



Policy Brief # PB-77-2023

September 15, 2023

The need to overhaul PEMRA as a regulator

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By

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History and Background:

The Pakistan Electronic Media Regulatory Authority (PEMRA) was introduced by the government as a progressive reform in media policy and endowed with robust regulatory vires. The inception of PEMRA dates back to 2000, during President Musharraf's tenure. It began with the establishment of the Regulatory Authority for Media Broadcast Organizations (RAMBO). This body was tasked with enhancing the quality of information, education, and entertainment. It aimed to diversify the media landscape in Pakistan, offering a broader array of options for news, current affairs, religious insights, art, culture, science, technology, economic progress, social welfare matters, music, sports, drama, and other topics of public and national significance. Additionally, it aimed to empower local and community-level access to mass media, promoting decentralization, and to ensure transparent governance through the unfettered flow of information.

PEMRA is responsible for granting licenses to electronic media outlets, monitoring their content to prevent the dissemination of offensive, indecent, or harmful material, and ensuring that media organizations adhere to the principles of responsible journalism. It also aims to promote healthy competition in the media industry and protect the interests of consumers. The authority has the power to impose fines, revoke licenses, and take other punitive measures against media outlets that violate its regulations. The goal of PEMRA is to create a balanced and responsible media landscape that serves the public interest while upholding freedom of expression within legal and ethical boundaries.

The formation of PEMRA: Was it necessary?

The formation of the Pakistan Electronic Media Regulatory Authority (PEMRA) was considered inevitable for several compelling reasons, reflecting the evolving needs and

challenges of the electronic media landscape in Pakistan. Here is why its establishment was seen as necessary and inevitable:

- 1. Media Expansion:** The electronic media landscape in Pakistan was experiencing rapid growth and diversification, with an increasing number of television and radio channels, cable operators, and other electronic media outlets. The proliferation of media outlets necessitated a regulatory body to manage and oversee this expansion.
- 2. Media Accountability:** With the growth of electronic media, there was a growing need for accountability and responsible journalism. Instances of irresponsible reporting, sensationalism, and ethical breaches were becoming more common, making it imperative to establish an authority to monitor and enforce media ethics and standards.
- 3. Ensuring Fair Competition:** The electronic media sector needed a regulatory framework to ensure fair competition among various media organizations. Without regulation, there was a risk of media monopolies and a lack of diversity in viewpoints and content.
- 4. Content Quality and Standards:** The quality of content being broadcasted on electronic media was a concern. PEMRA was formed to set and enforce content standards, ensuring that programs were culturally sensitive, free from hate speech, and in line with societal values.
- 5. Public Interest and Consumer Protection:** Protecting the interests of the general public and consumers of electronic media was a key driver. PEMRA was established to safeguard viewers from harmful content, false information, and misleading advertising.
- 6. Technological Advancements:** As technology evolved, new challenges and opportunities arose in the electronic media sector. PEMRA's formation was necessary to adapt to technological advancements like satellite broadcasting, cable television, and digital media.
- 7. International and Regional Context:** Pakistan's electronic media industry needed to align with international and regional standards and practices. Establishing PEMRA helped Pakistan meet its obligations and commitments in the global media landscape.
- 8. Complaints Handling:** The absence of a formal mechanism for addressing public complaints against electronic media outlets was a significant concern. PEMRA was formed to provide a structured process for addressing grievances and taking appropriate action when violations occurred.

- 9. Foreign Content Regulation:** Regulating foreign content was essential to balance the influence of international media while preserving Pakistan's cultural and national identity. PEMRA played a role in controlling the amount and nature of foreign content being aired in the country.
- 10. Government Control vs. Independent Regulation:** Establishing an independent regulatory authority like PEMRA was seen as a way to balance the interests of the government, media industry, and the public. It aimed to prevent government interference in media while ensuring responsible media practices.

Legislations:

- 1. PEMRA Ordinance, 2002:** This is the foundational legislation that established the Pakistan Electronic Media Regulatory Authority (PEMRA) and outlines its powers, functions, and objectives. It grants PEMRA the authority to regulate the establishment and operation of all broadcast media in Pakistan, including television, radio, cable, and satellite.
- 2. Code of Conduct for Media Broadcasters:** PEMRA has issued a comprehensive Code of Conduct that media broadcasters are required to follow. This code includes guidelines on various aspects of content creation and broadcasting, including:
 - Decency and Morality: Media content must not contain anything that is obscene, vulgar, or offensive to public decency.
 - Religious and Cultural Sensitivities: Content must respect religious beliefs, cultural norms, and values of the people of Pakistan.
 - Accuracy and Fairness: News reporting should be accurate, balanced, and impartial, avoiding sensationalism or distortion of facts.
 - Hate Speech and Violence: Content promoting hatred, violence, discrimination, or terrorism is strictly prohibited.
 - Privacy and Dignity: Individuals' privacy and dignity should be respected, and unauthorized intrusion into their personal lives is prohibited.
 - Advertising Standards: Guidelines for ethical advertising, ensuring that advertisements are not misleading or harmful.
- 3. Licensing Regulations:** PEMRA issues licenses to various types of electronic media outlets, including TV channels, radio stations, and cable operators. The licensing regulations outline:
 - Eligibility Criteria: The qualifications and conditions that entities need to meet to apply for a license.
 - Application Process: The procedures for submitting applications, the required documents, and the review process.
 - License Terms and Renewal: The duration of licenses and the process for renewal.

- 4. Content Regulations:** These regulations govern the content that can be broadcast on electronic media. They include specific guidelines on:
 - News and Current Affairs: Ensuring accuracy, fairness, and responsible reporting of news and events.
 - Drama and Entertainment: Avoiding content that promotes violence, obscenity, or negative social behaviors.
 - Children's Content: Ensuring appropriateness for young audiences.
 - Public Service Messages: Encouraging the broadcast of public service.
- 5. Advertising Regulations:** These regulations cover the content and timing of advertisements, ensuring that advertisements are not misleading, harmful, or offensive.
- 6. Cross-Media Ownership Rules:** These rules aim to prevent excessive concentration of media ownership by limiting the number of media outlets that a single entity can own.
- 7. Complaints and Redress Mechanism:** PEMRA has established a mechanism for the public to lodge complaints against objectionable content. The regulations define the process for submitting complaints and how they are addressed.
- 8. Penalties and Fines:** Regulations outline the penalties and fines that can be imposed for violations of the code of conduct and other regulations. These penalties can range from warnings to fines and suspension of licenses.

Criticism on PEMRA:

Content Regulation: PEMRA has the authority to regulate media content to ensure it aligns with social, cultural, and religious values, as well as national security interests. However, critics argue that this can be used to suppress dissenting or critical voices. For example, certain news stories or discussions on sensitive topics might be censored or limited in their coverage.

Selective Enforcement: There have been accusations that PEMRA enforces its regulations unevenly or selectively, targeting certain media outlets or individuals while allowing others to violate the same rules without consequences. This can create a chilling effect on freedom of expression as media outlets might self-censor to avoid punitive actions.

Arbitrary Suspension: PEMRA has the authority to suspend or revoke licenses of media outlets for violating its rules. Critics contend that these actions can sometimes be taken arbitrarily, without due process, and without clear criteria for determining what constitutes a violation.

Political Interference: There have been instances where PEMRA's decisions appear to be influenced by political considerations. This can lead to suppression of voices critical of

the government or those expressing dissenting opinions. Lately, it has been observed that one or two news channels which were reporting more in favour of the opposition were censored or off aired.

Lack of Independence: Critics argue that PEMRA's composition and structure might not ensure complete independence from government influence. An independent regulatory body is important to safeguard freedom of expression.

It's important to note that debates surrounding these issues can be complex and can vary depending on specific cases and contexts. While certain actions by PEMRA might be seen as necessary to maintain public order and uphold ethical standards, concerns about potential violations of freedom of speech highlight the delicate balance between media regulation and the protection of democratic rights.

Article 19 of the Constitution of Pakistan:

The freedom of speech in Pakistan is primarily protected under Article 19 of the Constitution of Pakistan. Article 19 guarantees the right to freedom of speech and expression to all citizens, subject to reasonable restrictions imposed by law in the interest of the sovereignty and integrity of Pakistan, security of the state, friendly relations with foreign states, public order, decency, or morality, or in relation to contempt of court, defamation, or incitement to an offense.

It's important to note that while the Constitution guarantees freedom of speech, there have been instances where this freedom has been curtailed or restricted for various reasons. The extent and interpretation of these restrictions can vary and have been a topic of debate and discussion in Pakistan's legal and political landscape. Many journalists have been abducted recently and some have fled the country after getting threats for expressing their opinions. According to “Reporters Without Borders” (RSF) report of 2023, Pakistan is ranked 150th out of 180 countries. The data is backed by Freedom Network’s annual report on press freedom in Pakistan. It says, “At least 140 cases of threats and attacks against journalists, media professionals and media organizations were reported in Pakistan between May 2022 and March 2023.” This highlights the severity of the situation in the country as anyone who expresses his/her opinion, is in danger.

Is PEMRA not promoting Freedom of Speech?

PEMRA has recently issued show cause notices to news channels and a prominent leader of a political party on inciting speech and words against state institutions and officials. A popular channel of the country received the notice on August 9, 2022, for airing hateful, seditious content against the government. However, some believe that these decisions were politically motivated and in fact ordered by someone from the military establishment. Critics argue that there was no proper investigation of these events, and it has curtailed the right of every citizen to free speech. They further believe that

constructive criticism is beneficial in the interest of the state, and this will help in the process of accountability.

The following laws and regulations are from PEMRA Ordinance 2002:

Section 33-B: Warrants for search

(1) “Where on information furnished by the Authority, the Court has reason to believe that any unlicensed broadcast media or distribution service is being owned, controlled or operated or its equipment is being kept or concealed, it may issue a search warrant and the person to whom search warrant is directed, may enter the premises where such unlicensed broadcast media or distribution service is being owned....”

Section 27: Prohibition of broadcast media or distribution service operation

The Authority shall by order in writing, giving reasons, therefore, prohibit any broadcast media or distribution service operator from:

(a) “broadcasting or re-broadcasting or distributing any program or advertisement if it is of the opinion that such particular program or advertisement is against the ideology of Pakistan or is likely to create hatred among the people or is prejudicial to the maintenance of law and order....”

(b) “engaging in any practice or act which amounts to abuse of media power by way of harming the legitimate interests of another licensee or willfully causing damage to any other person.”

Reforms to be considered:

- PEMRA ordinance 2002 reflects some strict laws and regulations which should be amended by the lawmakers. Every citizen should have the right to express his/her opinions openly irrespective of whether it is about the incumbent government or any state institutions. No institution is above the state and these institutions are filled with individuals who can make mistakes and do something unconstitutional. However, it should be noted that the speech should not be inciteful or propagate anger in the people.
- Government should not interfere or use PEMRA to for political victimization their opponents or suppress the voice of news channels and journalist, especially if they are reporting the truth. For this, any such policy should be initiated which makes PEMRA autonomous or not bound to obey government orders. **Section 5 and Section 39 of the PEMRA ordinance 2002** prevented PEMRA from making any law without the approval of the government. It should take recommendations from the government and decide itself because the incumbent government can propose policies which are in their interest and against their political rivals or any

individual or media group who is criticizing them. However, it should respond formally to the government if it does not consider any recommendations.

- The council of complaints made by the federal government in each province should not be able to call any licensee without enough evidence if a complaint is lodged against a media group. Pakistan's society is highly polarized and this way many complaints can be discarded which are wholly based on mere frustration and disagreement with the views of others. Thus, **section 26, (3-A) of the PEMRA ordinance** should be revisited.
- Allowing PEMRA to decide which media information is disinformation or misinformation is an attempt to replicate the hugely controversial function of **Section 20 of the Prevention of Electronic Crimes Act (PECA Act)** in the PEMRA law which allows bureaucrats to sit in judgment on freedom of expression. Let the editors and newsrooms deal with this issue instead of government appointed officials of PEMRA.
- It is ironic that the government is proposing these coercive and unfair changes to PEMRA which regulates only the private broadcast sector, not the public media sector. The government must bring the state-owned media such as PTV and PBC within the ambit of the PEMRA law so that the quality of the content can be maintained there as well.
- Instead of the government, there should be a parliamentary committee with members of government, opposition, civil society, and journalists who consult and appoint the chairman of PEMRA. This will bring a transparency in the appointment as all the stakeholders will be a part of the decision-making process.

Concluding Remarks:

PEMRA is now seen as a tool for the governments to use. It has to maintain its credibility as an effective regulator which ensures a fair procedure for every individual or media network. For this, it is important to note that instead of an ordinance signed by the President, the institution needs better laws after a consensus among the members of the parliament. This will result in better policies as all the representatives of the country will be participating and giving their input.