Impact of COVID-19 on Workers in Pakistan and Policy Guidelines for Employers and Employees

Policy Paper for the LUMS Law Journal

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Introduction

In the wake of the global pandemic of COVID-19, central and provincial governments have undertaken emergency steps such as imposing strict lockdowns in certain areas to prevent the spread of COVID-19. New emergency legal framework has been imposed across the country which authorises restrictions on freedom of movement and prohibition of gatherings. While issuing lockdown directives, neither the central nor provincial governments have announced guidelines regarding the impact of such lockdown on contractual obligations of employers and employees.

This policy paper discusses the socio-economic and policy impacts of COVID-19 on workers in Pakistan and the steps that the State and employers can take in order to accommodate employees during the pandemic. Our research explores the way in which contractual obligations are governed by a global pandemic and the relevance of contractual provisions such as those on force majeure, frustration, and waiver to the situation at hand. It further delves into highlighting the impact of the present catastrophe on female workers and the way they have been disproportionately disadvantaged as a result of the changing circumstances. Our paper also analyses the need for employer-sponsored health initiatives provided to the employees especially at a time of a public health outcry and when employees need such benefits the most. Lastly, this paper reviews one of the most significant policy issues faced by current employees in Pakistan, which involves improving an employee’s mental health during this adversity. In order to summarise solutions for the rampant crisis, the paper suggests some general recommendations.

Lockdown and Employment Contracts: COVID-19 and Contractual Obligations

Parties are bound to perform their contractual obligations and if they fail to do so, they are liable to compensate for damages which may arise as a result of such failure. In certain circumstances, it may become impossible for parties to fulfil their contractual obligations. The doctrine of *force majeure* (literally, “superior force”) caters to such circumstances. Most contracts contain a *force majeure* clause which defines the rights and obligations of parties when the performance of contract may become impossible due to natural events such as floods, earthquakes, eruption of volcanoes, and tsunami, or civil and political unrest, war or legal change regarding the subject matter of the contract.

The non-performing party relying on *force majeure* has to prove the following: i) It has taken reasonable steps to mitigate the impact of *force majeure* events on its performance; ii) Lack of control over the event; iii) Unforeseeability of the event at the time of the conclusion of the contract; and iv) Absence of alternative ways to fulfil contractual obligations.
Frustration of Contract

The contractual obligation during the COVID-19 pandemic can also be discharged under the doctrine of frustration of contract, where it is impossible to fit the COVID-19 pandemic within the *force majeure* clause of the contract. A frustrating event is an unanticipated and unforeseen event which renders the performance of contract impossible, or where the performance becomes illegal, or where the radical change of circumstances transforms the contract different from what was originally agreed upon by the parties.\(^1\) For a contract to be frustrated, an express provision dealing with the possibility of any frustrating event should be absent in the contract and the frustrating event should be the one which is not within the knowledge of either party.

Within this socio-economic change in their lives, contractual parties are foreseeing the effect of the COVID-19 pandemic on their contractual obligations. Since the COVID-19 pandemic is a natural event, not caused by fault of either party, it can be rightly be argued that it was an unforeseen event and therefore, it can constitute as a frustrating event in a contract. The unprecedented outbreak of COVID-19 was also not within the knowledge of contractual parties. The drastic measures taken by governments all around the world have rendered certain contractual performances impossible and therefore, the non-performing party can rely on the doctrine of frustration to avoid the consequences of breach of contract.

Waiver of Rights

A waiver of contract is the relinquishment of rights by a party upon failure to deliberately take an action or by taking a positive action. Waiver, either express or implied, has to be specific and should demonstrate a clear intention to affect the legal relations of the parties.\(^2\) Amid the COVID-19 outbreak, it is imperative to determine the circumstances under which the contractual parties can be said to have waived off their rights under the contract. Generally, there has to be either an express waiver of rights by the party having power to enforce those rights or the waiver of rights can be implied from the conduct of such party. However, the outbreak of the COVID-19 pandemic requires to delve a little deeper in the issue. There are a number of judgments which lay down the essential features for waiver of rights. Some judgments have held that mere silence to claim a right for some time does not amount to a waiver of right.\(^3\) On this, the Supreme Court has held that waiver may arise from mere silence or inaction or even inconsistent action of a person.\(^4\)

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\(^1\) Begum Zia Farhat v Government of Pakistan 1994 CLC LHC 854, [5].
\(^2\) Directorate of Industries v Masood Auto Stores 1991 PLD LHC 174.
\(^3\) Muhammad Jamal v Additional District Judge 2016 YLRN KHC 1.
\(^4\) Dr. Muhammad Javaid Shafi v Syed Rashid Arshad 2015 PLD SC 212.
In addition to mere silence, the party claiming to have waived its rights should have knowledge about violation of those rights. Where a person does not know exactly what he is giving up and is waiving without knowledge of all facts, it will not amount to a waiver of rights. Where a person remains silent despite knowing the breach of his rights, then such a person will be deemed to have waived those rights. In light of this analysis, it is prudent to suggest that mere failure of the obligor party to enforce its rights under the contract during COVID-19 would not amount to waiver of those rights. Therefore, the silence of the obligor party to enforce its positive rights under the contract coupled with an active knowledge about breach of those rights by the obligee party would constitute a waiver of rights.

However, in some cases, the obligor party may be unable to enforce its rights despite having knowledge about violation of those rights due to strict measures taken by governments around the globe. In such a situation, mere knowledge of violation of rights and subsequent silence to enforce those rights will not amount to waiver of rights; it is necessary that the concerned person has done some positive overt act to relinquish its rights. Therefore, during the outbreak, the obligor party will be considered to have waived its positive rights under the contracts if all the following conditions are met: i) the party was aware of its rights under contract, ii) the party kept silent to enforce its rights under contract, and iii) the party consciously performed an act which tantamount to intentional relinquishment of a known right. If the aforesaid conditions are not met, the obligee party may not be able to assert waiver of rights by the obligor party.

**Plight of Female Workers during COVID-19**

Even though women have increasingly entered the healthcare sector in the past few decades, they are still not provided with enough opportunities in financial crisis-management and decision making. Even historically women have been weakly positioned in places and spotlights that required major decision making power to be exercised.

It is true that most of the frontline health professionals exposed to this viral infectious disease are women with 67% of the global health workforce being female as recorded by a 2019 study. However, women in a number of professions, are the most affected among workers who have been laid off as part and parcel of the current economic shutdown, and significantly represent those whose working hours have been reduced to adjust pay cuts and other salary deduction policies during COVID-19. As a large number of women are forced to stay home during the crisis and might have to continue the same post-crisis too, it is crucial to note the repercussions of the pandemic on working women as well as those who are now employed at home but without

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6 Umar Hayat v Muhammad Asghar 2001 YLR SC-AK 3315.
pay. Such are women who are immersed in household chores, including but not limited to catering to large families as their husbands and children keep them constantly busy. While wives, mothers, daughters, most females – workers or not – are impacted by the wave of domestic chores and responsibilities that this virus brings with it, socio-economic and familial pressures continue to burden women more than men. And if we try to attempt to understand the fight against COVID-19, it is nothing less than a gendered struggle, especially when viewed from a gender-sensitive lens.

As people sit in lockdowns and the country faces a major blow to its economy, female workers are, unfortunately, facing the brunt of the pandemic in a number of ways. According to WHO and UN Women global statistics, while 70 percent of workers in the health and social sector are women, they do three times more unpaid care work at home than men.\(^8\) Analysis of various economies is evident of the disproportionately high impact of COVID-19 on women primarily, as women continue to work in low-paying, insecure and informal jobs.\(^9\) Moreover, as was observed by UN Women during the Ebola crisis,\(^10\) lockdowns and other disruptions lead to women’s restrictions and become a hindrance women’s ability to make ends meet. This is especially true because of the inherent discriminatory wage model followed by a lot of countries. As men globally continue to be paid 16 percent more than women on average, and the pay gap has risen to 35 percent in some countries, in crucial times of crisis such as the present one, women are more likely to quit their paid work to care for children.\(^11\) Women who belong to economically-deprived households are now seen facing further challenges that not only extend to the lack of funds but are disadvantaged enough to solely feed the young and the old and care for the sick during these crises. In Pakistan women are also observed managing their unpaid care work and domestic chores 11 times more than men.\(^12\) An extra burden on the females is also of their child’s education as schools and educational institutions shutdown and learning shifts to online platforms. However, in communities where online education is not an option, learning is

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\(^9\) (n 8) UN Women News and Events.


\(^11\) (n 8) UN Women News and Events.

completely suspended until the pandemic ends and the mother in most households takes up the responsibility of ensuring an education to her child.\textsuperscript{13}

However, the way COVID-19 has impacted female workers, particularly those that belonged to a certain age group and class has had a devastating effect on their financial situation as well as the recession that Pakistan is falling into. Older women and others belonging to poverty-stricken households have been most vulnerable at the hands of their employers. Women who worked as house helpers and maids, care providers in old age homes and orphanages, daily wagers and sole breadwinners have been affected by a shocking yet inevitable wave of unemployment as a result of the current economically unviable circumstances they find themselves in. As women lose their source of income and are forced to stay home and feed their children, they are also deprived of the additional benefits they received as a result of their jobs and employment, some of which included receiving zakat and \textit{sadqa} from their employers.\textsuperscript{14} Moreover, other benefits that would help them survive their sick days and illnesses were also provided to them in the form of medicines, clothes in charity, daily food supplies, and a doctor’s fee in case they needed an additional bump in their salaries. While sources of charity are still alive and being donated towards in Pakistan, it is not safe to assume that all impoverished households and distressed women will be able to receive ration and money as part of ordinary donation campaigns or the Prime Minister’s Corona Relief Fund.

\textbf{Employer-Sponsored Health Initiatives}

The COVID-19 public health crisis has impacted workers’ health all over the world. It is vital to have employer-sponsored health initiatives or policies set in place to protect and compensate workers during their sick days. Many countries, including Pakistan, have state-prescribed mandatory employer-sponsored health care initiatives. These include health workplace safety schemes and employer-sponsored health insurance.

Employer-sponsored health initiatives are aimed at protecting workers in the workplace during the crisis, especially essential workers. WHO has issued recommendations\textsuperscript{15} to employers such as maintaining clean and hygienic workplaces, providing sanitisers and hand washing facilities, and briefing employees on how COVID-19 is spread.

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In Pakistan, the enactment of the Punjab Infectious Disease Prevention and Control Ordinance 2020 has imposed certain obligations across all sections of the province to take preventative measures to stop the contraction of the virus. Article 14 of the aforesaid ordinance imposes an obligation on all heads of workplaces to inform the public health officials in case any of their employee contracts or is suspected of contracting the virus. Article 5(f) of the Ordinance empowers the government to force any company to abstain from working or trading to ensure that the spread of virus is contained. Hence, legal obligations are imposed upon corporations that are functioning at present to ensure that the health of their employees is maintained.

The Punjab Occupational Safety and Health Act 2019 also mandates employers to ensure that the health of their workers is protected. The act makes it obligatory for an employer to take all practical measures to ensure safety and health of the employees at the workplace, make arrangements for the prevention of the spread of any disease in the employment premises, and provide protective clothing and equipment to all the employees in case of a hazard. Hence, all employers in Punjab are obligated to provide sanitizers, ensure social distancing and effectively take all necessary measures to prevent the spread of COVID-19 in their workplace premises.

**Mental Health of Employees**

Along with the pandemic have come a lot of other problems such as panic buying, hoarding, lockdowns, shortage of basic supplies, shut down of companies, unemployment, financial crisis and the list is not exhaustive. The crises prove Thomas Hobbes’ theory about humans as ‘essentially selfish and egoistic’ quite realistically true. News and social media are filled with incidents which shows that in this time of pandemic, we humans are willing to go to any extent for our survival. Among all these issues, the most overlooked issue is that of mental health. In a society such as ours, the topic of mental health is already a taboo. But this emergency situation demands special attention to it, because now people are enclosed in their homes with nowhere to go and sob their hearts out.

Although the stress of this situation is equal for everyone, it is more for those who are either employed or have become unemployed due to the present recession. Some people were the sole bread-winners at home and carried the entire financial burden of their households. There are many companies that have been shut down due to a lockdown and as a result, there is a significant number of people who have become unemployed. They are going through the distress of not having a job and hence, not having enough money to bear their expenses and expenditures. On the other hand, those who are still employed, now have an additional responsibility of working from home. This not only places an extra burden on them to work from home; but, also adds to their expenses in the form of utility bills, internet connection, groceries and other relevant household expenses that lead to further stress and difficulty to cope. Moreover, the

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16 Punjab Infectious Disease Prevention and Control Ordinance 2020
17 The Punjab Occupational Health and Safety Act 2019
precaution to the virus suggested by doctors and the government is self-isolation. Isolation itself can be a ‘trigger’ for suicidal thoughts, self-harm, depression and anxiety. However, those who are already suffering from mental health issues, this will be a real battle for them. ‘While self-quarantine will safeguard our physical health, experts are warning that it might consequently lead to a mental health crisis post-outbreak.’

Be that as it may be, we need to work on minimizing the risk that can come from the untreated issues of mental health. Dr. Yousuf Raza, a profound psychologist, suggested in his talk “Managing Mental Health in Pandemic” that after the outbreak of the virus and a lockdown imposed, we have time to discover our inner-selves. We can come out of this lockdown as someone who has ‘started to figure out’ life because life has been slowed down around us. However, one should not torture oneself into doing something productive in a time of crisis that is inevitably uncertain for everyone around the world. We do not have to create unnecessary panic for ourselves.

Moreover, Rabeea Saleem, points out a number of things to do during the lockdown. The top one of them is ‘being mindful of our emotions and thought patterns’. It is a key to survive in this situation because this situation has taken everyone aback. We all are confined in the boundaries of four walls called home with a 24/7 interaction. This constant interaction and no ‘me-time’ can be enough to blow a person out. Thus, we should be keeping a check of our emotions and emotional needs. One of the other things that Saleem mentions include: “staying socially connected while maintaining a social distance, keeping a perspective, exercising, setting a routine, learning new skills, work on your life-style and self-care and build your resume.” These activities can help a lot in coping with a distressful situation such as this one.

Being distraught in a pandemic is normal. It is understandable to worry but not alright to panic about what the future holds. The lockdown can prove to be a positive experience too. This whole situation has the ability to make us more tolerant, humble and empathetic.

**Recommendations**

As the number of cases turned from hundreds to thousands within a few weeks, Pakistani workers are severely disadvantaged due to the most prolific industries ceasing production and sending workers home without pay, without promise of a future, without a source of income. Below are some recommendations that employers can take into account in ensuring better response effort against COVID-19 or any similar situations that may arise in the future:

1) First and foremost, employers must at all costs avoid calling employees to offices and workplaces (unless absolutely necessary) and promote healthier work from home lifestyle and schedules.

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20 Ibid.

21 (n 34).
2) The Centers for Disease Control and Prevention (CDC) in its Interim Guidance for Businesses and Employers for COVID-19, reported that since most American workers are at a risk of experiencing low or medium exposure to the virus at their place of employment, employers must refine their business response plans as required and prepare varying and flexible schedules to accommodate as many employees as possible. The same should be practiced in Pakistan by employers to manage effective communication and business response in cases of emergencies and unforeseeable circumstances.

3) Employers must be responsible for ensuring a better functioning workplace and avoiding any further spread of the virus due to daily interactions. In practicing activities that encourage social distancing: i) employers must make sure that transmission of the virus is reduced to minimum among its employees, ii) they must maintain and responsibly control healthy business operations of the office and work, iii) a healthy work environment must be promoted especially in these crucial and uncertain times where employees should be motivated to work, collaborate, and cooperate with each other, all at a safe distance.

4) Apart from ordinary and usual work meetings, employers must also partake in activities of educating their employees and making them aware of the current situation. While employees will be aware of the do’s and don’ts during a pandemic, employers must hold regular coffee chat sessions/meetings/workshops for capacity-building, personal growth, increasing motivation, and balancing personal and professional life together.

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