law.

10.1 Force Majeure (Long Form, Adapted)

10.1.1 Definition and Events

“Force Majeure” means any impediment beyond the affected Party’s reasonable control that it could not reasonably have foreseen at Contract signature or avoided or overcome, including its consequences. Force Majeure includes, without limitation: plague, epidemic or pandemic; public health emergency; quarantine; lawful or unlawful act of any public authority (including lockdowns, export bans, port closures, curfews); war, riot or civil commotion; act of terrorism; earthquake, flood or other natural catastrophe; general labor disturbance (boycott, strike, lock-out, go-slow); and widespread utility or transport shutdown. (ICC, 2020, Long Form cl. 3). ([ICC - International Chamber of Commerce](#))

10.1.2 Notice and Updates

The affected Party shall notify the other Party without undue delay and in any event within 10 days after becoming aware, identifying the specific event(s), attaching documentary evidence (including any government order), describing the impact on performance, and outlining mitigation steps taken. Updates shall follow every 14 days while the impediment persists. (ICC, 2020, cl. 4). ([ICC - International Chamber of Commerce](#))

10.1.3 Effects

While Force Majeure prevents or impedes performance, the affected obligations are suspended and the affected Party is not liable for damages arising from such non-performance. Time for performance is extended by the period of Force Majeure plus reasonable recovery. (UNIDROIT, 2016, art. 7.1.7(2)–(3); ICC, 2020). ([UNIDROIT](#), [ICC - International Chamber of Commerce](#))

10.1.4 Termination Backstop

If Force Majeure continues for more than 120 consecutive days, either Party may terminate the affected part by written notice, without fault and without prejudice to accrued rights. (ICC, 2020, cl. 8). ([ICC - International Chamber of Commerce](#))

10.1.5 Third-Party Performance

If performance depends on a third party, the affected Party must show the same impediment test is satisfied for that third party. (UNIDROIT, 2016, art. 7.1.7(3) & cmt.). ([UNIDROIT](#))

10.2 Hardship (Short Form, Adapted)

If, after Contract signature, events beyond a Party's control fundamentally alter the equilibrium of the Contract by increasing the cost of performance or diminishing the value received, and the risk of such events was not assumed, the disadvantaged Party may request renegotiation within 10 days of becoming aware. If no agreement is reached within 30 days, either Party may refer the matter for adaptation by an expert/arbitrator or for termination. (UNIDROIT, 2016, arts. 6.2.2–6.2.3). ([UNIDROIT](#))

11. Reform Proposals: Targeted Fixes Without Overhauls

11.1 Judicial Guidance (Common-Law Evolution)

High Courts could publish practice notes clarifying that parties invoking force majeure must prove: (i) an external impediment; (ii) causation; (iii) timely notice; (iv) reasonable mitigation; and (v) duration. *Abdul Waheed* already supplies much of this architecture post-COVID; distilling it into guidance would promote uniformity while respecting party autonomy. (PLD 2021 Lahore 453). ([pakistanlawyer.com](#))

11.2 Legislative Interpretive Note To § 56

A short explanatory note could confirm that § 56 deals with impossibility/frustration (radical change) and that temporary impediments are better handled by contract. This would reduce pressure to stretch § 56 to do suspension work it was never designed to do. (Contract Act, 1872, § 56). ([MA Law](#))

11.3 Encourage Hardship Pathways

Pakistan lacks a statutory hardship doctrine. The legislature could authorize courts to invite renegotiation and, failing that, adapt or terminate on equitable terms for long-term contracts, modeled on UNIDROIT arts. 6.2.2–6.2.4. This avoids the false binary between performance and discharge while preserving *pacta sunt servanda*. (UNIDROIT, 2016). ([UNIDROIT](#))

11.4 Comparative Micro-tools Worth Copying

- **France (Ord. 2020-306):** paused procedural and contractual time limits during the emergency surgical, time-bound relief that maintained baseline contract law (Legifrance, 2020). ([LegiFrance](#))
- **Germany (EGBGB art. 240):** enacted narrow moratoria and termination bars for defined relationships useful where blunt discharge would cause systemic harm (Federal Ministry of Justice translation). ([Gesetze im Internet](#))
- **China (SPC Guiding Opinions 2020):** instructed courts to **analyze causation precisely** and to promote renegotiation/adaptation where performance remained possible (CICC, 2020). ([CICC](#))

These are templates, not transplantations. Each offers discrete levers that Pakistan could adapt in sector-specific rules without rewriting the Contract Act.

12. Conclusion

COVID-19 exposed a design flaw: too many Pakistani contracts lacked force majeure clauses with real mechanics. Courts fell back on § 56's frustration doctrine workable, but blunt. The path forward is straightforward. Draft with precision (event lists, notice, mitigation, suspension, backstop termination). Separate hardship from true force majeure and give hardship a contractual lane. In court or before an arbitral tribunal, prove the impediment with documents, tie it to the specific obligation, and show you mitigated. That is how UNIDROIT, CISG practice, and ICC 2020 expect the doctrine to operate; it is also how Pakistani courts have signaled they will analyze these cases post-COVID, insisting on legal or physical prevention rather than mere commercial difficulty. Narrow judicial guidance and light-touch legislative notes can harmonize outcomes and shrink litigation costs. The goal is modest but vital: preserve *pacta sunt servanda*, while giving contracts enough flex to survive the next systemic shock. (UNIDROIT, 2016; ICC, 2020; United

Nations, 1980; Contract Act, 1872, § 56; *Abdul Waheed*, 2021; *Atlas Cables*, 2016). ([UNIDROIT](#), [ICC - International Chamber of Commerce](#), [UNCITRAL](#), [MA Law](#), [pakistanlawyer.com](#), [Scribd](#))

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