

Chapter 6

Pakistan Electronic Media Regulatory Authority (PEMRA)

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6.1. EXECUTIVE SUMMARY

- Since the liberalisation of the broadcast sector in Pakistan, broadcast media has grown exponentially. The regulations were introduced in 2002 to create an enabling environment for the existence of independent press in the country. The objective of independent press has not been achieved yet. This chapter highlights issues which have hampered the capacity of the media regulatory authority, PEMRA, in not meeting this target.
- Independent media is one of the important responsibilities of the governments which play a critical role in informing its citizens, increasing social interactions, and shaping democratic values. To achieve these objectives, the government of Pakistan, decided to liberalise airwaves of the country in 2002. The intent was to introduce a regulatory authority which designs a regulatory framework for issuing licenses for electronic media to the private sector. Hence, PEMRA was established through the PEMRA Ordinance, 2002.
- PEMRA Ordinance, 2002 articulates a wide array of the authority's objectives regarding 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, and good governance ensuring accountability and transparency. With these objectives at the backdrop, PEMRA was authorised to:
 - Issue licenses to the private sector for broadcast media (satellite television and radio), distribution stations at international, national, provincial and local levels.
 - Regulate issuance of licenses to the private satellite and radio broadcasters.
 - PEMRA is also responsible for issuing licenses for distribution system (such as Cable TV, MMDS/LMDS & Direct to Home (DTH)).

Before PEMRA's institutionalisation, Pakistan Broadcasting Corporation was responsible for informing, educating, and entertaining people through the airwaves of the country.

- Regulatory deficits, poor governance, slow enforcement mechanisms, and compromised independence of the regulatory authority impede the capacity of the regulator to implement its policies and plans.
- The role of media regulatory bodies, is to issue licenses to the private sector which is critical for competitive market and a prerequisite for independent

and free media. Literature quotes that media should be free from State control, but the regulation of broadcast media can be justified on the grounds that airwaves being a public good must be safeguarded.

- In addition, wireless communication requires and 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.
- In Pakistan, PEMRA laws authorise the federal government to issue policy directives to PEMRA. Hence, the independent status of PEMRA is questionable in this regard. Moreover, in 2017, the government of Pakistan linked PEMRA with the Ministry of Information and Broadcasting. This ministry exercises the federal government’s power to issue directives that further compromises the autonomous and independent status of the regulatory authority.
- The legal and regulatory framework structure is based on a conventional mentality of controlling, policing, and surveillance than facilitating, incentivising, & persuading media to abide by the law. This policing over persuading approach is the cause of trust deficit between licensees and PEMRA.
- PEMRA has not worked itself up for upgrading laws for channels, media broadcasters, and media distributors who are becoming more technologically convergent. In the present era, telecommunication services are offering broadcasting services and broadcasting services offering telecommunication services. The laws need to be upgraded.
- The current broadcast sector has turned into an oligopoly because of strengthening ownership of print media over electronic media outlets, due to which entrance of new content creators and media houses has become difficult. Also, it is difficult for them to compete with the existing media tycoons.
 - The concentration of few media players can control 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.
- In a post-colonial society like that of Pakistan, liberties and rights are considered privileges whereas they are vital ingredients for a healthy, economically sound, and socially mature society to come into existence. Like many other areas electronic media industry, an indispensable tool of modern-day life style, is also regulated by the State wherein imprints of Pakistan’s colonial past can be seen. The chapter has highlighted those areas wherein institutional constraints in the form of regulations hamper the progress of the media industry by limiting their rights and liberties and forcing them to create specific content, thus rejecting creativity and art. The current report sheds

light on undue government intervention in the media industry, which prevents the media market from performing at the optimum level.

- Ironically, the media was liberalised and the private sector was given a chance to invest in it during the dictatorial rule of General Pervez Musharraf. PEMRA was established to regulate the industry. After analysing document and collecting data, it appears that PEMRA has not served these objectives as intended and has been more of a boogeyman to scare of the media franchises and make them submit to the will of the people in power. The media franchises have to run their business, and hence they have to comply. PEMRA is only visible when it bans certain channels or specific TV programs or political talk shows.
- The purpose of the chapter is not to criticise the PEMRA. However, we have put the objectives for which PEMRA was designed, and what it has accomplished so far (on the ground). PEMRA has managed to expand the choices available to the consumers of electronic media content. The number of TV channels has increased and there has also been an increase in the number of radio channels. We believe that PEMRA suffers from certain institutional, structural, and design issues.
 - *Institutionally*, it has proven itself incapable of bringing in the changes as the fast-changing world of digital media requires.
 - As far as the *structure* goes, it is 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 without any appreciation for the sensitivity of the “Electronic Media” in the 21st century.
 - Thirdly, it is *designed* as a regulatory authority which invites some questions.
 - Why should there be any media regulation?
 - If regulation is necessary, where do we draw the line?
 - How can regulation and liberalisation of media both go together?
 - Is media regulated in other countries in the same manner?

The report has shed light on PEMRA from this perspective.

- PEMRA is an authority, which makes it sufficiently independent, but the institutional constraints put on PEMRA ties it up to a great extent. They hinder the performance of the PEMRA, as well. By institutional constraints, we mean the formal rules and ordinances that are applied on PEMRA. Such rules and ordinances compel PEMRA to seek the permission and consent of the Federal Government in any major action. When PEMRA as a regulatory authority is supposed to be subservient to the Federal Government, we cannot hope for a free and fair competitive media market in Pakistan.
- Finally, the chapter discusses that certain media groups, due to their economic and political capital, can control the entire media industry. PEMRA, as a regulatory authority, was supposed to stop such monopolies

from coming into existence. Yet, there are media groups that not only have a presence on the internet and TV but also in print media. Moreover, a single group has many licenses ranging from sports, entertainment to local and international news. PEMRA, as per its ordinance, was supposed to stop such monopolies from coming into existence, and it was also bound to protect small media groups and media enterprises in the nascent stage so that the big media houses could not drive them out of business.

- In the end, we conclude that several changes are required at different levels, and PEMRA as an authority needs to be made independent from political and economic control of the government. The rules need to be more inclusive and the structure and design needs to be changed. PEMRA should be given liberty in the drafting of rules peculiar to this industry. PEMRA's design should be altered to make it such that media industry can be put to check yet creativity, art and freedoms are protected.

6.2. THE PROBLEM

PEMRA was established in 2002 by the then government of General Musharraf as a regulator for the newly liberated media industry. As a regulator, it has jurisdiction over what content to be aired and what should not be aired. It has the authority to issue licenses to media channels and has the mandate to keep a check on the media content and intervene wherein the management feels that certain religious/cultural boundaries are crossed by the media group(s) or where there is content that could be harmful to national sovereignty, unity, and morale. The question we intend to address is why there is a need for an authority such as PEMRA. Why is there a need for regulation in the media market, where should the lines be drawn and what are the effects of regulation on the media in the case of Pakistan? Also, we intend to study the effectiveness of PEMRA. To articulate PEMRA's effectiveness, we have reviewed PEMRA's ordinance and analysed outcomes associated with the organisation in the light of its objectives and mandate.

For the current research, research objectives were:

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

The study's research strategy was qualitative, and the research design was a case study. The Units of Data Collection were documents (PEMRA Ordinance, Acts, advisories, show cause notices, and directives) and PEMRA ex and current officials. We used both telephonic and in-person interviewing methods for collecting data. We used semi-structured interviews for collecting data on themes as detailed in the section on qualitative findings. These themes were identified from existing literature by reviewing reports, Acts and Ordinances, and journal articles. The interview guide was revised along the way as the number of interviews conducted increased during the research. For textual data, we used document analysis, and for data collected through interviews, we have used

thematic analysis as the tools for analysing data. We transcribed data in the first stage for thematic analysis, followed by coding, thematic charting, and theming/sub-theming the data.

6.3. RELEVANCE OF PEMRA

PEMRA was established in the early 2000s to regulate the media market since it had just been opened to the private sector. Before that, there was just one state-owned channel - the Pakistan Television Network - which was a multi-content broadcaster. The only access that the people had to outside media was through the satellite Dish antennas and, more recently, the cable TV service providers. The days were peaceful, and the people were fed the information content in the form of news and entertainment which the State wanted them to see. PTV was the tool in the hands of the government, and through it, the State ensured and strengthened its monopoly over broadcast information. The Pakistani media customer had little “freedom to choose” because PTV was the only option available to the public; dish antennas were a luxury that everyone could not afford. Cable operators were an urban middle-class phenomenon. So, post 9/11, when the entire world experienced a change, Pakistan and its institutions also changed accordingly. Media, the fifth pillar, being one of them. There came private media channels, both TV and Radio, the cable business flourished, and so did the sale of both tangible and nontangible entertainment goods. With this shift in consumer preferences, the Government decided that an entity should keep this alien creature to Pakistani society on a tight leash. And hence PEMRA was established on the 1st of March 2002.

PEMRA gets its legal backing from article 19 in Chapter 1 of the constitution of Pakistan. Freedom of speech is a fundamental human right, and the country’s constitution guarantees this right for its citizen. The article states that:

“Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence”

It is pertinent to mention here that PEMRA was not the first ordinance of its kind. There had been others preceding it, namely Electronic Media Regulator Authority (EMRA) in 1997, which was presented by a caretaker Government⁸⁸. Another ordinance, Rambo Ordinance, was approved twice by the Cabinet of Pervez Musharraf in 2000, but it couldn’t go any further. Finally, in March of 2002, a revised version of the Rambo Ordinance was approved and was named Pakistan Electronic Media Regulatory Authority (PEMRA). The PEMRA Ordinance of 2002 is still enforced. Before PEMRA, there was just one State-owned channel wherein specific time slots were allotted for sports, entertainment, news, and talk shows. A movie used to be featured once a week, a prime time serial aired at 8 o’clock followed by the 09:00 PM *khabarnama* were the two most awaited programs of the day.

⁸⁸ <https://www.dawn.com/news/1104318>

To quote Javed Jabbar, this was an extreme case of monopoly.⁸⁹ The State-controlled what news to be aired and which one to be suppressed. Every political party, when in power, used PTV as Media Avenue to broadcast politically motivated negative information about its opponents. Newspapers were the only avenues where there was some room for criticism of the government. So, suddenly when in such a society, there comes an ordinance that allows for multiple media channels and aims at expanding the options for consumers of mass media, it would certainly lead to mega changes. The abundance of media channels following the ordinance did warrant regulation so that things do not go out of hand, and therefore strong, powerful, and well-equipped PEMRA was the need of the hour.

As per the PEMRA Ordinance 2002, PEMRA's mandate is to regulate the establishment and operation of broadcast media and its distribution.⁹⁰ This may include international broadcasters operating in Pakistan and other local and regional TV and radio stations. The PEMRA ordinance empowers the authority to issue laws that it deems necessary for the regulation and operation of the broadcast media industry in desirable ways. The PEMRA ordinance gives immense power to the authority. It can suspend, close down, re-open, reward or punish any media broadcaster and distribution house as it likes. The question is, what repercussions this amount of power concentrated in a single authority has for free media? Since freedom of expression and freedom of media are necessary for a functional democracy. Were the stakeholders, including the media channels, taken into confidence? How does the uneasy relationship between free press and immense regulation balance? What types of changes are required at the State, legislative, and executive? The current evaluation will try to point out the changes and reforms in these areas.

6.4. STATUTORY STATUS: PEMRA ORDINANCE, 2002

The key features of PEMRA Ordinance (2002) are as follows:

Objectives

The objectives of the Ordinance are to:

- Improve the standards of information, education, and entertainment;
- Enlarge the choice available to the people of Pakistan in the media for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama, and other subjects of public and national interest;
- Facilitate the devolution of responsibility and power to the grass-roots by improving the access of the people to mass media at the local and community level;
- Ensure accountability, transparency, and good governance by optimising the free flow of information.

⁸⁹ <https://www.dawn.com/news/1104318>

⁹⁰ Article 4 section 1 PEMRA Ordinance

The objectives cover four important elements for improving standards of information, enlargement of entertainment choices for people, outreach to the locals both in the provision of services and devolution of power, resources, and responsibilities, and finally, to ascertain good governance.

PEMRA as Authority

The Federal Government established PEMRA after commencement of the Ordinance to meet the above-mentioned objectives. 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.

- PEMRA members: 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, MOI&B, 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.

Responsibilities of PEMRA

- Compilation and submission of an annual report on its operations and accounts for each financial year. The report will be presented to the President of Pakistan. The authority will also publish and disseminate report.
- The Authority shall issue licenses for broadcast media and distribution service in: (i) international and national scale stations, (ii) provincial scale broadcast, (iii) local area or community-based Radio and TV Broadcast, (iv) specific and specialised subjects, (v) distribution services; and (vi) up-linking facilities.⁹¹
- Issuance of License
 - Exclusive right to issue licenses for the establishment and operation of all broadcast media and distribution services. PEMRA will use this right “in conformity with the principles of fairness and equity applied to all potential applicants”. The eligibility criteria will be based on criteria notified in advance.
 - License will not be issued to a person who is a non-Pakistani, a foreign company or a company whose shares are owned/controlled by foreign nationals or companies, or any person funded or sponsored by a foreign government or organisation.

⁹¹ Please see page no. 7 & 8 of the Ordinance.

- Bidding for the issuance of licenses will be carried if the number of applications exceeds the number of licenses to be issued.
- PEMRA has the power to determine number of licenses to be issued and charge fee at rates fixed by the authority (amenable to changes with time).
- Devising code of conduct (CoC) for programs and advertisements for compliance by the licensees.
- Conditions for the Issuance of Licenses
 - Ensuring preservation of the sovereignty, security and integrity of Pakistan.
 - Ensuring preservation of the national, cultural, social and religious values and the principles of public policy as articulated in the Constitution of the country.
 - Ensuring 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
 - Complying with rules made under this Ordinance
 - Representing provincial governments in decisions pertaining to issuance of licenses for establishment and operation of broadcast media and distribution services.
 - Making sure that no monopoly or exclusivity in broadcasting or in establishing or operating of broadcast media or distribution service.
 - In case of issuing licenses to more than one functional media enterprises, PEMRA will ensure principles of open and fair competition.
 - Prohibiting operability of broadcast media or distribution service in case of non-compliance in reference to aforesaid objectives. Suspension of broadcast media or distribution service is contingent on force majeure or with the prior approval of the Authority based on non-compliance with respect to submission of license fee, renewal fee, or any other charge or in case if licensee contravenes any of the rules/regulations/provisions of PEMRA ordinance. In case of suspension, the aggrieved may appeal in High Court.

The Role of Council of Complaints (CoC)

The responsibilities of CoC established by the Federal Government at Islamabad, the Provincial capitals, and in other areas deemed important by the Federal Government include:

- Receiving and reviewing complaints from the public or organisations from the general public against any aspects of broadcasted programs or distributed by a station established through a license issued by PEMRA.
- Members of CoC will include a Chairperson, five eminent members from the general public with at least two female representatives.
- CoCs will have the power to call for the licensees against whom complaint has been lodged.
- PEMRA is responsible for the formulation of rules related to operability and functionality of the Councils within two hundred days of the establishment of the Authority.
- CoCs will recommend a fine against a broadcast program, station, or licensee for violation of the code of conduct as approved by PEMRA.

Authority to Inspect

- PEMRA has the power to hold inspections against a broadcast media station or distribution service.
- All the licensees must remain open to inspection by an authorised officer and provide officer with every assistance and facility in performing his duties.
- Within forty-eight hours of carrying out inspection, the officer will submit inspection report to the Authority. The report will be based on information collected during inspection. PEMRA Chairman can issue show cause notice to broadcast media or distribution service may seize its broadcast or distribution service or seal the premises. The equipment may be issued later. In case of contravention of rules of PEMRA Ordinance, licensees will be charged a fine of PKR. One million rupees.

Offences

- Any broadcast media, distribution service or person who violates any of the provisions of Ordinance will be fined with ten million rupees.
- In case of repetition of the same offence, a person will be imprisoned for a term which may extend to three years, or with fine, or with both.
- If an offence is made by a person who does not hold a license, he will be imprisoned for a term which may extend to four years, or with fine, or with both, in addition to the confiscation of the equipment.
- In case of damages, removals, tampering, or theft of any equipment of a broadcast media or distribution service station, the person will be punished with imprisonment which may extend to three years, or with fine, or both.

6.5. CODE OF CONDUCT

The Ministry of Information, Broadcasting and National Heritage in cognizance with the Federal Government describes following acts as non-compliance to the code of conduct:

- Airing content in news, current affairs programs, or advertisements which is against the Islamic values, ideology of Pakistan, or founders of Pakistan.
- Airing content which incites anti-democratic sentiments against the constitution of Pakistan, country's security and defense.
- Airing content which is discriminatory about any religion, sect, community, or ethnicity.
- Airing content which is vulgar, pornographic or obscene.
- Airing content which incites or glamorises hatred and contempt against an individual or a group.
- Airing content which is against judiciary or armed forces.
- Airing content which is threatening, blackmailing, and falsely incriminating of any person or group.
- Airing content depicting behaviours such as smoking, alcohol consumption, narcotics, and drug use.

- Airing content which is inaccurate.
- Airing content which doesn't treat guests with respect.
- Airing gory contents.
- Airing contents which shows false, distorted or misleading facts.
- Airing content which puts ongoing inquiry, investigation or a trial into jeopardy.
- Airing content which is plagiarised without addressing to the issues pertaining to copyrights.
- Airing enactments of events which depict gore and violence.
- Airing content which glamorises or incites religious intolerance and disharmony.
- Airing abusive language.
- Airing hate speeches.

6.6. COUNCILS OF COMPLAINTS (CoCs)

Ministry of Information & Broadcasting in its gazette published in 2010 detailed establishment of the councils of complaints. The ordinance explains the functions of CoCs as follows:

- To work independently under facilitation by PEMRA and functions will be coordinated by the Secretary to the Authority.
- To take action against the complaints received against broadcast media or distribution service operators as detailed in the Ordinance (fine up to the limit prescribed in section 29 of the Ordinance, suspension of license against a broadcast media or distribution service operator or licensee for violation of the Ordinance).
- Each council to have a chairperson, 5 members (at least 2 should be women), and the members must be persons of eminence from general public.
- The Authority may approve or disapprove of the recommendations made by the CoCs.
- Each of the CoCs to compile and submit report on its operations to PEMRA, bi-annually.

6.7. PEMRA AMENDMENT ACT, 2007

In 2007, PEMRA Amendment Act was framed and implemented. This Act was established to amend PEMRA Ordinance, 2002. Some of its features are as follows:

- There were a total of 28 amendments made in the Act. The amendments were mostly related to explaining the technical terminologies and providing operational definitions for the same. Moreover, under separate clauses and sub-clauses, additional terms such as broadcast media, broadcast station, channel provider, distribution service, DTH, LMDS, among others, were either introduced or further explained for clarity.
- Categories of licenses to be issued were also introduced in the Act such as: international and national scale stations, provincial scale broadcast, local area

community based radio and TV broadcast, specific and specialised subjects, distribution services and uplinking facilities such as teleporting and DSNG.

- The transparency of bidding process was also pressed upon in situations when the numbers of licenses to be issued would be lesser than the license applications. After sub-section 4, a new sub-section was added which says: *The Authority shall devise a Code of Conduct for programmes and advertisements for compliance by the licensees.*
- Regarding power of Councils of Complaint, in section 3(A), following clause was added: *The Councils shall have the powers to summon a licensee against whom a complaint has been made and call for his explanation regarding any matter relating to its operation.*
- After section 33, following amendments were made:
 - Federal, provincial and local government officials to assist PEMRA
 - Based on the findings of PEMRA, the Court may issue a search warrant against a person who has ‘unlicensed broadcast media or distribution service’, or if the person has ‘controlled, operated or equipment of such a broadcast media or distribution service is being kept or concealed.’

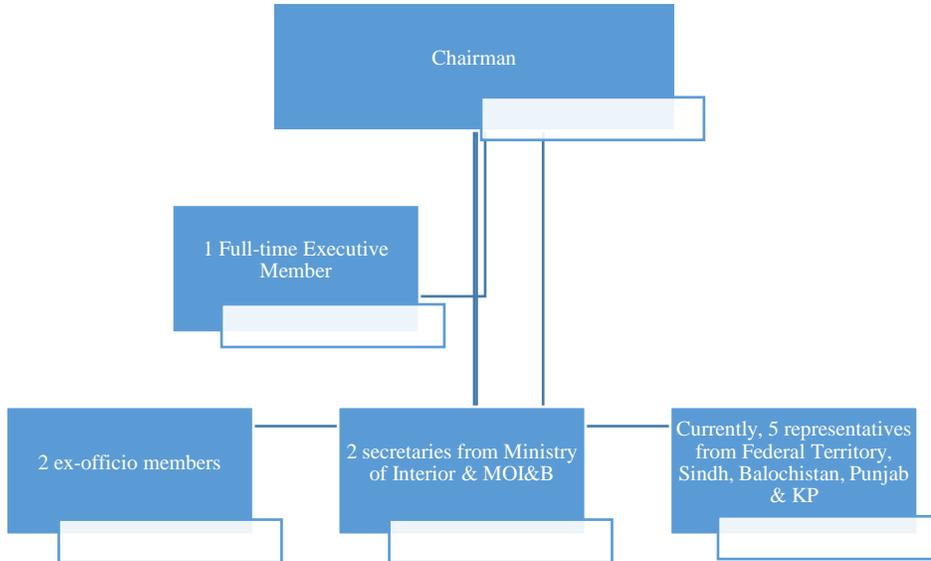
6.8. PEMRA AMENDMENT ACT, 2018

In PEMRA Amendment Act, 2018, following amendments were prescribed:

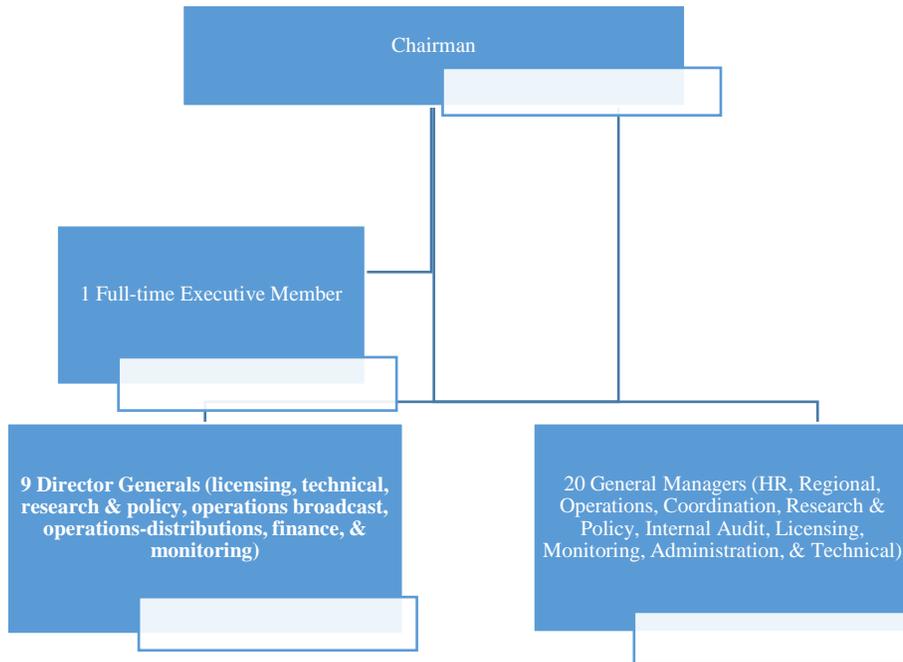
- Under section it was articulated that the Federal Government will have the power to issue directives to PEMRA, ‘in writing on a matter of policy’.
- In cases of ambiguities or questions or concerns raised, the decision of the Federal Government will be considered final.
- PEMRA will include a chairman and eight members who will be appointed by the Federal Government and will embody qualities such as competence and integrity. They must also have experience in any of these fields: Media, Business, Management, Finance, Economics or Law. The Chairman and members should have at least masters or professional degree from an equivalent qualification from institute recognised by the HEC and must also have twenty years of experience in the relevant field.
- 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 Chairman, PTA, one member nominated by the Pakistan Broadcasters Association, and one member each to be nominated by the provincial government from general public of whom at least 2 must be women. These members will be nominated by the provincial government on rotation basis.
- 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.

6.9. PEMRA Organogram

The Authority members are depicted in the following figure.



The administrative functionaries include:



6.10. MEDIA REGULATIONS: EVIDENCE FROM OTHER COUNTRIES

Although every country/region has its peculiar problems and issues, and, indigenous solutions are required to resolve such issues. We are far beyond the one-size-fits-all debate. We acknowledge that every country has its historical realities and political dynamics. There are various social, cultural, and, most importantly, economic factors that determine the market structure and operations. Therefore, we do not argue that we should model our media regulation based on what others have done. Still, we should look into what practices others have adopted, which ones were successful and which weren't, and based on that, we can make a good guess what the peculiarities of our broadcast media industry are and what sort of solutions can we offer keeping in view our unique historical cultural, religious and political situation. Therefore, we intend to briefly describe the broadcast media regulatory framework of some selected countries.

6.11. THE FEDERAL COMMUNICATIONS COMMISSION (FCC): UNITED STATES OF AMERICA (USA)

The United States of America is one of the most relevant examples to discuss since we intend to evaluate PEMRA, a regulatory body in Pakistan. The US constitutions, the bill of rights and the amendments are a euphemism for freedom and the rights of the citizens.

The first amendment regarding free speech provides the foundations for free media in the United States. The amendment states as follow:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances”⁹²

This amendment in the US Constitution guarantees individual and press freedom. This freedom is the distinguishing characteristic of the US economy and structure. But despite the freedoms afforded to individuals, certain lines are not supposed to be crossed. There are certain boundaries that need to be set, the freedoms are not absolute, and the US media law is clear on those.

For instance, the media cannot defame a person or harm his/her character by spreading false or unauthenticated information to the public. True that the media is free and the press is given enough freedom to inform the public and form opinions, but that in no way means that the media freedom can transcend boundaries of individual liberties, and personal spaces. If something like that happens, there is a written institutional setup to protect the victims and have their voices heard. Similarly, formal, and informal constraints prohibit the media from spreading information that the government considers inappropriate for public viewing/consumption and which may have an unfavourable impact on national security. There have been instances wherein the government, the court and the press has been dragged into legal battle over publication of material which was classified.⁹³

⁹² https://www.law.cornell.edu/constitution/first_amendment

⁹³ For example, the infamous Pentagon papers case wherein findings of a study regarding the Vietnam War were not allowed to be published by the government. However, the court decided that some parts of the finding may be published while certain critical information shall be kept secret for security purposes and safety of the individuals involved in the clandestine missions during the war. *Source:* <https://courses.lumenlearning.com/americangovernment/chapter/regulating-the-media/>

The United States has a very powerful media watchdog, namely Federal Communication Commission, abbreviated as the FCC. It was established as a result of the 1934 communications act.⁹⁴ The FCC is a seven-member commission that monitors the broadcast media in the United States. Currently, the FCC grants licenses to radio and TV broadcasters. The FCC ensures that the media channel will have to follow the rules and regulations. The FCC, which now has five members, also determines that the broadcaster does not cross the lines and therefore it remains vigilant over the content being aired. The FCC grants frequencies, content approval, fees, and fines. This makes it the US equivalent of PEMRA.

There are specific rules which make the United States Media regulation unique. For example, during a race for a public office, the presidency congress or senate, the TV channels will have to allocate equal time to the participants. If this doesn't happen, the candidates can file a complaint with the FCC. The media channel has to allot equal time, and the rates would also have to be the same. Time will be sold to the participants at the same rate. However, there are certain instances where the rule doesn't apply like coverage of a political rally or coverage of an issue where one or two public officials are interviewed by the journalist.

Till the 1980s there was a practice known as the fairness doctrine, which compelled media broadcasters to give the audience the complete picture and show the two sides of the coin. The FCC also regulates obscene content that is not suitable for certain audiences such as children. If there is any such program which has such content, it only gets late-night airtime slots. If channels do not comply, they are fined, for example, Janet Jackson's wardrobe malfunction cost CBS a huge sum of money.

Other than content regulation, there is an important area of concern where the FCC has played a role. The issue of transparency in media has been one of the hot debates in the realm of US media regulation. Certain specific laws collectively known as the sunshine laws that make the Government agencies disclose information to the public. There are critics of these -called sunshine laws and supporters, both having equally valid arguments. Proponents believe that such disclosures are the essence of democracy, while the opposition holds that such disclosure may have a variety of adverse effects on policy making as well as national security. The Johnson administration in 1966 with the freedom of information act, however reign during his tenure exempted certain government agencies such as the CIA and FBI from the FOIA.⁹⁵

Broadcast media is all about the information it relays between the general public and the government. This makes the media job one of the most difficult ones. In the US, it has been a practice to criticise the administration for not being open enough, but when

⁹⁴ The act was originally made to have uniform regulation for Radio, Telephone and Telegraph. However with the passage of time, there have been various amendments as technology developed and TV, cable and satellite came into the picture. The Act now covers all sorts of information broadcast and regulates the producers and distributors through Government agencies such as the FCC. If the FCC is the equivalent of PEMRA, the communications act of 1934 is the US counterpart of Pakistan's PEMRA Ordinance.

Source : <https://bja.ojp.gov/program/it/privacy-civil-liberties/authorities/statutes/1288#:~:text=The%20Communications%20Act%20of%201934%20combined%20and%20organized%20federal%20regulation,oversee%20and%20regulate%20these%20industries>.

⁹⁵FOIA is an example of sunshine laws. This act makes the Government offices, the executive branch to give information to the citizen upon the request of the citizen.

the same people (who criticised) got a chance to run the White House, they have sometimes become even more closed. Examples include Barrack Obama, who criticised the Bush administration for being closed. Yet, he only gave a total of 46 question-answer sessions with journalists as opposed to his predecessor, who gave 146. This culture has given rise to journalists relying on sources who provide information on the condition of anonymity, but the supreme court has now lifted the protection from journalists and if a journalist doesn't specify the source, he or she could face jail time, for instance, Branzburg Hayes 1972.⁹⁶

The telecommunication act of 1996 was another significant amendment in the 1934 communication act. As a result of this act, the FCC became a monitor rather than a proper regulator. However, still the FCC is a powerful entity and maintains its presence by intervening in the Media broadcast industry as and when required.

6.11.1. Organisation

The FCC is divided into different bureaus, and other offices are working under them. Each office or bureau has its area of expertise, jurisdiction, and span of authority. The key areas include:

- Developing and implementing regulatory programs
- Processing applications for licenses and other filings
- Encouraging the development of innovative services
- Conducting investigations and analysing complaints
- Public safety and homeland security
- Consumer information and education

There are currently seven bureaus and nine offices. The bureaus include Consumer and Governmental Affairs, enforcement, international Media, Public safety and homeland security, and wireless telecommunications. There are nine offices, namely the office of the administrative law judges, office of communication and business opportunities, office of economics and analytics, office of engineering and technology, office of general counsel, office of inspector General, and offices of managing director, media relations and workplace diversity. While conducting its usual business of making rules, the FCC issues notices to the public informing the citizenry of the issues and the rules that are being framed to deal with those new issues or changes being made for reforming already existing rules. The public then responds with comments, criticism, and suggestion. The FCC then considers and gives weightage to the responses received from the public. This type of rulemaking is called "notice and comment".⁹⁷

When it comes to rule making, the FCC classifies its rules into three types

- Legislative rules.
- Non-legislative rules.
- Organisational and procedural rules.

⁹⁶ It was a famous case in 1972 where in the reporters protected the anonymity of the source and refused to answer certain questions of the grand jury. The Supreme Court passed verdict that journalists by not naming the source are obstructing justice. The three reporters had to face jail time

⁹⁷ <https://www.fcc.gov/about-fcc/rulemaking-process>

The non-legislative rules are again divided into subtypes.

- (1) Interpretative rules
- (2) Policy statements

Legislative rules are the result of legislation by the law-making houses of the congress and the senate. Such rules are legally binding on the FCC as well as the public. As quoted on the FCC website, the rule regarding the height of towers can be a good example. Other examples may include the equipment used by broadcasters, their quality, etc. Among the non-legislative rule the first type i.e., the interpretative rules, interpret the meaning of the legislative rules and how to follow them. For instance, there exists legislation that the towers should be of a certain height to reduce hazards for aircraft. The interpretative rules would explain the meaning of what should be height, construction material, what precautions are to be taken, etc. The second type of non-legislative rule is the policy statements. These are communication from FCC to the public. The media houses and distribution agencies explain that how does the FCC intends to follow certain rules and what sort of rewards and penalties are going to be imposed.

The third type of rules is organisational and procedural rules. When the FCC is going to make any in-house changes such as opening a new bureau or delegating powers to some of its offices, the FCC uses organisational and procedural rules. These rules are related more closely to the internal structure and the way that structure is determined.

6.11.2. From where does the FCC Derive Power?

The power to make rules is given to the FCC by the United States Congress. The Congress has given a free hand to the FCC to make specific rules. The FCC has the discretion to introduce new laws and changes, while in a few instances, the Congress does not give that freedom to the FCC. Examples include the grant of licensing to broadcasters in the public interest as a rule wherein the FCC has some level of discretion. On the other hand, if congress asks the FCC to switch from analog to digital and gives a deadline, than FCC no more has its discretion; it has to get the job done.

When does the FCC decide that rules need to be made or amended?

There could many a reasons of the FCC wanting to adopt new rules or make changes in previously existing ones however broadly those reasons could be categorised as follow.

- Statutory Mandate
- Agency identification of a problem
- Petition for rule making.

6.11.3. Statutory Mandate

When the Congress demands the creation of new rules or provisions for changes in the existing rules/regulations, the FCC complies and makes changes accordingly.

6.11.4. Agency Identification of a problem

When the existing body of rules and regulations is silent on the issue than the FCC decides that new rules need to be made. Such situations can result from

technology change and advancement, changes in the market, and peculiar industry behaviours that are harmful to consumers. The FCC will identify a problem and make relevant changes in the existing rules or establish new rules altogether to deal with the issue.

6.11.5. Petition for Rule Making

The ordinary citizens, advocacy groups, organisations (Government and Non-Governmental), and other stakeholders may file a petition and demand changes in the existing laws. The FCC then reviews those demands and may agree or disagree on the changes demanded, however this is one of the mode of rulemaking prevalent in the FCC among others as discussed above. In the usual routine, the FCC makes rules on the notice and comment mechanism. Rules made after such procedure are legally binding on all concerned however, as far as non-legislative regulations are concerned, the FCC has different requirements.

6.11.6. Notice for Proposed Rule Making (NPRM)

Before issuing a notice, the FCC has to give a notice for proposed rulemaking and engage the public in the debate. It's after the NPRM that the FCC can issue a notice and comment for the rule. The NPRM allows for public input before a new law can be made and finalised. The NPRM, serves as a requirement for rulemaking. It is important to note that the FCC or the State can give waivers in good faith for the public interest if it wants to.

The NPRM contains full details such as the need for the new rule of the proposed changes, and it will also include the alternatives available and which one is more feasible moreover, the NPRM may also have the draft of the proposed changes. The deadline for submissions and the contact information of relevant office bearers so that the public can contact them if they need to. FCC tries to ask a direct question on the issues wherein public input is required. The NPRM is then published in the federal register, where it is accessible to everyone.

The public comment period on the NPRM is usually 30 days; however it varies on a case to case basis when the matter is of extreme urgency. The FCC might give less time, or it may extend the deadline if good enough reasons are communicated to them.

The public comments, irrespective of number or length, are then well-received by the FCC. The FCC acknowledges that the public comments are helpful, but FCC requires comments to be backed by relevant data. The commentators are allowed to present their comments in front of the FCC, and this allows for an exchange of ideas and may lead to better rulemaking. These presentations and other rule-making files are then placed in an electronic repository known as the public docket; the docket contains the draft of NPRM, the comments, the reply comments, and all other necessary files related to that particular rulemaking. The docket is accessible through the internet.

6.11.7. Rule Making

Congress is the legislative body in the United States. The entire process is congressional since the FCC derives its power and authority from the act passed by the US congress. When the rule takes the final shape, the FCC is then required to submit it to congress, the congress then can accept the rule, reject it totally, present it for further debate and propose further changes. Even if the Congress approves the rule, the courts still provide an avenue for challenging the rule. The court has many reasons to intervene such as the non-following of due process, violation of APA, or misuse of discretion given to the FCC. Although when FCC proposed rules go through so many filters, there is little chance that it will be dealt with so harshly in the court of law, but as far as procedures are concerned, the court can step up and intervene.

6.12. OFFICE OF COMMUNICATION, UK

Ofcom Act was institutionalised in 2002, based on which Ofcom as a statutory corporate body assumed its office in December 2003. Ofcom issues licenses and regulates the communication industry (telecommunication, radio-communication, cable, and broadcasting media in the UK.

Goals of Ofcom

Ofcom aims to perform three important goals detailed as:

- Independence entails explaining the independence of the communication market from government or private monopoly
- Accountability of regulatory regime to society, to the audience and users of the communication market
- Social and political diversity

Regulatory Role of Ofcom

As mentioned previously that Ofcom as a statutory body was formalised as a result of the Ofcom Act 2002. Among its regulatory role is included:

- To regulate how media programs are transmitted and program content.
- To fine media organisations for breaching regulations
- To close illegal ‘pirate’ broadcasters and commercial broadcasters
- To regulate broadcasting in variant aspects such as:
 - Quality and quantity controls
 - Creating competition by promoting choice, range of viewing, and listening
 - Pluralism of media content
 - Literacy in terms of empowering consumers in accessing services

Ofcom also specifies a code of conduct for the media in the UK. The broadcast journalists should adhere to or face sanctions from their employers. All broadcast journalists must produce politically impartial content. The significant sections of the broadcasting regulations focus on child protection, offense and

harm, crime, religion, undue prominence and impartiality, rules for election and referendums in the UK, rules for fairness, rules for the protection of privacy, and commercial referencing.

Media Regulation in South Asia

- In India, media is regulated by different Acts. For instance, print media is regulated by the Press Council of India Act, 1978. For the regulation of electronic media, Broadcasting Services and Regulations Bill was introduced in 2006. A broadcasting regulatory authority had to be institutionalised, but the Bill is not yet passed. Electronic media (Television and internet) is self-regulated. There are debates currently around whether electronic media should be brought under the PCI Act or make a new Act altogether. For the regulation of films, television, advertisements, and documentaries screened in theaters or television, the Central Board of Film Certification (CBFC) is required. Cable Television Networks (Regulation) Act, 1995, regulates programs and advertisements broadcasted on television.
- Bangladesh Press Council is the only formal regulatory authority in Bangladesh. The Council was established to protect the freedom of press and improve newspapers and news agency standards. The Council consists of 15 members. Usually, a Supreme Court Judge is nominated as the President of the Council who heads as the Chairman of the Council. Three members should be currently working journalists, three editors of news agencies, and three owners of news agencies. Expert panelists should comprise three members: one nominated by the University Grants Commission, second by the Bangla Academy, and the third by the Bangladesh Bar Council. The council addresses issues related to complaints, code of conduct and has the power to summon as well as it enjoys a few rights and jurisdiction of the civil court.
- In Nepal, the National Communications Policy, 1992 opened up licensing process for independent broadcasters. The National Broadcasting Act, 1993 authorises the government as the licensing agency and regulator. The law gives the government the authority to cancel licenses and prevent programs from on-airing. The actions of preventing media content from broadcasting go against Article 15 of the Interim Constitution, 2007, which states that no means of communication will be interrupted except as per law and another which bans censorship of any kind. In Sri Lanka, media regulation is controlled by various Acts directly linked to electronic media regulation, Acts indirectly related to electronic media, and decisions of the Supreme Court and the Court of Appeal. The most procedural and requires extensive documentation is the legal regulation (11 Direct Acts and 9 Indirect Acts).

Table 6.1

Comparison of FCC, Ofcom, and PEMRA

Country	Regulating Agency	Appointment	Expertise of Commissioners	Stated Purpose	Mandate
USA	FCC	Appointed by the US President and then approved by the senate	All commissioners in the current FCC have immense experience in the field of communication policy. They have both public as well as private sector experience in the field.	Commutation act of 1934 FCC is there to regulate all forms of Broadcast media in the United States	Granting of licenses Promoting competition, innovation & quality Revising and reviewing media regulation strengthening the defense of the nation's communications infrastructure Supporting the nation's economy by ensuring an appropriate competitive framework for the unfolding of the communications revolution
Pakistan	PEMRA	Appointed by the president directly	Retired and serving bureaucrats	PEMRA ordinance of 2002. Responsible for regulating and establishment of all broadcast media in Pakistan. The authority can make regulations for carrying out the purpose of the ordinance	Improve the standards of education, Informational, and entertainment Enlarge the choices available to people Facilitate the devolution of responsibility and power to the grass root Optimising the free flow of information. To ensure good governance
UK	Ofcom	Ofcom Board providing strategic direction to the organisation	Constituting non-executive Chair, Executive Directors, and Non-executive Directors imbining experience in media economics and communication.	Based on Ofcom Act, 2002	Quality controls, fine, revocation, and licensing.

6.13. ISSUES OF MEDIA REGULATION IN PAKISTAN

Regulations and regulatory authorities have very little flexibility, which makes it hard for them to adapt to changes in technology, politics, economics, or socio-cultural changes in society. Regulators are not quick enough to respond promptly; therefore, the case of PEMRA and its response to market changes also offers many questions which

require research. The unique feature of PEMRA compared to other regulators is that it has a very sensitive and strong relationship with the cultural and social aspects of society. The sensitive nature of PEMRA, coupled with a broad mandate wherein definitions of certain important things are unclear and its control over content production and distribution makes it a tough case to be evaluated. The Ordinances are formed but lexicons therein are either undefined or kept adhoc (details are in the subsequent sections). Moreover, there have been instances when PEMRA has acted upon its mandate and has been criticised severely and paradoxically, there have been instances where it has remained quiet, and the silence has been charged. These issues are faced by PEMRA solely because of its pivotal role in regulating electronic media, which forms a significant part of cultural industry. Hence, there are many subjective things. However, both domestic and foreign literature has pointed out certain issues faced by countries in the realm of media regulations.

6.14. THE QUESTION OF REGULATION

E. Dudley and Brito (2012)⁹⁸ define regulations as administrative laws or rules through which the Federal Government implements laws and specifies instructions concerning what individuals, businesses, and related organisations can or cannot do. The authors also argue that market-based economies need rules for efficient functioning and legal frameworks provide standardised instructions for framing and implementing such rules. Regulations can be categorised into social and economic regulations. Social regulations deal with issues related to health, safety, environment, and security, whereas economic regulations concern with industries using economic controls such as price ceilings or floors, production quantity restrictions, demand-supply manoeuvring, and service controls. Theories of regulation provide justification for the government to the behaviours of firms and individuals even in free-market economies. In the following are stated a few theoretical standpoints and later towards the end we will articulate the arguments as proposed in these theories with media regulations.

- According to **Public Interest Theory**, government intervention is justified when competitive markets are not functioning to allocate resources effectively. Hence, politicians' intervention is premised only to correct market failures such as externalities, monopoly power, or asymmetrical information. Public choice theory is critical of politicians' altruistic stands and explains 'self-interest' as the reason for the politicians to intervene (ibid).
- **Capture Theory** argues that framing and institutionalising of standard instructions and rules are not driven by the public interest rather by private interests. In other words, the politicians and regulators are 'captured' by the interests of those intended to be regulated. This standpoint provides a more pragmatic explanation of regulation but doesn't provide a complete picture because many regulations do not tend to serve the interests of the firms, businesses, and individuals being regulated (ibid).

⁹⁸ E. Dudley, Susan. and Brito, Jerry. (2012). *Regulation: A primer*. Mercatus Centre. The George Washington University.

- **The Economic Theory of Regulation** explains the position of the one being ‘regulated’ in a comprehensive way. This theory is based on three interlinked propositions. The first being the basic resource governments embodies and has an entitlement over is the ‘power to coerce’ , the second proposition is that interest groups can convince governments to use their coercive power to the advantage of a given group and to the disadvantage of others. Third proposition details that agents such as firms, individuals, interest groups, and government officials tend to maximise their utilities and well-being, even if that actualises at the cost of others. Legislator’s stance to regulate is supported by such groups who lend political support to legislators and regulators in exchange for favourable legislation and regulatory framework.

6.15. BROADCASTING AND TYPES OF BROADCASTING

Rome Convention, Article 3 (f) defines Broadcasting as the ‘**transmission by wireless of sounds or images and sounds for public reception.**’ Broadcasting can be of different kinds: State-controlled (also called public broadcasting), private commercial companies operating at global or local levels, and the third are the ones owned by a community, also non-profit in nature (Abrar, 2012).⁹⁹

- **Public Broadcasting:** Public broadcasting intends to serve the public; hence it is financed from public funds and owned by the State. Its interest should be to serve the interests of the general public as the citizens of the State, not as consumers. However, public broadcasting is misused by the body polity. The funding of broadcasting comes from license fees which can also be done from revenues generated from advertising, sponsorship, tax reductions, or State aid. In Pakistan, the public broadcasting organisation is Pakistan Television Corporation (PTV) which was established in 1964. Initially, it was established as a Private Limited Company under the Name of Television Promoters Company. In 1967, it was converted into a Public Limited Company under Pakistan Television Corporation Limited (PTV). PTV is the largest TV channel in Pakistan and provides coverage to 89 percent of the country’s population. PTV centres are in Karachi, Rawalpindi/Islamabad, Peshawar, and Quetta. PTV has six functional TV channels” PTV Home, PTV Global, PTV News, PTV National, AJK TV, and PTV Bolan. The organisation is owned by the Federal Government of Pakistan, which controls editorial and administrative policies. The government appoints the PTV Board of Directors, who then elects a chairman and managing director. The chairman and MD implement policies framed in cognizance with the Federal Government.
- **Private Broadcasting:** In Pakistan, functional private broadcasting companies include Geo, Aaj TV, Dunya TV, Express TV, ARY, and Hum TV, in addition to a few more vernacular, regional, food and sports channels. Private television broadcasting is regulated by PEMRA. The private broadcasting companies are funded from commercial revenues such as advertising, sponsorship and subscription fee paid by viewers.

⁹⁹ Abrar, Muhammad. (2012). *Enforcement and regulation in relation to TV broadcasting in Pakistan*. University of Glasgow.

- **Broadcasting via TV & Internet:** Broadcasting through TV and internet is also a significant industry in Pakistan. Broadcasting via Television take place through terrestrial, satellite or cable. Similarly, internet also provides broadcasting services, more recently through OTT platforms.

6.16. REGULATION OF PAKISTANI ELECTRONIC MEDIA

Abrar (2012) explains that before PEMRA was established, the electronic media laws were not in a single legislative form rather scattered in different legislative measures such as the Pakistan Television Company Act, 1964, Merchandise Marks Act, 1889, and Pakistan Penal Code, and Custom Act, 1969. Pakistan Telecommunication Authority started operating in 1997 in accordance with the Telecom Reorganisation Act, 1996, to control the private sector of electronic media functioning in Pakistan. With the establishment of PEMRA in 2002, PTA's role is now to 'regulate the creation, operation, and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan.' (Abrar, 2012, page. 18).

The four main platforms for distributing TV signals in countries are terrestrial broadcasting, cable television, satellite television, and internet protocol television. Cable Television is a transmission system which takes place through fixed optical fiber or coaxial cable. Coaxial cable is mostly used in Pakistan, whereas some metropolitan cities have been digitalised with fiber optics. Transmission of traditional and broadcasting channels through cable is most common in Pakistan; terrestrial broadcasting is declining as a result of the development of the cable industry for over two last two decades. There is a need to uniform digitalisation of cable TV in Pakistan. Digitalisation can also play its part in increasing cable channel capacity as compared to analog cable TV systems. Digitalisation also helps in improving the quality, makes technical maintenance easier, and improves services such as parental control, pay-TV, and video on demand. PEMRA played its role by approving phase-wise digitalisation of cable TV in Pakistan. The first phase started in the first quarter of 2009 and was completed at the end of 2011. It had two critical features: digital cable TV licenses in metropolitan cities and conversion of existing head-ends in metropolitan cities in which fiber optic and HFC networks were deployed in Karachi, Lahore, Islamabad/Rawalpindi, Peshawar, Quetta, Multan, and Faisalabad. The second phase, which started in 2010, claimed to issue a new digital CTV license and convert existing CTV licenses at a district level.

6.17. PEMRA'S MANDATE

PEMRA is mandated to regulate the production, distribution, and operation of the Media industry. Since 2002, when the media landscape of Pakistan changed and the country which only had one TV channel suddenly jumped a more liberal model wherein private entities could acquire TV channels ranging from sport and news to entertainment and lifestyle. In the military regime where things happen quickly, PEMRA, just like the HEC, was established with a single stroke of the pen by the then administration. Its primary function was to contain the industry through licensing and distribution mechanisms in order to keep a check on the mushroom growth of the industry. PEMRA can make rules, amend them, change them and replace them with new rules. It can allow a company to operate broadcast media stations may it be foreign or domestic TV or radio.

As far as the ordinance is concerned it has monarchic powers when it comes to regulation of the broadcast media industry. However, the same ordinance from which this immense and unrivaled power is derived also chains the authority constraining it from working freely rather the party in power has the real say since Article 5 of the ordinance specifically empower the Federal government to issue directives to PEMRA and that also makes PEMRA answerable to the government at Islamabad¹⁰⁰. The last lines regarding the power of the federal Government stating that the decision of the federal government shall be final on issues of policy and rules. The tone of the draft reflects authoritarian attitude of the federal government. It's understandable that PEMRA like many other regulators were created during the military regime of General Parvez and therefore PEMRA ordinance reflect that dictatorial preference. The question here is that why hasn't there been changes in the ordinance by the successive democratic governments that followed the Musharraf regime? One way to look at it is the hypothesis of Acemoglu and Robinson wherein they talk about political and economic losers. i.e., a change may take place if and only if the political losers are not powerful enough to stop it/ similarly, PEMRA has remained the same although the country no longer under dictatorship. PEMRA allows the Federal government, the ruling elite to bargain effectively with the Media and hence a more independent media regulator will complicate things and make it harder for the political elite to bargain with the broadcast media. There are many instances in the ordinance which require PEMRA to bow to the Federal Government a few examples are given below

Article 5	The Federal Government may, as and when it considers necessary, issue directives to the Authority on matters of policy, and such directives shall be binding on the Authority, and if a question arises whether any matter is a matter of policy or not, the decision of the Federal Government shall be final.
Article 6, Section 4 A	".....the Remaining two members will be appointed the federal government on need basis."
Article 7, Section 1	The Chairman and members, other than ex-officio members, unless earlier removed for misconduct or physical or mental incapacity, shall hold office for a period of four years and shall be eligible for re-appointment for a similar term or as the Federal Government may determine
Article 9	The Chairman and members shall be paid such emoluments as the President of Pakistan may determine and shall not be varied to their disadvantage during their term of office.
Article 14 (section 2, sub-section i-v)	foreign aid obtained with sanction of and on such terms and conditions as may be approved by the Federal Government; and all other funds received by the authority from any other source. It can obtain loans on the special sanction of the federal Government
Article 23, Section 1	It is clearly stated in the mandate that the PEMRA will discourage the creation of monopolies. The article states that "no group or person to benefit from any monopoly or exclusivity.....in operative and of no legal effect.
Article 38, The Indemnity Clause	No suit, prosecution or other legal proceeding shall lie against the Federal Government or any Provincial Government or local authority or any other person exercising any power or performing any function under this Ordinance or for anything which is in good faith done or purporting or intended to be done under this Ordinance or any rule made thereunder.

¹⁰⁰ Please see PEMRA ordinance 2002

6.18. ANALYSIS OF PEMRA ORDINANCE

As mentioned earlier, articles 5 and 6 empower the federal government to intervene in the decision-making and design of the leadership of the PEMRA. Such intervention works as a significant hurdle, especially when autonomy is necessary for regulatory authorities such as PEMRA.

The Federal government of Pakistan is usually the one that leads the polls in Punjab and Sindh, the two most important provinces of Pakistan. Therefore, the preferences of the ruling elite are not the reflection of the preferences of the entire country. We can safely assume that the political party in power will never allow for a fully autonomous PEMRA rather, it will desire PEMRA and other such entities to be under their control. A whole body of literature on elite capture and political economy, the most noteworthy and prominent of which is Acemoglu et al.,^{101 102 103} backs our argument when we say that the ruling elite, the political forces in power and the federal government has a big incentive not to make PEMRA as autonomous as it should be. The Federal government will always try to interfere either to control the media industry or favour media corporations that support their cause. In the backdrop of this scholarly work, it becomes clear why the PEMRA ordinance is drafted in this fashion and why it has been constrained, the political party in power will always try to tame it and make it work in the interest of the political regime. This has happened with PEMRA in the past, and there is no surety or legislative change that can ensure that such things won't happen in the future. To make PEMRA more useful and make it more market-friendly (assuming that regulation is a rational and wise economic move,) ^{104 105 106 107 108}, we need to revisit the PEMRA ordinance, redraft it make necessary changes, and tailor it to the needs and realities of the Pakistani society keeping in view the social, cultural, economic, and political dynamics of Pakistani society.

For instance, Article 5 states that the federal government has the final say on policy matters. It can issue orders as and when it desires. And PEMRA has to comply. Such power to political government is undemocratic and goes against the

¹⁰¹Acemoglu, D., Johnson, S., & Robinson, J. A. (2001). The colonial origins of comparative development: An empirical investigation. *American economic review*, 91(5), 1369-1401.

¹⁰²Acemoglu, D., Johnson, S., & Robinson, J. A. (2005). Institutions as a fundamental cause of long-run growth. *Handbook of economic growth*, 1, 385-472.

¹⁰³Acemoglu, D., Johnson, S., & Robinson, J. A. (2002). Reversal of fortune: Geography and institutions in the making of the modern world income distribution. *The Quarterly journal of economics*, 117(4), 1231-1294.

¹⁰⁴Freedom of media and regulation in the media industry are very heated topics of discussion. There exists an extreme poles of scholars on the subject. Since going it to that debate is not the objective of this study therefore the issue has not been discussed as much in detail but we do acknowledge that this is question worthy of debate and discussion.

¹⁰⁵McChesney, R. W., & McChesney, R. W. (2008). *The political economy of media: Enduring issues, emerging dilemmas*. NYU Press.

¹⁰⁶ Napoli, P. M. (2003). *Audience economics: Media institutions and the audience marketplace*. Columbia University Press.

¹⁰⁷Burger, M. (2006). The discursive construction of the public and the private spheres in media debates: the case of television talk shows. *Revista alicantina de estudios ingleses*, No. 19 (Nov. 2006); pp. 45-65.

¹⁰⁸Kemal, A. R. (2002). Regulatory framework in Pakistan. *The Pakistan Development Review*, 41(4), 319-332.

basic human rights of freedom of media. If the content is disliked by the federal government, it can use PEMRA to punish a particular media outlet, and if it needs it can totally destroy the small and medium-scale players. Therefore, instead of ensuring freedom of media, the PEMRA is used to ensure that media remains on a tight leash.

The young age and mushroom growth on a geometric scale necessitate a regulator, but what kind of regulation is required, how to regulate, and who is to be regulated are all questions that are far more complex than what they appear to be. These questions provide the pillars on which Pakistan's media policy should be based, and its media economy shall be structured. When the regulator and its powers are not specified properly, when its autonomy is not appreciated, and when there are big corporation that can even influence the legislation, regulation, and rules we are doing the exact opposite of what is needed. A free media and well-functioning media industry can serve as a 5th pillar of the government, but government intervention through articles 5 and 6 of PEMRA ordinance makes such freedom a distant dream.

PEMRA, like the judiciary, should be free from political interventions. It should be answerable to the state and not the government. It will function more efficiently when it is free from political pressures. There may be oversight or standing committees comprising government and opposition members from both houses or a team from the judiciary, including civil society members, academics, and civil servants who may review the performance periodically. Article 5 and 6 (4A) need to be revisited, and the political control of the federal government needs to be diminished to ensure the smooth working of the PEMRA.

The appointment of the chairman and the authority members should also be delinked from politics and political control of the government. At present, the PEMRA has 12 members and a chairman. The president of Pakistan selects them. The criterion for appointment of the chairman as described in subsection 2 of the PEMRA ordinance is that he/she should be a person of "known integrity with expertise and experience in the field of MEDIA, business, economics, or the law." This is a vague criterion, it can be subjectively defined, and any person favoured by a political regime can fit in if desired by the ruling party. The criterion should not be so broad and open to interpretation and opinion. There needs to be set criterion, one which is specifically made for a chairman of PEMRA. There needs to be deliberations, debates and discussions on the appropriate criterion; the political bias and influence of the ruling party should be minimised as much as possible. On the flip side, Media corporations may try to coerce political leadership using de-jure and de-facto powers to influence the framing of rules and regulations to suit them (Rasul and McDonald 2012)¹⁰⁹ also see Bagdikian (2004)¹¹⁰, Machensy (2008)¹¹¹,

¹⁰⁹ Rasul, A., & McDowell, S. D. (2012). Consolidation in the name of regulation: The Pakistan Electronic Media Regulatory Authority (PEMRA) and the concentration of media ownership in Pakistan. *Global Media Journal*, 11(21).

¹¹⁰ Bagdikian, B. (2004). *The new media monopoly*. Boston: Beacon Press

¹¹¹ McChesney, R. W. (2008). *The political economy of media: enduring issues, emerging dilemmas*. New York: Monthly Review press

and Machensy (1999)¹¹², Napoli (1997a, 2003)^{113 114} and Mosco (2009)¹¹⁵ for this point. Enough scholarly work exists that highlights the role of media corporations in influencing the selection of members and even chairman.

The government, on the other hand, may use Regulators such as PEMRA to get back at media outlets that it considers as rebellious, hostile, or undesirable to them. There are many such examples where the government and the ruling political party have used the regulator for their own ends. One relevant is the case of GEO TV during the regime of the Pakistan People's Party. Jang group, through its TV channel, was quick to bluntly criticise the regime, and the government responded through PEMRA by putting charges of tax evasion and also banning the broadcasting of GEO for some time (Rasul and McDonald, 2012). Other examples include the punishment of media outlets for not following state narrative. Such issues emerged during the PTI *dharna* in Islamabad¹¹⁶. Similarly, when the PTI came into power, it slashed government advertisement budget and many unpaid bills. Big television channels such as Waqt news had to shut down. Jobs were lost, and the media industry was put on a downward trajectory. PEMRA was very vigilant in regulating the content production and putting bans. Still, its true purpose, as per its mandate, to expand, improve and make the quality of the broadcast media better by allowing freedom of choice was forgotten. PEMRA still plays this role of listening authority which bans transmission when it doesn't like the content or the ruling party objects to certain program or media product.

Article 6 subsection 3 explains that one member shall be appointed by the Federal Government permanently and the other five Members should be eminent citizens. Two members have to be women while all these members shall have some expertise in Economics, Management, social service or law. The question here is again of the criterion. PEMRA is supposed to regulate the most powerful entity in the society, "the Media". It should be clear that such a regulator needs technical experts. Merely saying that the members should be eminent citizens and adding ex-officio members makes the management design of PEMRA weak, and such a regulator will not be able to play its due role. Similarly, it is admirable that the article mentions and makes it mandatory to have at least two women as members, but what will the criterion be? What is going to determine the eligibility of the women and the men? It should be appreciated that PEMRA needs experts as members, not representatives of various social strata or groups, given the sensitivity of media regulation and the stakes involved.

Article 7 subsection 1 further proves that PEMRA is not as independent as it should be, instead it is brought under political control through various channels provided by the loopholes and generalisations present in the PEMRA ordinance. For instance, in article 7, it is stated that "The Chairman and members, other than ex-officio members, unless earlier removed for misconduct or physical or mental incapacity, shall hold office

¹¹² McChesney, R. W. (1999). Rich media, poor democracy: Communication politics in dubious times. New York: The New Press

¹¹³ Napoli, P. M. (1997). A principal-agent approach to the study of media organisations: Toward a theory of the media firm. *Political Communication*, 14(2), 207-219

¹¹⁴ Napoli, P. M. (2003). *Foundations of communication policy: principles and processes in regulation of electronic media*. Cresskill, NJ: Hampton Press

¹¹⁵ Mosco, V. (2009). *The political economy of communication*. London: Sage

¹¹⁶ <https://www.thenews.com.pk/tns/detail/621174-screen-blues>

for four years and shall be eligible for re-appointment for a similar term or as the Federal Government may determine.” There are many questions that arise due to the vague nature of the above script. Firstly, what is “misconduct”¹¹⁷ How is it defined? What if the chairman says “no” to the political party in power? Will that be counted as misconduct, or will the chairperson just be doing his/her job? For legal clarity, misconduct should be properly defined otherwise, the chairman will always be in a vulnerable position and may also be compelled to bow down to pressure. A Government regulator should always be given enough freedom and autonomy so it can operate fearlessly. Such constraints will hinder the working of the chairman, his/her team and the entire PEMRA. The same is the case with the other members on whom the same rules will apply/are applied.

The ex-officio members of the Authority include the Secretary of MOIB, Chairman PTA, and Chairman Federal Board of Revenue. The federal government also selects the remaining two members. The chairman of the authority may suggest, however the federal government has the final say in the selection. By looking at the composition, it appears that the federal government has a complete say in the board. In theory, the federal government appoints one member and the last two members when the seats are filled, but on the ground, the federal government appoints 3 members, and 3 ex-officio members, making it the controller of PEMRA. There is no denying that chairman PTA, Secretary MOIB, and Chairman FBR are all representatives of the Federal Government. The selection of the board, its representation, and criterion needs to be revisited and revised to make PEMRA more independent and inclusive.

After the selection of the board comes the important issue of remuneration. The remuneration of the chairman and the board members is to be decided by the president of Pakistan. The president is allowed to give any pay package to the board. Article 9 states:

“The Chairman and members shall be paid such emoluments as the President of Pakistan may determine and shall not be varied to their disadvantage during their term of office.”

As good as it sounds, it also means that the saying “No” to the federal government will also be a tough choice to make. There is no criterion against which the remuneration and pay packages can be set. This again increases the influence of the federal on the PEMRA. Therefore, it is of immense importance that the parliament should pass legislation wherein payment packages of PEMRA board members and other regulators may be set based on a standard.

Article 14 sections i-v are regarding the funding of the authority. While section 1 states that seed money will be provided by the Federal Government, the sections immediately preceding it raises questions.

For instance, section 2 states that the authority can apply for a loan, and the Federal government may grant the loan as a special or general case. So here again, the federal government has maintained its sufficient control. There is no denying that

¹¹⁷ The term is very vaguely defined in the ordinance. The ordinance has explained it as follows
“For the purposes of this section the expression
“Misconduct” means conviction for any offence involving moral turpitude and includes conduct prejudicial to good order or unbecoming of gentleman”.

PEMRA is a state institution. The state should keep a check on the regulator and make it stronger and improve it. However, we need to understand that the state and the government are two different things. Government is just one pillar of a functioning state. The media in this regard is as important a pillar of the state as the government. Just like it would be absurd to give the media channels and corporations the control of the government in the same way, it is disastrous for the media market and its consumers if the government is allowed to interfere in it. The ordinance empowers the political authority to interfere in this particular market to a great extent.

Another alarming issue with the ordinance of PEMRA is that it is allowed to take in foreign aid and accept it as a part of the funding (obviously with the consent of the Federal Government). This provision clearly shows that while preparing the draft, the designers and legislators were either unaware of the importance of broadcast media or neglected the impact media can have on society. We cannot afford to receive donations from aid partners because by doing so, we have to follow certain donor-oriented agendas, and thus, the true purpose of media may not be achieved, and opinions that may not be in our best interests be cultivated in the hearts and minds of the people. Why should the ordinance allow PEMRA to get foreign aid? Independent media that may serve its purpose of informing the public and creating awareness will not be able to work independently if it's allowed to accept donations from foreign sources. Therefore PEMRA as a regulator must not be given this permission, and the ordinance needs to be redrafted. Moreover, PEMRA funding report should be made public so that the people's trust on the entire media industry is not shattered.

In article 23 of the ordinance, it is clearly stated that PEMRA will discourage monopolisation. It will stop monopolies from coming into existence in the media industry. The reason for that is that big corporate media groups can control the economics of information by being able to decide what information to be produced, how it's going to be produced, and for whom it's going to be produced. Therefore, having big corporations control the major part of the media broadcast industry, harms the economy of media and leads to poor and less efficient outcomes.

The scholars of the political economy of communication also look upon the concentration of ownership of media outlets by a single group as harmful to the industry. For instance, Rasul and Macdonald (2012)¹¹⁸ quote Mosco (2009)¹¹⁹ while discussing the harms of concentration of ownership of media outlets. When big corporations are allowed to capture major part of the market, according to Mosco (2009), they are then able to decide the economics of broadcast media through which they can limit, mold, and in many cases show custom news more suited to their agendas leading production of less reliable media products while consumers are unaware of it. The Regulator, therefore, is supposed to look into the issue of concentration of the media industry. Ideally, it should be the entity that protects, nurtures, and propels forward the media industry by keeping a check on big corporations and facilitating the small local and regional broadcast media outlets.

¹¹⁸ Rasul, A., & McDowell, S. D. (2012). Consolidation in the name of regulation: The Pakistan Electronic Media Regulatory Authority (PEMRA) and the concentration of media ownership in Pakistan. *Global Media Journal*, 11(21).

¹¹⁹ Mosco, V. (2009). *The political economy of communication*. London: Sage.

This is essentially PEMRA’s mandate too, but unfortunately, PEMRA has been unable to play its due role in this regard. The establishment of four big media conglomerates such as the independent media group (commonly known as Jang Group) and the Pakistan Herald Publication (the PHP), owns Dawn Newspaper, Dawn TV channel. Other groups include Waqt news, whose premier product is the rightwing Urdu paper *Nawai Waqt* while express group and ARY Digital are also suitable examples of concentration of ownership.

Rasul and McDonald (2012) view this phenomenon of concentration as one of the biggest challenges faced by PEMRA and the media industry since these big corporations can send the small firms out of business. The small media firms cannot compete with the huge giants as the latter have economies of scale which the former don’t. The latter also has political leverage as its popularity makes it an entity to be feared, and hence the regulator and the government favour them.

The PEMRA ordinance Article 4 section 1 clearly states that PEMRA will be regulating the media industry, improving it, and expanding it further. It also has the authority to make rules for local, national, regional, and international media broadcasters. It’s been given some freedom or autonomy to issue new rules if required and publish it in the Gazette of Pakistan but concentration of ownership is not mentioned in the ordinance. This shows that the issue was not important for those who drafted the ordinance and those who presented and approved it. Given the importance of the phenomenon, this is not something that should have been overlooked.

The Independent media group, also known as the Jang group tops the list in terms of revenue. In fact, the group’s revenue is greater than the cumulative revenue of all other media corporations combined. This statistic is given by Rasul and McDonald (2012). The group owns the English language newspaper “the News International”, the English language magazine Us, the Urdu language newspaper titled Jang. This group was the first to launch a TV channel named Geo. Currently, it owns five TV channels ranging from the genres of sports and entertainment to News. Even before the TV Channels, Rasul and McDonald (2012) argue that the IMG or Jung group was the leading media group in terms of revenue. However, after the launch of TV channels licensed by PEMRA and owned by the group, its revenues increased manifold. Right after 2009, the Geo TV Channels grabbed 26 percent of the total advertising spending; its English and Urdu newspapers held 34 percent share of total ad spending while the magazines acquired 64 percent share of the total ad spending in the country for that particular year. The total ad spending on TV was 308 million US\$. While the total ad spending in 2019-20 was 444 US\$. Below is given a detailed table.

afaa ASIAN FEDERATION OF ADVERTISING ASSOCIATIONS										PAKISTAN
www.afaaglobal.org										
MEDIA AD SPENDING BY PAKISTAN										
Advertising Expenditure in US\$ million										
Year	Television	Print	Newspaper	Magazine	Radio	Cinema	ODH	Digital	Total	
2009-2010	152	0	72	1.5	11	0	25	0	308	
2010-2011	201	0	75	1.7	13	0	24	0	329	
2011-2012	240	127	0	0	16	0	33	11	427	
2012-2013	276	145	0	0	16	0	36	11	485	
2013-2014	299	147	0	0	19	0	28	19	512	
2014-2015	334	160	0	0	23	0	83	35	635	
2015-2016	363	172	0	0	27	0	85	43	689	
2016-2017	401	191	0	0	29	0	113	53	786	
2017-2018	344	176	0	0	23	0	63	72	678	
2018-2019	200	97	0	0	13	0	60	75	444	

Noted : July - June Figure (12Months)

Waqt media group, a staunch critic of media regulations, was also among the first to utilise PEMRA and apply for a broadcasting license. Following the Jang group, the Waqt media group was the second leading ad revenue generator. They are followed by the Pakistan Herald publication, also known as Dawn News group followed by Express groups officially known as Century Publication or Lakson group.

These four conglomerates own the media industry of Pakistan. Their spread and influence, both political and economic, makes them able to influence regulations in their favour and thus to drive small TV channels out of business. Although PEMRA was established to control the mushroom growth of TV channels, however, it was also supposed to regulate the media industry so that the big sharks are not able to make a meal out of the small fish. These big sharks use their lobbying power and political muscle to make the regulators bring out rules suited to their special needs Rasul and McDonald (2012). It's no wonder that Pakistan doesn't have vibrant local and regional media players in both print and electronic sectors. These few groups are so powerful that they won't allow any small newspaper or media outlet to succeed. PEMRA as the regulator, must provide for a level playing field and look into the concentration of ownership issue seriously.

Other than the concentration of ownership, we also need to look deep into the relationship between media and technology. Media, especially broadcast media, and technology have a very strong relationship. Technological change in the media industry, no matter how small, has the potential to change the entire media landscape. The issue has been discussed by studies such as Rasul and McDonald (2012). They rightly cite Napoli (2003)¹²⁰ and Castella (2004)¹²¹ that while making policy interventions and designing regulatory frameworks, we should keep in mind the changes that the technological change may bring in the dynamic media industry, which is very sensitive to the most incremental of changes in the fields of Technology. The Ordinance should therefore be revisited, keeping in view the changes that have taken place in media specific technology. So far, there has not been any report which can tell us how technology has affected media, the flow of information, consumption, and production of media products, and their style of operations.

The ordeal of the Pakistan Media Industry doesn't end here as the regulation ordinance further has an indemnity clause that gives immense powers to the political government controlling PEMRA. Article 38 states that:

“No suit, prosecution or other legal proceedings shall lie against the Federal Government or any Provincial Government or local authority or any other person exercising any power or performing any function under this Ordinance or for anything which is in good faith done or purporting or intended to be done under this Ordinance or any rule made thereunder”

¹²⁰ Napoli, P. M. (2003). Foundations of communication policy: principles and processes in regulation of electronic media. Cresskill, NJ: Hampton Press

¹²¹ Castells, M. (2004). The information age: economy, society, and culture. New Jersey: Wiley-Blackwell.

This, accompanied by article 28, which allows PEMRA or any of its officers to carry out inspection, gives the impression that PEMRA is more of a tool than a regulator that is brought into the picture once a particular media outlet is supposed to be punished. The fact that it has allowed for monopolies to be established on the one hand while has heavy fines and penalties for others for minor negligible transgressions such as the airing of a sports program which PEMRA defined as entertainment, speaks of the misuse of de-jure power that the authority has. Article 38 states:

“...is in good faith done or purporting or intended to be done under this Ordinance or any rule made thereunder”

These words give a very unfriendly picture along with confusing subjective language. For instance, what is good faith? How do you define it? What is the extent to which one can act in good faith? Mere use of the word “good faith” is testimony to the fact that the PEMRA ordinance is not created from market-friendly perspective. Hence we conclude that PEMRA’s legislation should be revisited, and its design should be reconsidered. We need a regulator, not a *thanedar* the media industry of Pakistan needs to be regulated not chained and toyed with, and we need to acknowledge the role of media and the power it has. It is undoubtedly a pillar of the state. We end this section with the words of Thomas Jefferson:

“Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.”

6.19. FINDINGS FROM FIELD

Following are the themes which emerged from data collected during field research conducted in PEMRA Headquarters from PEMRA personnel and ex-employees.

Issues in PEMRA Ordinance, 2002 and Amendment Act, 2007

Based on the analysis of PEMRA ordinance we have highlighted the issues detailed in the preceding section. One telephonic interview with an ex-PEMRA employee revealed that amendments in Ordinance 2002 and Amendment Act 2007 are needed as both documents do not address some of the core regulatory issues. The following excerpt from the interview is critical in this regard.

“Licensees have objections, media channels have objections, cable operators have objections, and broadcasters both radio or OTT broadcasters have objections, too. I also believe the ordinance needs amendments. How much and where? That is a complicated subject that needs thinking and discussion before amendments are made. The amount of fines, the implementation of code of ethics, and 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 or renewal tenure because it has become an expensive business now. As a result, it has become 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."

Regulator of Media Market or Regulator of Media Content?

When asked about PEMRA's over-regulation of media content and not fully regulating the media market for its role in facilitation and incentivising broadcasters, media channels, and service providers, another ex-employee responded:

"This is not the entire reality. It is a perception, and the perception is not wrong. TV channels & people working in media make the perceptions. In reality, PEMRA has a lot more to do rather 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 finalise the code of conduct, and the Supreme Court ordered PEMRA to implement it in 2015. So, PEMRA has nothing to do with it, except it has become the implementer for a document it neither made nor enforced. PEMRA's role is to issue licenses, renew licenses, respond to technological improvements, and make a budget as it's a self-sufficient organisation. 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 centre of discussion in news channels or in newspapers about PEMRA is the code of conduct and not the other functions."

What is the Public Interest in the PEMRA Document?

The documents are full of buzzwords that are neither explained nor interpreted. One most recurrent term in the documents is public interest. When asked to interpret what it entails, one currently employed PEMRA representative detailed:

"Exactly, you are right! Public interest has not been explained completely in the documents. I don't think this term has been properly interpreted by the Supreme Court of Pakistan or High Court. But generally speaking, the public interest is what the people of Pakistan want, what viewers want, and their priorities and choices. Pakistan's Constitution does not stop you from talking about certain issues, but our culture may consider those issues as taboo or controversial. For example, sex education. It is not forbidden to give sex education, but you cannot talk about it on TV channels. So this is one example. Also, religious issues can be discussed in scholarly environments but TV channels when they discuss them, it becomes a national issue. People resort to violence, and hence such contents are not allowed by TV channels."

Censorship Issues

Questioning whether PEMRA has a censorship role in on-aired content, one ex-employee commented:

"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 and USA on TV channels. Every country has certain limits on certain issues, so is Pakistan. But one feels that such freedoms are too restricted in Pakistan. PEMRA cannot do anything on such a front because PEMRA is not sovereign. It is just a State organ which follows the law made by the parliament."

Why PEMRA, When There is the Ministry of Information and Broadcasting?

Speaking on the role of regulator and MOIB and the intersecting functions, one ex-employee responded:

"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 and the independence that regulator can enjoy on paper will not be possible."

PEMRA's Performance as a Regulator

While interviewing one ex-chairman about the performance of PEMRA as a regulatory authority, it was shared that:

"The pace and trajectory have remained satisfactory by and large. We had long, mid, and short-term strategies in place, and we implemented the same, as well. But after I left it and before I was there, PEMRA has been headed by non-media people, either bureaucrats or police people. So, that's why they could not take long-term decisions to improve policies and implementation frameworks of PEMRA. Bureaucrats think differently than media persons think of media. So, there is a difference in the implementing strategies and policy frameworks. That is why new lobbying is being discussed, which sounds draconian. It suggests tougher punishments, higher penalty fee so, I don't think PEMRA has done what it needed to do."

PEMRA Organogram

Questioning about the organogram structure of PEMRA, one recurrent theme was severe under-representation of media persons in the authority. One such view was also shared by one of the current employees:

“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.”

The Question of the Independence of PEMRA

Building on one of the critiques on the independent status of PEMRA, one ex-chairman commented:

“There are issues whenever PEMRA takes its independent decisions. But there is a difference. I will explain. Law making is not PEMRA’s right or prerogative. Laws are made by the parliament and ministries are part of the parliament so if PEMRA starts making its own laws and then starts implementing then it will become a draconian regulator, a dictatorial regulator. You cannot give any authority to any regulator, and it doesn’t happen anywhere in the world. You make an organisation independent by making its Head and Authority independent by not 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 for example, he shouldn’t be removed as in the case of High Court Judges, or now they have given the freedom to chairman CPEC; free of any inquiries or cases. That kind of independence is needed.”

PEMRA’s Role is to Regulate, not to Act as Surveillance Body

Speaking of PEMRA’s role as controller and surveillance body, one ex-employee narrated:

“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 organisations. The regulator shouldn’t be a control freak. It should help develop an industry. The only bone of contention between regulators and industry is the implementation of the code of conduct. If that code of conduct 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.”

PEMRA and the Politics of Media Rating

The question regarding the politics of media rating and how can PEMRA play its role in responding to that can be detailed as:

“The problem lies in the system. The majority of cable operators are running analog system. They have been shifted to digital cabling. 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.”

PEMRA and the Question of Ad-spend Monopoly

The current employee’s take on ad-spend and PEMRA’s role therein details:

“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 favour 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.”

6.20. CONCLUSION

Freedoms- whether it’s market freedom or freedom of expression, whether it’s the freedom to choose or freedom to say “Yes” or “No” – such concepts of freedom in their various manifestation were alien to Pakistani Society.

The privatisation of the electronic media was a revolutionary move. For the first time in the history of Pakistan, the media consumers were allowed to choose the information available for sale. But as much as this was a solution to ending state monopoly, it also brought a new set of problems, and to tackle those problems a regulator like PEMRA was needed.

As Per its Mandate, PEMRA was supposed to ensure a level playing field and take steps for improvement, expansion, and up-gradation of Pakistani broadcast media content, its quality, and technology. This authority was supposed to create a framework within which the media industry had to be regulated, keeping in mind Pakistan’s cultural sensitivities, social issues, and politico-economic realities. It was also supposed to prevent monopolies from being created, and it had to safeguard small and medium media enterprises that were new ventures’ in the industry.

Looking back at the 20 years since PEMRA has been in business, we cannot say that its presence has been useless or it has been a sheer waste of Government resources, but we can confidently say that due to certain legislative, political, and economic factors PEMRA has not been able to play the role that it was required to play. In fact, by looking at the industry closely, we can conserve that in certain situations, PEMRA has done the opposite of what it was supposed to do. Brief description of the issues discussed in different sections of the report is given below.

6.21. THE MONOPOLY POWER OF CERTAIN MEDIA GROUPS

When PEMRA was created in 2002, and private sector ventures were encouraged, it was a welcome move appreciated across the board. The Authority was issued a mandate, and the media industry was supposed to be regulated through that ordinance. One of the regulator’s objectives as per the mandate was the prevention of monopolies in the media industry. Concentration of ownership was supposed to be kept under check and surveillance. This aspect has however, not been addressed by PEMRA as it should have been.

The PEMRA board should have a considerable representation from the Broadcast media Industry. The current setting doesn’t have any room for such members. The absence of such members who represent the media means that the voice of the media is never present when PEMRA decides on rules and policies regulating the media business. Therefore, there is a need to have representatives from the media industry on the PEMRA board. The representatives should be such that the media industry unanimously agrees upon their inclusion. There also needs to be academics who have worked in the area or hold a specialty in the field should be made part of the PEMRA board.

There needs to be legislative changes to make PEMRA more independent in terms of funds, recruitment, pay packages, and policymaking.

6.22. IDENTIFIED ISSUES

<p>Formal institutional change in the form of amendments in PEMRA Act.</p>	<p>The institutional constraints on PEMRA binds it with Ministry of information and broadcasting and through this bond federal government can exercise power over PEMRA. There needs to be legislative changes through the parliament but the amendments should come into place once they are backed by sound research. PIDE Islamabad as an institution has the capability of carrying out such research which will help the State adopt well informed policies and amendments.</p>
	<p>The debate is that whether PEMRA is regulating the media market or the content produced by the media production house be it news, sports or entertainment. However, PEMRA’s response is that the code of conduct is a document that has neither been made by PEMRA nor had PEMRA any specific policy regarding the Code of conduct. As per PEMRA’s response to us, it was said that PEMRA has many functions. Code of conduct is a very small part of it. However TV channels and media outlets have created baseless perception in the minds of people that PEMRA only deals with the Code of Conduct. The Code of conduct made by the TV channels was approved by the Supreme Court and PEMRA was asked by the Supreme Court to enforce the code of conduct. There are two opinions on this. One is that PEMRA should not be regulating the Media Market in terms of content it should just facilitate the efficient working of the market. The other is the one given by PEMRA, that is, PEMRA has not created the code of conduct rather the Supreme Court at the request of the TV channels approved a certain code and ordered PEMRA to follow it.</p>

Vague definition of certain terms in the PEMRA ordinance and rules.	There are certain buzzwords which make the interpretation of the certain sections complex and subjective. Such confusions may facilitate undue intervention by the politically powerful groups into the media market. One such example is the recurrent use of the word “public interest”. What is public interest and what sort of rule are there to which one has to adhere to in order to not violate public interest? Moreover, it is subjective for one person based on his/her epistemological orientations, past experiences and training a particular action might be in public interest while for another person there same may go against public interest. The PEMRA ordinance should clearly define what public interest is. If this does not come under the purview of PEMRA than guidance from the legislature should fetched in this regard.
Issue of censorship	PEMRA may sensor media content but not on its own discretion. The censorship is based on the directions of the parliament. Whatever the constitution forbids PEMRA blocks and penalises those TV which go against it. However, PEMRA’s power to sensor is sometimes taken advantage of by the politically powerful. Moreover due to cultural and religious reasons there are certain things that PEMRA does not allow PEMRA, according the executives that we have met is a state institution and has to abide by the policies of the state.
Need of PEMRA when MOIB is already there.	PEMRA is a regulator, it regulates the media industry. The ministry is the Government itself. It makes the policy and PEMRA then enforces that policy. A senior PEMTA executive shared these views among others; that if ministries are allowed to regulate the former will become so powerful that the market would not be able to reap the fruits of such de-jure reforms. The question that what sort of power should regulator have and to what extent is the regulating body allowed to enforce given the peculiarities of the market is something which needs deliberation from the technical experts of the field (not Bureaucrats whose only achievement is a passing a colonial style competitive exam). Coming up with proper meaningful proposals is the job of experts not PSP or DMG clerks.
Performance of PEMRA	PEMRA has been headed by people of different professional backgrounds. There have been very few instances where media experts were pasted as heads of PEMRA. PEMRA has played a significant role especially during the time when it was headed by media technocrats however it’s unfortunate that Postcolonial Pakistan still has the bureaucrats of powerful groups like PAS (formerly DMG), Police and secretariat. Police and DMG have no relevance at all to the working of PEMRA and hence when it was headed by such people who had mostly come here on deputation its performance a regulator was not satisfactory. While in other cases, it has played a significant role in digitisation of airwaves, improvement in technology and regulating the market. We do not argue that when PEMRA was headed by Media Person or media related technical expert, it was a hall mark however based on our findings we believe that PEMRA should be led by media experts and the staff should also be recruited based on relevance of qualification and experience.
Organogram	PEMRA has tight bureaucratic structure with very few media experts. Moreover the recruitment of HEAD and senior staff is based more on political preferences rather than expertise, relevance and merit
Independence of PEMRA	PEMRA has the mandate to regulate. As far as the designing of regulation is concerned that is the JOB of the legislature and if regulators such as PEMRA are given independence in terms of LAW making this could lead to political and social problems affecting the entire society. The current PEMRA situation warrants that it should be independent as a far as the operations are concerned while those operations have be inside the ambit of regulations duly approved by the legislature and the judiciary.
PEMRA is a market regulator not a policeman	It is unfortunate as discussed at different points above and at many instance in the report document that Police officers were posted as Chairman and were also given other key posts who due to their training as a postcolonial police force mishandled the media market. Not only did this practice of appointing police officers cost the media industry but it also cost PEMRA in terms of growth and expansion.
Code of Conduct	Code of Conduct is bone of contention between the regulators and the regulated. Some data from the field suggests that if this issue is resolved and the TV channels and media houses are themselves supposed to take care of the code then the relationship between PEMRA and the Regulated can be made more productive.’
Analog and digital Cable: issue of resource constraint society of Pakistan and the politics of rating	There has been considerable progress in digitisation of cable TV however the progress is not uniform all across Pakistan. one of the major reason for the over reliance on analog system is that digitisation requires funds which small cable operators operating in less developed geographical zones cannot afford. Rating meters have mostly been installed in Lahore and Karachi this misleads the observer as data from the two cities doesn’t represent the entire consumer base of electronic media. Until we full digitise the issue of media rating and politics that comes with it will remain.
The ad spend	A respondent who was currently serving at PEMRA was of the view that it’s the business model of the particular media house that makes it earn more or less revenue. PEMRA as an organisation doesn’t in any way interfere in the market. The ad-spend is pure market based demand supply phenomenon. The PEMRA rules or regulations do not in way manipulate or interfere in this market.