

Pakistan Electronic Media Regulatory Authority (PEMRA)

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Context

- **PEMRA Ordinance, 2002:**
 - Improvement in the standards of information, education and entertainment
 - Provision of a wider choice of news and current affairs to the people
 - Easier access of mass media to the rural and urban areas
 - Good governance ensuring accountability and transparency
- **PEMRA is authorized to:**
 - Issue licenses to the private sector for broadcast media (satellite television & radio), & distribution stations at international, national, provincial & local levels.
 - Censorship, policing & inspection.

The Problem

○ **Governance**

- Regulatory deficits, poor governance, slow enforcement mechanisms, & compromised independence of the regulatory authority impede the capacity of the regulator to implement its policies and plans.

○ **Regulation of Broadcast Media Justified?**

- Justified on the grounds that airwaves being a public good must be safeguarded.
- Wireless communication justifies government authority over the allocation and licensing of broadcasting frequencies. Templeton (2000) quotes media ownership as a rationale for regulations as limiting the private broadcasting sector helps in not over-expanding the media sector and keeping a check on quality and quantity controls.

○ **Is PEMRA Independent?**

- PEMRA laws authorize the federal government to issue policy directives to PEMRA
- MOI&B exercises the federal government's power to issue directives, compromising the autonomous & independent status of the regulatory authority

The Problem (continued)

○ **Trust Deficit?**

- Structure based on a conventional mentality of controlling, policing, & surveillance than facilitating, incentivizing, & persuading media to abide by the law.

○ **Broadcast Sector into an Oligopoly**

- The concentration of few media players controls the type of information to be disseminated.
- Lack of pluralism and asymmetrical information are among the issues identified by media advocate lawyers due to excessive controlling of media houses.

○ **Design & Structure**

- Structured as hierarchical management which hinders creativity and out-of-box solutions since bureaucrats with little or no knowledge of media regulation and industry are occupying key posts.

Objectives & Methodology

Objectives

- To study the statutory status & role of PEMRA as the regulator of the media content in Pakistan.
- To examine PEMRA's organogram, explain structure & dynamics therein, and study its regulatory framework.
- To explain the aims/objectives of PEMRA, articulate the same with the outcomes, and study its efficacy in the light of its objectives.

Methodology

- Research Strategy: Qualitative
- Research Design: Case Study
- Units of Data Collection: Documents and Individuals (PEMRA ex-, and current-employees)
- Research Methods: Telephonic & Face-to-face interviews
- Analytical Methods: Document & Framework Analysis

Statutory Status

- The federal government, “*may, as and when it considers necessary*”, issues directives to PEMRA on policy matters wherein the Federal Government’s decision will be considered final- **as per PEMRA Ordinance 2002 and PEMRA Amendment Act, 2018.**

As per Ordinance, 2002, PEMRA will include chairman and **12 members** detailed as:

- The Chairman: Renowned professional experienced in media, business, management, finance, economics or law.
- 1 member appointed by the **Federal Government** on full-time basis, 5 citizens chosen from all the provinces ensuring representation from one or more fields of media, law, human rights, and social service. Out of these 5, must be women.
- **Secretary, MOIBS, Secretary, Interior Division, Chairman, PTA and Chairman, Central Board of Revenue** shall be the ex-officio members.
- Two members shall be appointed by the **Federal Government** on need basis on the recommendation of the Chairman.

As per PEMRA Amendment Act, 2018:

- **Federal Government** will have the power to issue directives to PEMRA, ‘*in writing on a matter of policy*’.
- In cases of ambiguities or questions or concerns raised, the decision of the **Federal Government** will be considered final.
- PEMRA will include a chairman and eight members who will be appointed by the **Federal Government** and will embody qualities such as competence and integrity.
- Among the members will be one permanent member appointed by the **Federal Government** who will work on full-time basis, one officer of BS-22 of the **Federal Government**.....
- The composition must also include 2 ex-officio members.
- All members, excepting for **ex-officio members**, will have to vacate office if remain absent from 3 consecutive meetings.

Issues of Media *Regulation* in Pakistan

○ **Article 5 and Article 6 (section 4 A)**

- If the content is disliked by the federal government, it can use PEMRA to get back to a particular media outlet, disrupts the small & medium-scale players. Therefore, instead of ensuring freedom of media, the PEMRA is used to ensure that media remains on a tight leash.

○ **Criteria for Appointments: Sub-section 2 of the Ordinance**

- *“known integrity with expertise and experience in the field of media, business, economics, or the law”*
- This is a vague criterion, subjectively defined & any person favored by a political regime can fit in if desired by the ruling party
- ***De-jure*** and ***de-facto*** powers to influence the framing of rules & regulations to suit the federal government
- In theory, the federal government appoints 1 member and the last 2 members when the seats are filled, but on ground, the federal government appoints 3 members & 3 ex-officio members, making it the controller of PEMRA. Chairman PTA, Secretary MOI&B, and Chairman FBR are all representatives of the Federal Government
- Pay packages and funding in control of Federal Government (section 2 and article 14, section I-IV)

○ **Article 23 (section 1): Monopolization???**

- Big corporate media groups capture major part of the market & decide the economics of broadcast media through which they limit, mold, and in many cases show custom news more suited to their agendas. These can send small firms out of business.

Voices from the field

Issues in PEMRA Ordinance, 2002 and Amendment Act, 2007

“Licensees have objections, media channels have objections, cable operators have objections, and broadcasters both, radio or OTT, have objections, too. I also believe the ordinance needs amendments..... The amount of fines, the implementation of code of ethics, the renewal of licenses to the licensees, be cable operator or DTH operator or TV or radio channel operator.... they all have issues with renewal fee & renewal tenure because it has become an expensive business now. As a result, it is difficult for all license holders to continue their operations. Amendments are more specifically needed in areas such as the code of ethics and implementation of fines. That is the reason why they want certain amendments or concessions from the government or the regulator. The document binds PEMRA to follow MOIB even in cases when it doesn't agree with the ministry's decisions.”

(ex-employee)

Regulator of media market or regulator of media content?

“PEMRA has a lot more to do other than implementing a code of conduct. And, in this case, as well, the code of conduct was not made by PEMRA. TV channels took the initiative to finalize the code of conduct, & the Supreme Court ordered PEMRA to implement it in 2015. So, PEMRA is the implementer for a document it neither made nor enforced. PEMRA’s role is to issue licenses, renew licenses, respond to technological improvements, & make a budget as it’s a self-sufficient organization. It generates its revenue and spends it to have its independence. So, it has other significant roles too, but unfortunately at the end of the day, the center of discussion in news channels or in newspapers about PEMRA is the code of conduct and not the other functions.”

(ex-employee)

Censorship Issues

“If you accuse someone of corruption without any evidence, that’s the crime, and law takes its course, but the law is so weak that it doesn’t take its course when politicians are proven corrupt. The interpretations change too, conveniently. When I was there, we worked upon it. Declaring someone kafir or ghaddar, is not the prerogative of the anchorperson. Only the court of law or parliament can do that. So, we never allowed anchors to do that, and whenever it was said, we took action. On the other hand, talking about blasphemy and sectarian issues cannot be discussed as per the country’s law, just like the holocaust cannot be discussed in European countries or USA. Every country has certain limits on certain issues, so is Pakistan. But one feels that such freedoms are too restricted, here. PEMRA cannot do anything because it is not sovereign. It is just a State organ which follows the law made by the parliament.”

(ex-chairperson)

Why PEMRA, when there is the Ministry of Information and Broadcasting?

“It is not possible for MOIB to perform regulatory roles. The ministry’s role is to make policies. PEMRA is a regulator, just like OGRA and NEPRA. You don’t say that these regulatory authorities should shut down when there are functional ministries of petroleum and electricity. Ministry cannot be a regulator. When a policy-making function is with the ministry and implementation of that policy task is with the regulator then these functions should be separated. And it has remained the case worldwide. Whenever there is an industry, and since media is an industry, then there exists a regulator of that industry. So, I think this is a non-issue. Whether it (PEMRA) should be separated from MOIB is a separate question, but I think there must be a regulator. How much power it should have, that is a debatable question but ministries should not be regulators because then ministries will be too powerful...”

(ex-employee)

Questioning the Organogram?

“There is a need to change the composition of the authority and member of CoC, and we plan to bring media persons or people linked to media as authority members. It is a serious issue that why there are no media representatives in the media regulatory authority, which is not the case in other regulatory authorities such as NEPRA and OGRA. The appointments in PEMRA are more political than based on merit and representation. Law doesn’t prohibit hiring media personnel in PEMRA, but successive governments have not introduced media persons because they wanted to employ their people.”

(current employee)

“PEMRA has been headed by non-media people, either bureaucrats or police. That’s why they could not take long-term decisions to improve policies & implementation frameworks. Bureaucrats think differently than experts in media think of media. So, there is a difference in the implementing strategies and policy frameworks.”

(ex-chairperson)

Independence and Dichotomy of Power

“If PEMRA starts making its own laws and then starts implementing, it will become a draconian regulator. You cannot give any authority to any regulator, and it doesn’t happen anywhere in the world. You make an organization independent by making its Head and Authority independent, not by giving it the authority to make law. This dichotomy of power is, what is needed. This separation of tasks is needed. Having said this, PEMRA should be free of the State’s interference by making its Head independent.

(ex-chairperson)

PEMRA's role is to regulate, not to act as surveillance body

“That’s true! I agree with that, primarily because the law was made like that. It was an ordinance implemented by a military dictator and also because appointments for chairman and authority members one after another for many years have remained a parking place for retired police officials, and they acted like policemen in PEMRA while handling media organizations. The regulator should help develop an industry. The only bone of contention between regulators and industry is the implementation of the code of conduct. If that CoC is monitored and implemented by TV channels themselves as it was done earlier in the newspapers by the editors, the same should be done by the editors in the TV news channels. They should decide what should go on-air and must be accountable to their internal systems, which should take action if someone violates the law. This issue is unresolved and the most difficult one, too.”

(ex-employee)

PEMRA and the Politics of Media Rating

“The problem lies in the system. The majority of cable operators are running analog system. When you become digital, the TRP issue can be handled. Right now, it’s flawed because there are a few meters that read the rating, which are mostly installed in Karachi and Lahore. Based on this, the entire rating system is conceived and followed. But if cable operators go digital, then it can be told about the exact number of TV channels and programs being watched. Internationally, the analog system has been switched to digital cable systems but the pace is very slow in Pakistan; in this PEMRA can play its role by expediting the process. But cable operators have their issues. Pakistan’s economy is poor, poor people cannot pay for improved services, and that’s why cable operators who have fewer consumers cannot invest in improving the system from analog to digital.”

(current employee)

PEMRA and the Question of Monopolization

“I don’t think PEMRA can do anything in this regard. Those kinds of issues are determined by the market demand/supply because it’s an open market and State cannot interfere in the market. It can interfere by making laws that don’t favor a particular competitor but it cannot dictate why certain TV channels are taking greater shares because channels such as Waqt News and Geo News are in the newspaper too, and as per law, you can have a newspaper and TV channel, both. So, if you can have both by law, then it’s up to the prerogative of TV channels. There are entertainment channels that are not associated with any newspaper, still, they are the most watched, such as Hum TV and Samaa TV. So, it’s up to their business models and how well do these live up to the consumer demands, makes the difference.”

(current employee)

Conclusion: Problematize Please!!!

- Formal institutional change in the form of amendments in PEMRA Act.
- Vague definition of certain terms in the PEMRA ordinance and Acts.
- Issue of censorship.
- Performance of PEMRA and change in organizational structures
- Analog and digital cable: issue of resource constraint society of Pakistan and the politics of rating.