Does the Fight Against the Pandemic Risk Centralizing Power in Pakistan?

David A. Thirlby[*]

Abstract

When the pandemic struck Pakistan, there was a high-profile divergence between how the federal government and the provincial government of Sindh responded. This points to a tension between the need for a national approach to tackle the pandemic and the prerogative of the provinces to deal with health issues under its devolved powers. These powers were the result of the 18th amendment, which restored a parliamentary federal democracy. Power has also been decentralized from executive presidents to parliamentary forms of government. However, parliamentary systems centralize power within the executive: a trend which the pandemic has reinforced. The article will explore the various interplays although it is the economic landscape which will prove most challenging. Although the emergence of a national centralized approach to combat the pandemic points to a weakening of the devolution process and therefore the reasoning behind the 18th amendment, the situation is more complex which this article seeks to explore.

Keywords: PTI government, 18th amendment, 1973 Constitution, lockdown, economic impact.

This article will explore how the singularity of the pandemic and the response by the provincial and federal governments both risks centralizing power and, paradoxically, delineates responsibilities between the centre and the provinces. This is significant in Pakistan, where the devolution of powers and parliamentarism, as opposed to other forms of government, are closely associated with democracy. If the post-2008 democratic dispensation is successfully able to deal with the epidemic and mitigate the economic consequences, it will emerge more adaptive and resilient from it.

The first COVID-19 case was reported in Pakistan on 26 February 2020 and the first death on 20 March 2020. The provincial governments, which have responsibility over health, issued lockdown measures, starting with Sindh on 23 March 2020. In contrast, the federal government questioned the economic impact of the lockdown. Despite this initial response, a nationwide lockdown was announced, and orders were issued to the military to support enforcement. A sharp difference in narrative had emerged between the Pakistan Tehreek-e-Insaf (PTI) federal government and the government of Sindh, which is the only province governed by the opposition Pakistan People's Party (PPP). On

* David A. Thirlby is Senior Programme Manager Asia, Westminster Foundation for Democracy

13 March 2020 the National Security Committee established a National Coordination Committee for COVID-19, chaired by the prime minister whose members include the chief ministers of the provinces and senior military personnel. The National Command and Operation Centre (NCOC), which also comprised federal and provincial ministers, would be the body that would guide the fight against the pandemic. Therefore, a highly centralized approach led by Islamabad was undertaken. Although the provinces had taken the lead in fighting the pandemic, pressure soon arose to have a uniform approach. This was exemplified on 30 April 2020 when Sindh resisted the federal government's calls on easing the lockdown. The need to have a uniform Coronavirus policy that would not add to the confusion 'gave the Supreme Court the opportunity to intervene'.[1] Subsequently, the Supreme Court *suo moto*[2] called notice on the governments' measures to fight the pandemic and warned Sindh not to deviate from national policy. This led Sindh to comply with the national policy, and the outcome was a strengthened centre in relation to the provinces.[3] However, even if combating the pandemic has tilted power towards the centre after the 18th amendment, the situation is much more complex as there are other factors at play, including the effects of long periods of military control, the position of the different provinces within the federation, the outcome of the 2018 elections and a worsening economic outlook. The interplay between these factors and the pandemic has reopened the debate on the 18th amendment, with the prime minister calling for it to be 'reviewed'.[4]

A The 18th Amendment

In 2006 the Pakistan Muslim League – Nawaz (PML-N) and PPP, the main political parties and erstwhile opponents, joined forces and signed the Charter of Democracy.[5] The charter was a political agreement that outlined a road map and a political set-up for a democratic Pakistan. Central to the Charter of Democracy was the restoration of the 1973 Constitution, and following the 2008 parliamentary elections, the Parliamentary Committee on Constitutional Reforms (PCCR) was established. Since 1973, the Constitution had been amended numerous times and had consequently lost its 'equilibrium'.[6] This rebalancing of

1 Yasser Kureshi, "Judicialising the pandemic in Pakistan", University of Melbourne, 28 May 2020, Para. 4, available at: https://law.unimelb.edu.au/centres/alc/engagement/asian-legal-conversations-covid-19/jurisdiction-economy/pakistan/judicialising-the-pandemic-in-pakistan.

2 "On its own motion" refers to the Supreme Court taking, of its own volition, a case that has not been referred to it.

3 International Crisis Group, "Pakistan's COVID 19 crisis", 6 August 2020, Briefing 162 Asia, available at: www.crisisgroup.org/asia/south-asia/pakistan/b162-pakistans-covid-19-crisis.

4 *The Dawn Newspaper*, "18th amendment needs to be 'reviewed': PM", 18 June 2020, available at: www.dawn.com/news/1564273.

5 Full text of the Charter of Democracy can be found in *The Dawn Newspaper*, 16 May 2006, available at: www.dawn.com/news/192460.

6 Report of the Constitutional Reforms Committee (2010), National Assembly Secretariat, National Assembly of Pakistan, Para. 3, p. 2.

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the Constitution was the main objective of the PCCR, and it recommended 91 amendments – most of which would be agreed and encompassed as the 18th amendment to the Constitution, passed in 2010.

The most salient changes limited the powers of the presidency, installed a parliamentary form of government, renamed the North West Frontier Province (NWFP) Khyber Pakhtunkhwa (KP) and devolved powers to the four constituent provinces. In terms of the devolution of powers, the 18th amendment went further than the 1973 Constitution by abolishing the concurrent list, thereby increasing the scope for provincial autonomy. This was also reflected in increased financial resources by amendments to Article 160-3a, which safeguarded the same or increased share of revenue.[7] The 7th National Finance Commission (NFC), agreed unanimously by all provincial governments in 2009, introduced, for the first time, a weightage other than population in dividing revenues among the provinces. The NFC award marked "a new national spirit to accommodate the demands of the smaller units of the federation".[8] The Constitutional framework outlining the responsibilities of the provinces was thus aligned with increased financial resources. Both reports "surprised seasoned Pakistani observers [...] partially because the level of agreement between rival political parties and provinces was unprecedented".[9]

Health had been one of the subjects devolved to the provinces and they were able to respond quickly to the pandemic by taking "the lead in putting in place health and sanitation measures including lockdowns" while the [federal] government was able to take

> a number of steps to tackle the evolving challenges and address the economic impact of the outbreak, through stimulating businesses in the urban centres, and agriculture in the rural area.[10]

On 30 March the government announced a Rs.1.2 trillion fiscal stimulus package and a supplementary grant of Rs.100 billion for the 'residual emergency/relief fund'.[11] However, the federal government has not limited itself to relieving economic measures, and on 7 March 2020 the Ministry of National Health Services, Regulation and Coordination launched the National Action Plan for Coronavirus Disease. This ministry had replaced the Ministry of Health after the

7 Art. 160, Clause 3a specified that the distribution of revenue to the provinces by the National Finance Commission (NFC) cannot be decreased. *See* O. Mumtaz (2016), "Story of federalism in Pakistan", Section 9.5, Research Paper, University Law College, Punjab University Lahore.

8 Usman Mustafa (2011), "Fiscal federalism in Pakistan: the 7th national award commission and its implications", PIDE Working Papers, Pakistan Institute of Development Economics, p. 7.

9 K. Adeney (2012), "A step towards inclusive federalism in Pakistan: the politics of the 18th amendment", Publius: The Journal of Federalism, p. 539.

10 S. Mandviwalla (2020), "Federalism and the COVID 19 crisis: a Pakistan perspective", Forum of Federations blog.

11 *See* KPMG for list of financial measures taken by the Pakistan government; KPMG International Cooperative, Pakistan Government and institution measures in response to COVID 19, available at: https://home.kpmg/xx/en/home/insights/2020/04/pakistan-government-and-institution-measures-in-response-to-covid.html.

18th amendment, and its title defines its mandate in harmonizing healthcare throughout the federation. However, the response of the pandemic has highlighted gaps in practice:

> There is a formal coordination structure within the government that has been established to provide coordination of the response at all levels however, the linkage between the central and provincial/regional level coordination is not well defined and needs to be streamlined.[12]

The lack of coordination and the diversity of policies adopted by the provinces has caused confusion. Newspaper articles critical of both federal and provincial governments are common; for example, "Sindh Lockdown a Chaotic Policy?"[13] or "The Unravelling of Imran Khan: How Pakistan's Prime Minister Fumbled".[14] However, it is important to note that policies within many federations or units with devolved powers, such as in the United Kingdom, have differed. What is important in Pakistan's case is that the pandemic has brought to the fore differences in regard to the 18th amendment and the 7th NFC. A competitive political landscape had long ago finished the consensus following the 2008 Charter of Democracy, but this had been contained to the political sphere. Indeed, the 7th NFC still stands as the 8th and 9th NFC discussions remain inconclusive.[15] Now the lack of a coordinated policy and "procrastination over measures aimed at social distancing continued to send conflicting messages",[16] which affected the very heart of people's freedoms – not only of movement but also of earning a living, – has brought the issue to life.

B 1973 Constitution

It is worth reflecting the spirit of the 1973 Constitution that the 18th amendment sought to revive. The Constitution was framed in the "back-drop of a loss of the country and consequent disillusionment and frustration".[17] However, the framing of the Constitution brought political leaders together, and the result was a magna carta that has "stood the test of time and could not be abrogated".[18] The essential features of the 1973 Constitution are:

12 OCHA (2020), "Pakistan Humanitarian Response Plan for COVID 19 pandemic 2020".

13 The Nation, "Sindh lockdown a chaotic policy?", 23 March 2020, available at: https://nation.com.pk/23-Mar-2020/sindh-lockdown-a-chaotic-policy.

14 The Diplomat, "The unravelling of Imran Khan: how Pakistan's prime minister fumbled", 5 July 2020, available at: https://thediplomat.com/2020/07/the-unraveling-of-imran-khan-how-pakistans-prime-minister-fumbled/.

15 The Daily Times, "The 18th amendment: financial autonomy and fiscal deficit", 11 August 2020, available at: https://dailytimes.com.pk/652364/the-18th-amendment-financial-autonomy-and-fiscal-deficit/.

16 *The Dawn Newspaper*, "Leading in a pandemic crisis", 13 April 2020, available at: www.dawn.com/news/1548796.

17 *Ibid.* PCCR Report, Para. 2.

18 *Ibid.*

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> based on Islamic principles and be a Federal Parliamentary system with Provincial Autonomy in which fundamental rights and the independence of the Judiciary would be assured.[19]

The 1973 Constitution sought to deal with provincial autonomy, which has been a "hugely contentious issue in Pakistan's constitutional history".[20] Balancing the relationship between the centre and the province had been one of the reasons why it took nine years after independence to pass the country's first constitution.[21] The first constitution of 1956, which provided for provincial autonomy, would be short lived. The 1962 Constitution, promulgated by Ayub Khan, who had come to power in a coup in 1958, established an executive presidency. Moreover, the "question of provincial rights [...] was more responsible for the scission of the country's eastern wing in 1971 than anything else".[22]

In the aftermath of 1971, there was widespread political consensus[23] in the framing of the 1973 Constitution, which reverted Pakistan to a federal parliamentary democracy. However, the Constitution's first iteration was short lived following the imposition of martial law by General Zia al-Huq in 1977. Although democracy was restored in 1988, following Zia's untimely death, General Musharraf's coup, in 1999, again interrupted the evolution of the Constitution in a democratic environment. The various military interventions all led to a centralization of power in the form of an executive president.[24] Another similarity of the military takeovers is that the generals-cum-presidents sought legitimacy through some form of elections, often at the local level. Interestingly, military regimes have promoted local government, which weakened once democracy has been restored. Ali Cheema et al have called this the "paradoxical counter-cyclical pattern for local democracy",[25] arguing that local government

19 *Ibid.*

20 Arab News, "The reason why debate on the 18th amendment refuses to die", Ahmed Bilal Mehboob, 28 July 2020, available at: www.arabnews.pk/node/1709751.

21 Until 1956 it was governed by the 1947 Pakistan Independence Act, itself based on the 1935 Government of India Act, which, under Art. 5, proclaimed the 'Federation of India'. The act ended diarchy in the governing of India and provided for provincial autonomy. Resistance by princely states, opposition to the act by the independence movement as well as the advent of World War II stymied further developments, although elections to provincial legislatures took place in 1937.

22 Arab News, *ibid.*

23 "The constitution was negotiated between the parties elected in the western wing in the 1970 elections, the vast majority of whom supported it. The opportunity to create a democratic and truly federal constitution was never stronger", K. Adeney (2007), "Democracy and federalism in Pakistan", in Federalism in Asia, edited by Y Baogang He, Brian Galligan, Takeshi Inoguchi, p. 113.

24 The 8th amendment, in 1985, and the 17th amendment, in 2003, provided power to the president to dissolve the National Assembly. The 17th amendment itself reversed the 13th amendment of 1993, which had restored parliamentary democracy.

25 A. Cheema, Adnan Q. Khan and Roger B. Myerson (2014), "Breaking the countercyclical pattern of local democracy in Pakistan", p. 1, available at: http://home.uchicago.edu/~rmyerson/research/pakdemoc.pdf.

elections, often conducted without parties, have been used by the military governments to bypass political parties and foster a 'class of collaborative politicians'.[26] A tendency emerges of military governments centralizing power in the form of an executive president with weak provinces and strong(er) local government and democracy espousing parliamentarism and federalism. However, there are no guarantees that federal systems are democracies. Although rare, they can also 'support authoritarian structure[s]'.[27] Likewise, not all executive presidencies are undemocratic. Military takeovers in Pakistan have led to executive-presidential systems rather than other forms of authoritarian systems, such as juntas or one-party states. This lack of alternative models of control has created a strong association between undemocratic governments with executive presidents and between democracy and federal parliamentarism. Indeed, it may seem paradoxical, but parliamentary forms of government can also lead to centralization of power as they are designed to create strong executives vis-à-vis the legislature.

C Positions of the Respective Provinces

The response to the pandemic by each of the respective four provinces of the federation highlights their position therein and their respective relationships with the centre. Considering the political history of each province, it is not surprising that it is Sindh that has deviated the most from the national policy in combating the pandemic. Arguably, it is the relationship between Sindh and the centre that is going to most crucially define the post-18th amendment constitutional settlement.

One of the most salient aspects of the Pakistani federation is the dominance of the Punjab. The Punjab accounts for approximately 55% of the country's population, and it correspondingly has a majority in the National Assembly.[28]

> The distribution of seats institutionalises the dominance of a core ethnic region at the heart of the federation.[29]

Given the Punjab's position within the federation, no political party can expect to win power at the centre without making significant inroads in the province. Therefore, the political parties need to be conscious of the Punjab 'vote bank',[30] and no federal government can win without also winning Punjab. This makes

26 *Ibid.*, p. 2.

27 K. Adeney (2007) *ibid.*, p. 111.

28 The 15th National Assembly elected in 2018 is composed of 271 constituency seats on a FPTP basis: 141 elected in the Punjab and the remaining elected from Sindh (61), KP (50), Balochistan (16) and from the Federal territory -Islamabad (3). This ratio also applies to the 60 seats reserved for women representing the Punjab (33), Sindh (14), KP (9) and Balochistan (4) who are elected on a proportional list system. The 10 seats reserved for non-Muslim minorities are from a national list. Details available on the National Assembly of Pakistan.

29 K. Adeney (2012) *ibid.*, pp. 542-543.

30 *Ibid.*, p. 543.

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elections in the province competitive. In 2018 the PTI was able to win a majority, although the PML-N put up a 'credible'[31] performance in central and southern Punjab, despite the challenges the party faced, such as the barring of its leader and former Prime Minister Nawaz Sharif from standing. PML-N's strength in Punjab explains why despite being the second largest party in the National Assembly, it is, nonetheless, much more equally posed in the provincial assembly.[32]

Until the 7th NFC in 2008, population headcount was the sole basis for revenue distribution. This naturally favoured the Punjab, but it exacerbated tensions with the other provinces. Balochistan is the least populous province, but it is also the largest in terms of size and is rich in natural resources. However, the arid terrain and sparse population has hampered economic development, and it is, consequently, the least developed province. This causes resentment, and although there have been armed uprisings of Baloch nationalism accompanied by acts of economic sabotage, there is little popular support for independence. Instead, Baloch nationalism should be seen within the prism of the province's political culture, which is "extremely divided politically, tribally and ethnolinguistically".[33] The province's factional politics, challenging security environment or small number of National Assembly seats[34] leads the main political parties to limit campaigning and 'ignore' the province, instead seeking post-election alliances where needed.[35] In Balochistan, former PML-N members created the BAP, which governs the province in coalition with the PTI.

Although not without its own grievances,[36] KP has historically been much more integrated in the federation. Its strategic position and its relative proximity to the Punjab have been contributing factors. The Pashtuns, the main ethnic group in KP, play an active role in the army[37] alongside the Punjabis from the 'martial belt'.[38] Economically, the Pashtuns are also integrated with economic and

31 M. Shah and S. Sareen (2018), "Pakistan general elections 2018: analysis of results and implications", ORF Special Report, December 2018, p. 8.

32 In the National Assembly the PLM-N has 82 seats against the PTI's 149 seats in the 342-member chamber, as opposed to 165 seats against the PTI's 181 seats in the 371-member provincial assembly.

33 K. Adeney (2012) *ibid.*, p. 599.

34 Balochistan sends a total of 20 MNAs (16 PFTP and 4 women reserved seats) to the 342-member chamber.

35 The Dawn Newspaper, "Forgotten Balochistan", 3 July 2018, available at: www.dawn.com/news/1417631. "It is to all intents and purposes a politically forgotten province." Following the July 2018 elections, the PTI formed a coalition with Balochistan parties in the province and in Islamabad.

36 For example, on the use of water resources that the 1991 Water Apportionment Control sought to resolve, *see* A.A. Anwar and M.T. Bhatti (2018), "Pakistan's water apportionment accord of 1991: 25 years and beyond".

37 During Ayub Khan's period, 1958-69, 60% of the army were Punjabis and 35% Pashtuns; The News on Sunday, "Averting Pashtun secession", 23 July 2017, available at: www.thenews.com.pk/tns/detail/563696-averting-pashtun-secession.

38 The Potohar region is referred to as the martial belt owing to the high recruitment of young men into the army.

business interests throughout the federation. Indeed, Karachi, in Sindh, is the Pashtuns' most populous city in Pakistan. Politically, it is interesting to note that the PTI had its first breakthrough when it won the province from the Awami National Party (ANP) in 2013. The ANP had governed the province since 2008 and allied with the PPP at the centre. The ANP's left-wing politics and secular outlook generated the wrath of the Taliban in the province. Its officers have been killed, and its rallies are targets for suicide bombings.[39] Although the target of extremists prevented effective campaigning, the ANP also suffered at the polls through anti-incumbency and corruption allegations. The PTI was effective in its campaign, and not only did it win, but it was also to increase its vote share in 2018.

In Sindh, the relationship between the province and the federation is more contentious. Although the second largest province in terms of size, its population is still over 50 million and is the most urbanized – 52% versus 36% in the Punjab.[40] Among its contributory factors are that its main population centres are distant from the Punjab heartland and that it has a distinct culture and that its coastline has been the gateway for external influences and trade. In addition, the ethnic composition of Sindh changed drastically after independence which would change the rural -urban dynamics. . After partition, the Mohajirs settled in urban centres in Sindh. The Mohajirs came from all over India and, as Urdu speakers, were not culturally or linguistically tied to Sindh. Politically, the Mohajirs would be represented by different political parties, especially the Muttahida Qaumi Movement (MQM), who would come to dominate urban Karachi.[41] Influx from other parts of Pakistan would further complicate the political landscape. The instability caused by the Afghan wars[42] and a politically divided ethnic mix in a city of 20 million people that generates 50% of the country's revenue[43] would make for an explosive combination. Political turf wars linked to criminality led to a city beset by violence and a breeding ground for extremists – it is estimated that between 1986 and 1996, 10,000[44] people died in political violence. After the Musharraf regime, criminality continued unabated, with a high incidence of extortion, kidnappings and targeted killings. It was only in 2013, with the deployment of the federal Sindh Rangers, an elite paramilitary force with special powers to conduct raids and arrests, that the situation improved. The success of

39 The leader of the ANP Haroon Bilour was killed while campaigning in 2018. Haroon's own father, Bashir Bilour, a prominent ANP politician, was himself killed by a suicide bomber in 2012.

40 Pakistan Politico, "Pakistan census 2017: what does the date indicate?", 4 May 2018, available at: http://pakistanpolitico.com/pakistan-census-2017-what-does-the-data-indicate/.

41 The Mohajirs would also have spoken vernacular languages from the areas they came from, including Bihar, Bombay, Delhi, Rajasthan and Utter Pradesh. For more information on Mohajir identity *see*: K.M. Shah and S. Sareen (2019), "The Mohajir identity and politics in multi-ethnic Pakistan", ORF Occasional Paper, Number 22, November 2019.

42 Indeed, it is estimated 50% of the weapons destined to support the Muhadideen that entered Karachi never made it to Afghanistan; *see* K.M. Shah and S. Sareen (2019), *ibid.*, p. 7.

43 Global Security Org, "Karachi political violence", available at: www.globalsecurity.org/military/world/war/karachi.htm.

44 *Ibid.*

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the operation has been remarkable: in 2014 Karachi was classified as the sixth most violent city in the world, but by 2020 it was the 101st.[45] The PTI was successful in capturing the MQM vote in 2018 following the controversial 2016 speech by its leader. The PTI was able to win 14 of the 24 National Assembly urban seats in Sindh in what has been called a 'tectonic shift'.[46]

The PPP has emerged as the party that represents the Sindhi who remain a majority in rural areas. The PPP was founded as a national party in 1967 by the charismatic Zulfikar Ali Bhutto, who came from a prominent Sindhi family. The PPP espoused social democracy, and it was during Bhutto's government that the 1973 Constitution was drafted. In its first iteration of devolution, the PPP Sindh government implemented policies, such as quotas in the bureaucracy, to favour the Sindhi population, who felt disadvantaged. This created tension with the Mohajirs, culminating in communal violence after the Sindh Language Act 1972, which made Sindh the official language of the province. The execution of Zulfikar Ali Bhutto in 1979 by the military regime and the PPP's opposition to the dictatorship would further accentuate the province's assertiveness towards the centre. Although the PPP is a national party, the PTI's modern and effective campaigning was particularly popular among the poor and PPP's nationwide supporters.[47] However, although weakened nationally, the PPP's grip in the province strengthened in 2018 with its surprising victory in rural Sindh (winning 32 of 37 rural seats).[48]

In their analysis of the 2018 elections, K.M. Shah and S. Sareen[49] point to two further interesting trends nationally. First, the rise of religious parties. Although the Tehreek-e-Labbaik Pakistan (TLP) was the fifth biggest party in terms of votes, it did not gain any National Assembly seats and only a few provincial assembly seats. Second, the large number of constituency seats were won by small margins. These two trends point to some of the inconsistencies of FPTP[50] elections that mask the underlying party strength as well as the highly competitive nature of Pakistan's elections.

D Eruption of the Pandemic

The 2018 elections point to a realignment of the political forces influenced by the 18th amendment. The emergence of a new national party, the PTI, is a remarkable feat given the challenges within an FPTP system for new national parties to emerge. Also notable is that one of the main driving forces of the PTI

45 The Daily Times, "Sindh Rangers played major role in eliminating crimes from Karachi", 27 February 2020, available at: https://dailytimes.com.pk/566110/sindh-rangers-played-main-role-in-eliminating-crimes-from-karachi/.

46 M. Shah and S. Sareen (2018), *ibid.*, p. 9.

47 Z. Khan, "Fall of the PPP, the rise of the PTI", The International News, 2 May 2016, available at: www.thenews.com.pk/print/116797-The-fall-of-the-PPP-the-rise-of-the-PTI.

48 M. Shah and S. Sareen (2018), *ibid.*, p. 9.

49 *See ibid.*

50 'First past the post' system, whereby the winner is the candidate who receives the most votes.

was its determination to 'eradicate the status quo',[51] which alludes to the binary nature of Pakistan's politics.[52] The fact that PTI won seats in urban Sindh meant there was another layer to the narrative between pro- and anti-lockdown measures. In addition, the electoral rise of religious parties meant that restrictions to mitigate the pandemic would also need to consider religious imperatives, bearing in mind that the pandemic struck during Ramadan.[53]

As we move into 2020, we also need to consider that the period since the implementation of the 18th amendment coincides with only one federal and provincial mandate 2013-18. It is understandable that after a centralized (both within the federation and an executive president) system, it would take time for the provinces (and legislatures therein) to digest their new responsibilities, especially considering the encompassing nature of the 18th amendment. Not surprisingly, each province had different priorities. The PTI government in KP was the only province to devolve significant authority to local bodies[54] in line with its message to support the grassroots, while in the Punjab, the chief minister undertook a reform of the education system. This was a high-profile initiative, involving the launch of model schools, but as the governing party in both Islamabad and Lahore, overall policy would be aligned.[55] In terms of Sindh the period was characterized by dissonance with the centre, which is not surprising as it was governed by the opposition. There was, for example, controversy on the pricing of drugs by the provincial government[56]. Sindh, home to most of the Hindu population in Pakistan, was the only province to legislate concerning religious minorities. It passed the Sindh Hindus Marriage Act 2016, whereas Balochistan, KP and Punjab deferred to the federal government over the Hindu Marriage Act 2017. There are 'common elements' between the Sindh and federal acts,[57] but what is significant is the province's resolve in exercising its rights, defining its roles and responsibilities. Within the first mandate under the 18th amendment, it does not escape the observer that the radical improvement of security in Karachi was accomplished through the effectiveness of federal security forces. For the effectiveness of the operation the Rangers were provided with special time-bound powers. These special powers and the need for them to be extended would cause not only friction between Islamabad and Karachi but also internal divisions in Sindh between safeguarding the province's domain while

51 *See* What is PTI at its website www.insaf.pk/what-is-pti.

52 Z. Khan divides the political periods between pro- and anti-Bhutto camps from the 1960s until the emergence of Nawaz Sharif in the 1990s, then into pro-Bhutto and pro-Nawaz camps until the assassination of Benazir Bhutto in 2008 and, finally, into pro- and anti-Nawaz camps until the emergence of the PTI. *See*, Z. Khan, *ibid.*

53 *See* The Dawn Newspaper, "Editorial on religious precautions", 20 March 2020, available at: www.dawn.com/news/1541743.

54 The News on Sunday, "A new local government system?", 14 October 2018, available at: www.thenews.com.pk/tns/detail/566469-new-local-government-system.

55 Further accentuated that for most of this period Prime Minister Nawaz Sharif and the chief minister of Punjab, Shehbaz Sharif, were brothers.

56 *See* The News International, "Drug regulation", 20 February 2016, available at: www.thenews.com.pk/print/99525-Drug-regulation.

57 *See* Volume IV LUMS Law Journal, "The Hindu Marriage Act 2017: a review".

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accepting the need for the deployment.[58] A further controversy arose in the extension request by the Sindh government through 'notification' "without authorisation of the provincial assembly".[59]

However, it is the area of provision of education and healthcare in which the provinces' mandate is clearer to the citizens even if there are still some areas to further delineate, for example on tertiary education. Nor does this mean that there was no controversy with the provinces' new powers: some observers questioned the capacity of the provinces or the risk of a disjointed education curriculum. However, what is important for the purpose of this article is that in the minds of the citizens it is the area of direct service delivery that is going to shape their relationship with the state.

E Ordinances

All the provinces introduced lockdown measures through ordinances, enforced by provisions of the Code of Criminal Procedure 1898. Ordinances were issued in Balochistan, Punjab and Sindh through the Home Department[60] and by the Relief and Rehabilitation Department in KP. Sindh and KP had provisions within existing legislation for these ordinances: under Section 3 of the Sindh Epidemic Disease Act 2014 and, in KP, under Amendment 16A 2019 of the Disaster Management Act of 2010. Both these acts were themselves adapted from the West Pakistan National Calamities Act 1958 for KP and the West Pakistan Epidemic Disease Act 1958. The latter was based on the 1897 Epidemic Disease Act, which in 1958 was amended only "to replace the word India with Pakistan".[61] KP suffered a devastating earthquake in 2008, and Sindh is prone to outbreaks of infectious diseases, presumably because of its large urban population and climate. This may explain why these provinces had specific acts under which lockdowns could be enforced. In contrast, Punjab issued its lockdown ordinance on 23 March 2020 directly under section 144 of the Code of Criminal Procedure of 1898, but on 29 March 2020, it rectified this by drafting the Punjab Infectious (Prevention and Control) Disease Ordinance. In contrast, the federal government issued ordinances to try and protect consumers from price rises caused by hoarding and smuggling.[62] At times of national crises, it is important for

58 Pakistan Today, "PPP govt in two minds over Rangers' 'Special Powers", 11 December 2015, available at: www.pakistantoday.com.pk/2015/12/11/ppp-govt-in-two-minds-over-rangers-special-powers/ and Pakistan Today, "PPP drags its feet but extends Rangers' Powers by 90 days", 2 August 2016, available at: www.pakistantoday.com.pk/2016/08/02/ppp-drags-its-feet-but-extends-rangers-powers-in-karachi-for-90-days/.

59 The Nation, "The Karachi question", 15 December 2015, available at: https://nation.com.pk/E-Paper/Lahore/2015-12-15/page-7/detail-0.

60 "Home and Tribal Affairs" in the case of Balochistan.

61 The Nation, "India, Pakistan grappling with archaic epidemic law", 31 March 2020, available at: https://nation.com.pk/31-Mar-2020/india-pakistan-grappling-with.

62 COVID-19 (Prevention of Smuggling) Ordinance 8 June 2020 and COVID-19 (Prevention of Hoarding) 8 July 2020.

governments to act swiftly and decisively, and the powers provided through ordinances enabled the federal and provincial governments to do so.

However, the use of ordinances has been a tool increasingly used by governments at all tiers. According to Ahmed Bilal Mehboob,

> an overwhelming majority of the ordinances [...] promulgated [are] out of convenience because the government of the day did not want to face parliament to debate and justify the proposed legislation

and 'runs counter to the spirit of democracy' noting that up to December 2019 Pakistan had passed 1,774 ordinances in comparison with 533 in India.[63] However, this period coincides with military rule, where it is expected that ordinances would be more prevalent. There continues to be controversy both in the federal parliament and in the provinces over the use of ordinances (e.g. see 'Opposition assails frequent use of ordinances' in the Senate or "MPAs challenge LHC frequent issue of ordinances in Punjab"[64]). There has been little open debate in parliament over tackling the pandemic. Although a federal bicameral Parliamentary Committee on Coronavirus (COVID-19) was established on 25 March 2020 under the leadership of the Speaker and was composed of leaders of parliamentary parties, or their nominees, reflecting the importance of the subject, meetings have been held in camera with opposition parties claiming they are unproductive and "limited to receiving briefings from government functionaries".[65] Moreover, in a parliamentary form of government, the executive needs to control the legislature to govern. This is even more pronounced in countries like Pakistan, where anti-defection laws, aimed at securing party discipline and government stability, bar MPs from voting against their own parties.[66] It is therefore not surprising that the debates surrounding COVID-19 measures have been outside the parliament, especially in the media domain, where the highly competitive nature of Pakistani politics plays out.

It is not politicians alone that have questioned the use of ordinances. A story emerged of the Employers' Federation of Pakistan questioning the mandate of the Sindh government in issuing ordinances to protect salaries and employment contracts, as this was the domain of the federal government.[67] It will be

63 The Dawn Newspaper, "Ordinances over the years", 8 December 2019, available at: www.dawn.com/news/1521058.

64 *See* The Dawn Newspaper, "Opposition assails frequent use of ordinances", 30 July 2020 and, The Daily Times, "MPAs challenge LHC frequent issue of ordinances in Punjab", 1 December 2019.

65 The Dawn Newspaper, "In-camera session of parliamentary panel on COVID 19 today", 27 April 2020, available at: www.dawn.com/news/1552580.

66 Although this does not mean that there is no floor-crossing or factions within parties, *see* The Dawn Newspaper, "The law and politics of floor crossing", 13 March 2011, available at: www.dawn.com/news/612849/the-law-and-politics-of-floor-crossing.

67 Employers Federation of Pakistan, Notice Under Section 3 Of Sindh Epidemic Diseases Act 2014 & Sindh Payment Of Wages Act 2015, 3 April 2020, available at: https://efp.org.pk/notice-under-section-3-of-sindh-epidemic-diseases-act-2014-sindh-payment-of-wages-act-2015/.

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interesting to follow whether the increased use of ordinances will further delineate the roles and responsibilities between the federation and the provinces.

F Economy

The PTI government inherited a weak economy in 2018, with the country suffering a balance of payment crisis, resulting in low GDP growth and high inflation. When the pandemic struck, the federal government initially resisted lockdown measures in view of its potential impact on the economy – especially on the commercial capital of Karachi. The government eased lockdown measures and introduced 'smart lockdowns' to "ensure daily wagers and small businessmen should not lose their incomes".[68] In addition to stimulus fiscal packages, the federal government introduced measures to alleviate the economic impact of the pandemic, such as a Rs.200 billion scheme to support daily wagers and freeing of electricity tariffs. This was accompanied by legislative measures to protect people from rising costs – such as the COVID-19 (Prevention of Hoarding) Ordinance.

Once the full impact of the pandemic is felt, the economy is likely to worsen, and a contraction by –0.38% in 2019-20 is expected, the first recorded contraction since 1951-52.[69] Growth of 1.91% in 2018-19 was also one of the lowest recorded by the Pakistan Bureau of Statistics. The impact on the federation is already being felt, and questions are being raised as to whether the federation can afford the 18th amendment, specifically Article 160-3a, which guarantees the same or rising proportion of revenues to the provinces. Although this was included to safeguard provincial autonomy, it has also hamstrung the government, which has to deal with a federal deficit averaging 6.7% GDP during 2010-18.[70] The Federal Ministry of Finance argues that the remaining funds after the distribution to the provinces does not allow it to finance two important and binding obligations, namely debt serving and defence.[71]

G Conclusion

Federalism and parliamentary democracy are closely associated in Pakistan, and the 18th amendment of the Constitution is its ultimate embodiment. It was designed in an era of political party consensus, and it created a system where power would be decentralized, both in the system of government away from executive presidents and in the federation, with devolution to the provinces. The financial provisions it introduced were designed to secure provincial autonomy. At the eruption of the pandemic, there had been only one full mandate post

68 *See* Pakistan Today, "Govt touts 'smart lockdown' as infections cross 30,000", 10 May 2020, available at: www.pakistantoday.com.pk/2020/05/10/govt-to-seal-off-covid-19-hotspots-as-toll-crosses-30000/.

69 All statistics from the Pakistan Bureau of Statistics, Table 1 Macro-economic indicators, available at: www.pbs.gov.pk/sites/default/files//tables/national-accounts/Table-1.pdf.

70 The Daily Times, "The 18th amendment: financial autonomy and fiscal deficit", 11 August 2020.

71 *Ibid.*

devolution. The various measures initiated to combat the pandemic have highlighted the responsibilities of the province vis-à-vis their constituents, but the need for national coordination has reopened the debate on the nature of the federation.

The political landscape has changed with the emergence of a new national party that seeks to 'end the status quo'. Although the PPP has been confined to its home province of Sindh, its position has strengthened. This will further embolden it to defend its provincial autonomy. However, the domination of Punjab and its importance to winning at the federal level remains a constant. Another constant is weak local government systems and strong executives within provinces that parliamentary governments facilitate. The use of ordinances to combat the pandemic is part of a wider tendency, and although there have been divergencies between the federation and the provinces on tackling the pandemic, the approach in both tiers has been centralized, leaving the minimum scope for parliamentary involvement. Arguably, at times of national emergency a unified and centralized approach is needed. Although conscious of the possibility of a second wave, Pakistan has to date suffered much less than expected. "Mr Khan's supporters say this policy's success was aided by a national command centre to co-ordinate regional policies."[72]

It will be interesting to see whether the response to combating the pandemic will lead to more calls for parliamentary scrutiny of existing legislation, including the use of ordinances. This demand will be influenced by the effectiveness of the measures taken. However, the biggest challenge is not necessarily centralizing forces at the federal level or within the executive but rather whether a slowing economy can meet the financial provisions of the 18th amendment. This is likely to be the biggest challenge, and overriding it will make the federation both more adaptable and resilient.

72 The Economist, "Is Pakistan really handling the pandemic better than India?", 30 September 2020.

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