



Independence of PEMRA and Regulatory Framework of Electronic Media in Pakistan

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Abstract

This article analytically examine the history and present situation of regulatory process of electronic media in Pakistan. This paper also explore as to what extent PEMRA as a regulatory authority is operating independently under the existing law. This article concludes that PEMRA should be granted more institutional independence in order to effectively regulate electronic media in Pakistan.

Introduction

Pakistan television started broadcasting in 1964 when the Pakistan Television Corporation Limited was established at Dhaka and Lahore on 26th November¹. In 1967 Pakistan Television started its operations even from Karachi and Rawalpindi. Whereas Peshawar and Quetta television stations started their operation in 1974. The private electronic media in Pakistan started working in 1997 under auspices of (PTA) Pakistan Telecommunication Authority from 1997. Telecom Reorganization Act 1996³ was made regulator of private sector of media in Pakistan. Prior to passage of Pakistan Electronic Media Regulatory Authority (PEMRA), the laws related to electronic media in Pakistan were not organized in a single document. They were scattered in different enactments. The major laws related to electronic media were, 1964, Merchandise Marks Act, Custom Act, Pakistan Television Company Act and Pakistan Penal Code⁴. As far as international obligations were concerned, Pakistan assented to the Berne Convention in 1948 and joined World Intellectual Property Organization in 1977 and the World Trade Organization in 1995⁵. In Pakistan, first attempt to

license privately-owned TV channels and FM Radio Stations was made in 1993 during the government of Benazir Bhutto. However, it was alleged that discretionary power was heavily misused. Dr. Mubashir Hassan and Javed Jabbar, as private citizens, challenged it by a Petition to the Supreme Court under Article 184 (c)⁶. Supreme Court admitted this petition for hearing. The Petition is still pending in the Court for final disposal⁷.

Regulation of Electronic Media

In November 1996, after the removal of Government of Benazir Bhutto, Malik Meraj Khalid then interim Prime Minister of Pakistan drafted the (EMRA) Electronic Media Regulatory Authority Ordinance in 1997. This law was drafted to enable all citizens and entities to have equal opportunity to obtain licenses for private radio and TV channels. However, later the next government of Nawaz Sharif did not translated the Ordinance into a law of the land and this ordinance lapsed after the prescribed time of four months. No similar statute was presented to replace the lapsed EMRA Ordinance till the arrival of dictatorship on 12 October, 1999. The dogmatic General Musharraf entered into office with a strong belief to launch private TV and FM radio station in country. Later in year 2000, the lapsed EMRA Ordinance was distributed among public for awareness and, was approved by the cabinet in principles with some amendments and was presented new name of: "Regulatory Authority for Media Broadcast Organizations (RAMBO) Ordinance". However, this version was not formally promulgated. Eventually, in March 2002, with a new title and with a new enactment i.e. "Pakistan Electronic Media Regulatory Authority

1 50 years ago today: Pakistan launches first TV channel.

www.dawn.com. april 10, 2015.

<https://www.dawn.com/news/1147037> (accessed october 22, 2017).

2 50 years ago today: Pakistan launches first TV channel.

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3 Pakistan Telecommunication (Re-organization) Act, 1996.

4 M. Mahmood. The Pakistan Penal code, 1860 : with case law and amendments up-to-date. Lahore: Al-Qanoon Publishers, 2006.

5 Mohammad Abrar, Pakistani Media Law: An International and Comparative Study UK ed. Edition. Oxford University Press; UK, 2016.

6 Media Commission Report (Final).

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7 Media Commission Report (Final).

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8 Dr. Sanchita Bhattacharya, "Violence: A Bane For Pakistani Media." Journal of the International Relations and Affairs Group, 2013.

9 Dr. Sanchita Bhattacharya, "Violence: A Bane For Pakistani Media." Journal of the International Relations and Affairs Group, 2013.





Ordinance (PEMRA)", federal government presented the current law of electronic media. The original PEMRA Ordinance was amended by the authority in 2007 and is named as Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007 (Act No.II of 2007)¹⁰.

Pakistan Electronic Media Regulatory Authority (PEMRA)

The PEMRA was created under the "Pakistan Electronic Media Regulatory Authority Ordinance 2002"¹¹ to regulate and facilitate the electronic media of Pakistan. In April 2005, the Government of Pakistan by an Ordinance also incorporated Enforcement Committee in order to meet with the emerging global trends. The PEMRA is one of the important and major stakeholders of these committees. The laws which are available to assist PEMRA ordinance are, Broadcasting Regulations, 2002, PEMRA (Amendment) Act, 2007 and Rule 2002, Copyright Ordinance, Cable TV Regulations 2002 12, 1962 (amendment 2000), and PEMRA (Councils of Complaints), Rules 2010¹³.

Private sector of Pakistan electronic TV media was initially operated by the Pakistan Telecommunication Authority (PTA). PTA was delegated this authority in agreement with Telecom Reorganization Act 1996 but since the formation of PEMRA, electronic media as a whole is controlled by the PEMRA instead of PTA¹⁴. Currently The PTA is regulating the creation, maintenance and operations of telecommunication systems and delivery of telecommunication services in country. The trip play services, broadband, smart television and land phone contain PTA as a governing body in broadcasting. There is broadcasting communication which also belongs to telecommunication such as mobile operators, cable

operators and IPTV. These facility providers require license from PTA to conduct business in country. Hence the authority is indirectly involved in communications transmissions in Pakistan¹⁵. The community based media do not come under the umbrella of authority. The preamble of PEMRA Act¹⁶ enunciate the following objectives: "first to improve the standard of information, education and entertainment, enlarge the choice available to the people of Pakistan in the news media, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest; secondly, to facilitate the devolution of responsibility and power to the grass-roots by improving access of the people to mass media at the local and community level and thirdly, to ensure accountability, transparency and good governance by optimizing the free flow of information" Primary responsibility of the PEMRA is to manage the operations and establishment of distribution services and broadcast media in Pakistan. The PEMRA Authority also controls the dissemination of local and foreign radio and TV channels in Pakistan¹⁷.

Regulatory process Under PEMRA

The PEMRA as a regulatory Authority, have judicial, executive, and legislative powers. It can create rules for TV industry, implements those rules, and hears complaints of alleged violation of rules. The PEMRA Authority can also penalize against infringements. The verdicts of the authority can be judicial reviewed. However, in addition to PEMRA ordinance there are some special regulations related to electronic media. Those includes, Broadcasting Regulations, 2002 Councils of Complaints Rules 2010 and Cable TV Regulations 2002¹⁸. These statutes provide definitions of broadcast station, broadcast media, cable TV, broadcaster, cable television operator,

10 Yasmeen Aftab Ali, A Comparative Analysis of Media & Media Laws in Pakistan: Sangemal Publishers Lahore, 2011

11 Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.

12 "PEMRA Cable Television (Operations) Regulations, 2002." www.ahmedandqazi.com. n.d. <http://www.ahmedandqazi.com/actsandregulations/mediaLaws/pEMRACableTelevisionOperationsRegulations2002.pdf> (accessed september 11, 2016).

13 Mohammad Abrar, Pakistani Media Law: An International and Comparative Study UK ed.

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17 Mohammad Abrar, Pakistani Media Law: An International and Comparative Study UK ed. Edition. Oxford University Press; UK, 2016

18 "PEMRA Cable Television (Operations) Regulations, 2002." www.ahmedandqazi.com. n.d. <http://www.ahmedandqazi.com/actsandregulations/mediaLaws/pEMRACableTelevisionOperationsRegulations2002.pdf> (accessed september 11, 2016).



electronic media, copyright, cable television system, council, illegal cable TV operation, eligible channel, illegal broadcast operation, program and license etc¹⁹

Regulation of electronic media under PEMRA law is divided into two parts. First part deals with granting of license by the PEMRA for “for establishment and operation of broadcast media or a distribution service”. Whereas Second part deals with the implementation of PEMRA law.

Any person or party desirous to obtain license for distribution services or broadcast media must apply to Authority by prescribed method. The authority will review the application according to rules. The Authority has the sole right to grant a license. The license should be granted within one hundred days from the date of acceptance of the application. Once the applications are received the PEMRA Authority forwards all applications to Frequency Allocation Board (FAB) for frequency allocation and issuance license along with allocation of frequencies. The grounds for refusal of license are addressed under section 25 of the PEMRA ordinance²⁰. The Authority has the power to suspend or revoke the license of a distribution service or broadcast media if the holder of license has not been able to pay license fee, the annual fee or any other charges. Other grounds for refusal or suspension includes gross violations of laws and also public interests. However the term public interest is not defined in the ordinance. A cable TV operator or broadcaster who is granted license under this Act has numerous responsibilities under the ordinance. It is responsibility of the Authority makes sure that all licensee fulfills the terms imposed for safeguarding of the security, sovereignty, integrity of Pakistan and social, national, religious and cultural values. Authority also guarantees that all advertisements and programs don't encourage or contain violence, racial, terrorism, religious or racial discrimination, extremism, sectarianism, obscenity, pornography, hatred copyright violations, or other substance aggressive to normal standards of decency.

While second part deals with Enforcement Process of PEMRA laws. It is the authority of the federal government under section 26 of the act to establish Council of Complaints²¹. The members of the

Council of Complaint are also appointed by the federal government. Every council shall comprise of total 6 members chairperson and five members and two of them will be women. Presently seven council of complaints are operational in Pakistan. One of them is at federal capital Islamabad and remaining are located at provincial capitals. However Council is a recommendatory forum to assist the authority in order to achieve objectives set out in the PEMRA Ordinance. Each Council works autonomously under the direction of the Authority. PEMRA as a body is entrusted with responsibility of enforcing and regulating law. Any person can file a complaint to Council against distribution service operators and broadcast media companies. Council of complaints is not a final authority rather recommendatory body to assist the PEMRA Authority. Complaint Council can recommend number of actions to PEMRA Authority. Those actions includes a censure, a fine and/or revocation of a license of broadcaster. PEMRA Authority decides the fate of complaint in the light of Council's recommendations. The unsatisfactory party with the judgment of the authority may present an appeal to respective High Court in thirty days. The terms and conditions of the license under section of the PEMRA ordinance are following:

“A person who is issued a license under this Ordinance shall.

- (a) ensure preservation of the sovereignty, security and integrity of the Islamic Republic of Pakistan;

(b) Ensure preservation of" the national, cultural, social and religious values and the principles of public policy as enshrined in the Constitution of the Islamic Republic of Pakistan;

(c) ensure that all programs and advertisements do not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency ;

(d) Comply with rules made under this Ordinance;

(e) broadcast, if permissible under the terms of its license, programs in the public interest specified by the Federal Government or the Authority in the manner indicated by the Government or, as the case may be, the Authority, provided that the duration of such mandatory programs do not exceed ten percent of the total duration of broadcast or operation by a station in twenty-four hours except if, by its own volition, a station chooses to broadcast such content for a longer duration;

19 Muhammad Abrar,. "Pakistan Electronic Media Legal and Regulatory System." Journalism and Mass Communication, January 2014, Vol. 4, No. 1: 36-41.

20 Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.

21 Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.



(t) Comply with the codes of programs and advertisements approved by the Authority and appoint an in-house monitoring committee, under intimation to the Authority, to ensure compliance of the Codes;

(g) Not broadcast or distribute any program or advertisement in violation of copyright or other property right;

(h) Obtain NOC from Authority before import of any transmitting apparatus for broadcasting, distribution or teleporting operation; and

(i) not sell, transfer or assign any of the rights conferred by the licence without prior written permission of the Authority.²²

The Council has the right to demand an explanation from a licensee against whom a complaint has been made. After investigating the complaint and providing equal opportunity of hearing, the Council may present to the Authority for the proper action. That recommendation can be of revocation or suspension of a license or censure or impose a fine on a licensee if found guilty of violating the Code of Conduct for advertisements and programs as discussed earlier. The Council is under obligation to keep Authority informed on public response and feedback to the programs quality, content, and effect of the advertisements and programs that are presented. The Councils also submits bi-annual reports to the PEMRA Authority with respect to the number and nature of complaints entertained. Those reports also includes the recommendations forwarded by the Council and the actions initiated by the Authority²³.

Authority may proscribe the broadcasting or distribution of any advertisement or program on the grounds stated under the PEMRA ordinance.

The Authority can authorize any of its officers to enter and search the premises of a broadcast media or distribution service operator for purposes of inspection. The broadcast media station or distribution service will be under obligation to facilitate the authorized person for inspection. Whereas the courts in the country can grant search warrants for unlicensed distribution service operators or broadcast media in order to seize equipment. The authority may fine up to 10 million and in exceptional circumstances can order for imprisonment up to 4 years. Appeals against the

decision of the authority can be made to High courts with in a period of 30 days²⁴.

Independence of PEMRA authority

PEMRA ordinance brought a revolutionary changes to the regulation of electronic media in Pakistan. However unfortunately there are some serious reservations with regard to regulatory functions of PEMRA authority independently under the PEMRA Ordinance. Firstly chairman and all members are appointed by the President of Pakistan and president is always elected and nominee of sitting government. So in other words it is the federal government who is playing all shorts with regard to appointments of PEMRA chairman and members of the authority. Secondly, under section 6 of the PEMRA ordinance "Secretary Ministry of Information and Broadcasting, Secretary, Interior Division, Chairman, Pakistan Telecommunication Authority and Chairman, Central Board of Revenue shall be the ex-officio members of the authority²⁵". It means direct representation of the federal government is also ensured by the Ordinance. Thirdly members of the council of complaint are also selected by the federal government. Fourthly although federal government do not provide funds to the PEMRA but even than PEMRA is required to deposit all collected revenues to the Treasury. It leads us to the question that "who is or should be Principal Accounting officer of the PEMRA?" Fifthly Section 30 of the PEMRA ordinance deals with "power to vary conditions, suspend or revoke the license" in case of violations is not frequently applied and when PEMRA tries to implement this section, the alleged culprits immediately approach courts and get relief from the Courts. This is an important issue as even notices issued to TV channels were challenged before court and court allowed stay order on those. All these issues hinder the regulatory authority independence of PEMRA.

Recommendations

In order to truly achieve independence of PEMRA and effectively regulate electronic media in Pakistan following recommendations are made:

- 1) The chairman and the members of the authority should be selected by committee consisted of representatives of Federal Government, all Opposition parties

22 Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.

23 Yasmeen Aftab Ali, A Comparative Analysis of Media & Media Laws in Pakistan: Sangemal Publishers Lahore, 2011

24 Yasmeen Aftab Ali, A Comparative Analysis of Media & Media Laws in Pakistan: Sangemal Publishers Lahore, 2011

25 Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.



represented in the Parliament, Pakistan Broadcasters association(PBA), Pakistan Bar Council(PBC), and Pakistan Federal Union of Journalists(PFUJ).

- 2) It is also recommended that members of authority should include nominees of PBA, PBC and PFUJ because these are the persons who are true representatives of the media industry.
- 3) Registrar Supreme Court and respective Higher Court should be made ex-officio members of the authority and council of complaints.
- 4) PEMRA is required to generate financial resources for its own expenditures but is mandated to submit revenue in national treasure which is itself contradictory in nature. In order to achieve financial independence it is suggested that PEMRA should utilize its resources without the involvement of the federal government. However a strong mechanism of audit should also be placed in PEMRA rules.
- 5) Another important hurdle in regulatory independence is the involvement of higher judiciary by granting of stay order against the decisions of PEMRA authority. It is recommended that cases involving PEMRA should be disposed of expeditiously and

pattern of granting of stay order should be discouraged by the higher courts.

- 6) The recommendation made by the Media Judicial Commission are also very pertinent to mention here and one of those is worth mentioning here. The integrated, well-coordinated, singular regulatory body established in the United Kingdom and known as "Ofcom" provides a pertinent example of the direction in which new legislation in Pakistan can move forward in the interest of reforms. Only individuals with direct experience of one or more sectors relevant to the convergence phenomenon in communication should be appointed to head PEMRA or any other entity which replaces it with the same principles being applied to those appointed to serve as Members of the Authority".

It is believed that in order to properly regulate all electronic media in the country it is imperative that the regulatory authority should also be independent by external pressures. By adopting above mentioned steps PEMRA can be made truly independent.

In order to achieve better regulation of electronic media PEMRA should be made independent. Some suggestions are presented here to make PEMRA a true independent organization.

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