
POLICY PAPER ON
INDEPENDENT
MEDIA
REGULATION

**CIVIL SOCIETY FOR INDEPENDENT
MEDIA AND EXPRESSION (CIME)**

Policy Paper on Independent Media Regulation in Pakistan

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Table of Contents

| | Page |
|--|-------------|
| Executive Summary | 4 |
| Introduction | 5 |
| Literature Review | 7 |
| Media Regulation in Pakistan: History and Policy Context | 10 |
| Analysis: The Broadcast Regulator’s Performance | 15 |
| Policy Recommendations | 38 |
| Appendix A Methodology | 43 |
| Appendix B References | 44 |

EXECUTIVE SUMMARY

The media regulatory framework in Pakistan is fragmented across media types and ill-equipped to deal with the rapid changes in media technology and information consumption patterns of the local audiences. The broadcast media dominates the domestic media landscape despite a recent rise in online news and entertainment options for citizens. Consequently the role of the broadcast regulator, the Pakistan Media Regulatory Authority (PEMRA), becomes significant in ensuring public interest, fair market practices in the broadcast sector, and the diversity and pluralism of media sources and content in the country.

The broadcast media regulator's performance has remained the subject of criticism since its inception in 2002, especially due to the perception of direct government influence on its policies and enforcement action. Concerns about the independence of the regulator become even more prominent due to the extra-legal pressures on the press and creative industries. Within this context, this policy paper examines the media regulatory regime, especially the broadcast regulatory framework, in the country.

The paper informs its discussion by relying on a review of international trends and policy approaches in media regulation. It presents a brief history of different media regulations in Pakistan to contextualise the policy analysis, which is focussed on the issues with the nature and impact of broadcast media regulation. Based on the analysis and discussion, the paper presents the following policy recommendations:

1. Establish a Regulatory Convergence Review Commission: The independent commission of experts should be mandated to review existing media laws and regulations and present recommendations to modernise the media regulatory framework in Pakistan in light of the convergence of the media, communication, and technology sectors.
2. Amend the PEMRA Act to Enhance Regulatory Independence: The process of appointment of PEMRA Chairperson and members should be modified through a legislative amendment along with the relationship between the government and the regulator as stipulated in the statute. These changes are necessary to provide autonomy to the regulator and protect it from political influence.
3. Adopt a Co-regulatory Approach for Content Regulation: The media content regulation scheme followed by PEMRA is invasive, indifferent to public interest, devoid of restraint, and ineffective. It should be converted into a co-regulatory system with statutory cover in which the industry takes responsibility for compliance through appropriate codes of practices and standards and the regulator supervises the process with minimal but transparent interventions.
4. Improve the Public Complaints Mechanism and Transparency of Enforcement: The current enforcement of content restrictions and other regulatory actions by PEMRA fail to meet standards of transparent, accountability, and consistency. With a co-regulatory content regulation system, PEMRA should constitute a public complaints mechanism that is open and transparent at the level of decision-making and enforcement.

The policy recommendations are expected to provide impetus to efforts by stakeholders, including media, policymakers, and civil society, to deliberate on media regulatory reforms in the country in a bid to ensure that media regulation is independent, fair, and done in the public interest.

INTRODUCTION

Four examples from the past five years serve to illustrate the pressures on the various forms of media in Pakistan and the issues with media regulation in the country.

In 2019, the transmissions and programmes of several news channels were suddenly suspended as they provided news coverage to opposition political leaders¹. The broadcast regulator was unable to account for these suspensions, which journalists termed as a fresh round of censorship to stifle political dissent. A few months later, a feature film, which was approved for screening by the film censor boards, was barred from exhibition after pressure from a religious group². Later, the same film was ironically selected as Pakistan's submission to the Oscar Awards even though its general public screening was still not possible³. When one of the biggest print news stories of the decade in Pakistan led to a tense confrontation between the government and the security establishment in 2016, the government bypassed the print media regulator to set up a separate inquiry committee⁴. In 2017, the telecom regulator, which also monitors harmful online content, blocked a local satirical news website without giving the website owners any chance to defend their position and without considering the impact of the decision on online free expression⁵.

These examples are only a few out of the many incidents where regulatory independence across the different media industries in Pakistan is either undermined through extra-legal pressures or usurped by government influence. These concerns demand a discussion on the need for regulatory reforms and independent media regulation in the country.

In recent years, the government hinted at a legislative push toward a converged model of media regulation before shelving the plans for the immediate future. The idea of a converged media regulator is not new as other countries have also approached the idea through deliberations or practice. But given the history of media control in Pakistan, the notion of a centralised media regulator with powers to oversee several interrelated sectors is bound to cause anxiety among industry stakeholders over how it may affect the already fragile condition of freedom of expression and press freedom in the country.

At the same time, the media and civil society may not be able ignore the pressures of media convergence on the regulatory framework forever, and a discussion on the independence of media regulators will inevitably have to address the pressing questions brought about rapid advances in technology and shifts in audience behaviour. Given these developments, this policy paper will attempt to identify the major issues with the existing model of media regulation in the country, determine the need for independent media

¹ 'Silenced': Pakistan's journalists decry new era of censorship. Al Jazeera. <https://www.aljazeera.com/features/2019/8/15/silenced-pakistans-journalists-decry-new-era-of-censorship>

² Govt stops screening of 'Zindagi Tamasha'. The Express Tribune. <https://tribune.com.pk/story/2141568/khoosat-films-files-petition-tlp-interfering-films-release>

³ 'Zindagi Tamasha' is Pakistan's submission to the Oscars. The Express Tribune. <https://tribune.com.pk/story/2273849/zindagi-tamasha-is-pakistans-submission-to-the-oscars>

⁴ Asad, M. (2016). Dawn shouldn't be asked to reveal source: press council. Dawn. <https://www.dawn.com/news/1295594>

⁵ 'Khabaristan Times' ban. Editorial. Dawn. <https://www.dawn.com/news/1312530>

regulation, consider the best practices of media regulation around the world, and discuss the best model for media regulation in light of global trends and the challenges facing the media industry.

The paper will also review the structure and operations of the broadcast media regulator and suggest changes through amendments to existing law or new regulatory strategies to improve the scope for independent media regulation in the country. In this regard, the next section provides a brief review of literature on media regulation concepts and relevant trends.

LITERATURE REVIEW

Given the importance of media as sources of information for citizens in a democracy, the issue of who owns and controls the media has been a significant political question in all societies and all States exercise some form of media regulation whether it is through government control or other means (Herman & McChesney, 1997, as cited in Feintuck & Varney, 2006). The traditional rationales used by governments to regulate the media, especially broadcast services, have included upholding the public interest in a democracy, resource scarcity in terms of broadcast frequencies, cultural promotion, protection of citizens from harmful material, and the protection of national economic interests (Salomon, 2008).

Flew (2016) states that national media laws have historically rested upon assumptions such as the readily definable nature of a media industry (such as print versus broadcast etc.), clear distinctions between producers and consumers of media products, and the applicability of territorial jurisdictions on media content distributors. In the light of these assumptions, the resource scarcity rationale for regulation is manifested in the form of licensing regimes for publishers and broadcasters while sociocultural, economic, and political reasons to regulate media are mostly reflected in media ownership controls and the restrictions applied on media content through rules and classifications.

The media regulatory approaches are usually mapped on a spectrum that ranges from direct government regulation on one end and self-regulation on the other end (Hargrave et al., 2006). Direct government regulation, which is backed by legislation and statutory controls, is the predominant form of media regulation internationally (Australian Law Reform Commission, 2012). Whereas in self-regulation, a media industry formulates the codes of conduct for its members and is also responsible for the enforcement of these codes. In between these two approaches, a co-regulatory model is also practised whereby the industry develops its own set of standards but its enforcement is through government statutes, which may include sanctions for violators.

The adoption of one or a combination of these media regulatory approaches in national policies has been influenced and continues to be affected by a host of factors including political systems, neoliberal economic policies, cultural imperialism, globalisation, and, more recently, the advancements in technology and the emergence of new global media platforms (Flew, Iosifidis & Steemers, 2016). Perhaps due to the interplay of these complex factors in influencing regulatory frameworks, the development of national media systems varies across the globe from State-owned media in China to the corporate media giants in the U.S.

Within a country, too, different media industries are sometimes regulated and licensed differently (Ofcom, 2016; Stewart, Lawrence & Manvell, 2012). The print media regulatory trend has shifted toward self-regulation relying on professional codes of practice and independent press councils as seen in the Nordic countries, the UK, and some countries of Africa and the Asia-Pacific region (Stewart, Lawrence & Manvell, 2012; Limpitlaw, 2013; Syvertsen et al., 2014; Trevelyan, 2016). The print self-regulation trend, spurred on by free speech protections, cannot be considered an international norm though because many countries still retain licensing and registration requirements for the press. The strictness of print media licensing and registration regimes have eased, however, when compared with the broadcast media industry, which has traditionally been more heavily regulated due to frequency allocation constraints, avoidance of harm to public from audiovisual content, and the perceived threats to diversity and pluralism from consolidation and concentration of broadcast media ownership (Article 19, 2013).

Most regulatory frameworks also look towards the public interest to justify the nature and development of media systems. For example, the U.S. broadcast media regulatory framework holds that market

competition will ensure public interest (Candeub, 2007) whereas the European countries have encouraged media pluralism and content diversity through public service broadcasters (Valcke, 2011) even though both paradigms prevent cross-ownership of media and understand diversity in terms of the supply side.

The tensions between these paradigms and State-controlled media policies became apparent on the international stage when countries began to deregulate and privatise their media systems under the influence of neoliberalism from the 1990s onward. One example of this is discussed by Harcourt (2003) who found that some Central and Eastern European countries became battlegrounds for media regulatory models promoted by Western governments and ended up with a hybrid regulatory framework. Similarly, the opening of local markets to IT and communications equipment exports from the West led to a rise in satellite and cable TV audiences in India and Pakistan, but the development of media regulatory systems there was encumbered with domestic political debacles and government control (Maheta, 1998; Narrain, 2009; Rasul, 2018). The broadcast regulators established as a result of supposed media reforms were in some cases a liberal facade underneath which the State controls on the media persisted in disregard of international norms of free speech, as Zaid (2018) showed in his study of 11 Arab countries.

The tendencies of governments to control the media through regulation has led to recommendations for an independent media regulatory model from multilateral organisations and international media freedom advocates. Article 19 (2013) suggests that pluralism can be encouraged during the frequency allocation process by allocating parts of the spectrum for national, regional, and local broadcasters, and independence of the regulator can be protected by separating it from any government ministry, by constituting an open process for the appointments to the regulator's governing board, by allowing parliamentary oversight of these appointments so the government or one political party may not unduly influence them, and by ensuring the regulator's financial independence through law. Salomon (2008) has also discussed the creation of an independent regulator and offered guidelines for, among other aspects, a constructive relationship between an independent broadcast regulator and a spectrum regulator and/or a competition commission, the appointment of members of the regulator, its funding, its accountability, and its regulatory activities.

McQuail (2010) has identified six focus areas of media regulation: structure, infrastructure, distribution, access, conduct, and content. Structural regulation deals with issues of ownership and concentration, specifically the concern that if too few companies own too many media services it would: reduce the diversity of viewpoints available to the public, allow powerful economic interests to unduly influence the audiences, and negatively impact the public's political participation (Barron, 2000). This belief led to the imposition of limits on the size, extent, and common ownership of media sources but, as Candeub (2008) argues, these may not have sufficiently provided for media diversity in the public interest, and regulators have themselves relaxed the rules on cross-ownership since the early 2000s to allow for large corporate mergers of media entities (Winseck, 2008). The competition laws or antitrust laws of a country often also play a part in regulating the mergers and acquisitions of media companies.

Distribution regulation often puts some obligations on service providers, such as universal coverage in an area and the must-carry rules (for example, Article 31 of the European Union's Universal Service Directive) that make it mandatory for broadcast services to make channels that serve some defined public interest objectives available to all their audiences (Van Eijk & Van der Sloot, 2012)

Media regulation regarding access sometimes deals with restrictions on foreign or local ownership of media services (if either is undesirable to the State) and sometimes with diversity of opinions by directing media organisations to ensure representative programming (McQuail, 2010).

Content regulation is one of the most significant aspects of a media regulatory framework as it is associated with the media effects on the public. Key themes for content regulation include protection of democratic principles, protection of minors, protection of human dignity, taste and decency, privacy of individuals, and protection against hatred (Salomon, 2008). Restrictions on content have taken the form of industry standards, codes of ethical practice (such as the journalism codes of ethics), scheduling restrictions (often called ‘watershed’), age-based ratings for entertainment programming, films, and games, and pre-transmission warnings to name a few (Hargrave et al., 2006). Alongside programming, most countries also have standards and codes for advertisers to protect consumers from misleading information or harmful products (Harker & Harker, 2000). Media behaviour and media content are sometimes also regulated by other general laws and penal codes related to defamation, sedition, contempt of court and other restrictions on expression (Stewart, Lawrence & Manvell, 2012; Mendel et al., 2019).

Finally, infrastructure regulation has traditionally dealt with transmission systems, frequency allocations, and technical standards, but the convergence of media content with Information and Communication Technologies and the rise of new media platforms through the Internet has brought fresh regulatory attention to this aspect during the past decade. Corporate consolidations on the intersection of broadcasting and Internet, the global expansion of media and Internet companies, the international domination of social media networks, such as Facebook and YouTube, and streaming content services, such as Netflix, has altered the public’s interaction with news, information, and entertainment content and posed challenges for policy goals that can “ensure diversity, independence and accessibility” (APC News, 2016). As a result, many countries are reviewing their regulatory frameworks for audiovisual content, opening discussions about regulatory reforms, and considering regulatory convergence that could offer platform-neutral content regulation, protection for locally produced content, and digital media literacy opportunities for users, among other features (ACMA, n.d.; Ofcom, n.d.; Singapore, 2012; European Commission, 2013; Broadcasting and Telecommunications Legislative Review, 2020; South Africa, 2020).

The following section discusses how the traditional and contemporary concerns about media regulation mentioned above are reflected in the regulatory framework in Pakistan.

Media Regulation in Pakistan: History and Policy Context

The current media regulation framework in Pakistan is fragmented across different media industries and displays a mix of statutory, co-regulatory, and self-regulatory approaches even though government controls usually overshadow industry concerns and public interest objectives in the areas of licensing, registration, media ownership, and content restrictions. Mendel et al. (2019) have listed 34 laws — not all of these are currently in force — that have been used at various times in the past to regulate the print, broadcast, and communications industries in Pakistan. The enforcement of these sector-specific laws by separate regulatory agencies is done through over a dozen sets of rules, regulations, and standards that were developed to manage the work of publications, journalists, public and private broadcasters,

advertisers, distributors, telecom operators, and other service providers. Finally, general laws and penal code provisions regarding defamation, sedition, public order, obscenity, blasphemy, intellectual property, and market competition also affect the media services and content in Pakistan (Mendel et al., 2019).

Print Media: Print was the most prominent type of news media in the country historically and was subjected to various forms of censorship, control, and regulation ever since Pakistan gained independence in 1947. Niazi (2010) has provided a detailed account of the gag orders, fines, arrests, systems of press advice, direct censorship, repressive media laws, and nationalisation drives the Pakistani print media and journalists faced from 1947 to 1985. The Press & Publications Ordinance of 1963, arguably the worst media law in Pakistan's history, was repealed and revived twice between 1988 and 1997 and finally replaced by a pair of ordinances in 2002 to manage the registration and conduct of the print media (Niazi, 2010; Mezzera & Sial, 2010).

The first of these two ordinances mandates that printing presses and news publications need a "declaration" or licence from district governments in order to operate and must adhere to six categories of content restrictions specified in the law; violators can be punished with fines, imprisonment, and cancellation of licences⁶. All licensed newspapers will also be registered with the federal government. The law does not mention a licensing fee, but the rules specify a small fee for reserving the title and registration of a publication⁷.

The second ordinance established a national press council to monitor and maintain ethical standards in journalism and uphold the freedom and independence of the press⁸. The council and its inquiry commission include members from the industry associations; it is supposed to be independent from government influence, has developed a code of ethics for the press, and provides a complaints mechanism⁹. But in over 15 years, the council's role has remained marginal¹⁰ and print news organisations mostly adhere to the self-regulatory codes and guidelines developed by the Council of Pakistan Newspaper Editors¹¹ and the All Pakistan Newspapers Society¹².

The Pakistani press was still a dominant player in the media market when the press council ordinance was passed in 2002. Since then, however, the focus of media regulation in Pakistan has shifted to private broadcast media.

⁶ Press, newspapers, news agencies and books registration ordinance 2002: http://abc.gov.pk/SiteImage/Downloads/PNNBRO_2002_0.pdf

⁷ Press, newspapers, news agencies and books registration rules, 2009: http://www.moib.gov.pk/MediaLaws/PNNBR_Rules_2009_0.pdf

⁸ Press Council of Pakistan Ordinance, 2002. http://presscouncil.org.pk//media/ordinance/pcp_ordinance.pdf

⁹ Press Council of Pakistan. <http://presscouncil.org.pk>

¹⁰ Haq, R. (2017). Toothless watchdog: Govt urged to strengthen PCP on the lines of PEMRA. The Express Tribune. <https://tribune.com.pk/story/1480453/toothless-watchdog-govt-urged-strengthen-pcp-lines-pemra>

¹¹ The code of ethics issued by the Council of Pakistan Newspaper Editors is available here <https://cpne.webs.com/aboutcpne.htm>

¹² The All Pakistan Newspapers Society is an association of news publishers and manages the press relations with advertisers. <https://www.apns.com.pk/downloads.php>

Broadcast Media: Up until the '90s, Pakistanis mostly had access to Radio Pakistan and the Pakistan Television as their main broadcast sources of news and information¹³. Radio Pakistan was a State-run entity until 1973 when its services were moved under the Pakistan Broadcasting Corporation (PBC), a statutory body whose control remains with the government which appoints its board¹⁴. Pakistan Television, or PTV, began its transmission in 1964 and is managed by the Pakistan Television Corporation, a public limited company whose entire shares are held by the government¹⁵ which also appoints the corporation's chairman and board of directors¹⁶. The corporation runs news, entertainment, sports, and regional-language TV channels. The management controls of PTV have resulted in its subservience to State policy and its news channel is largely seen as a government mouthpiece (Barracough, 2001; Mezzera & Sial, 2010). PTV and PBC are also arguably not public service broadcasters in the strictest sense, due to their financial model and lack of editorial independence (Media Commission Report, 2013).

In the early '90s, Pakistani audiences began to get their first taste of private broadcast media, due to the remarkable regional expansion of satellite television that introduced Indian and Asian television channels to the country and the popularity of the Network Television Marketing entertainment programmes on the Shalimar Television Network, which had been allowed to broadcast terrestrially under a public-private partnership agreement (Barracough, 2001; Mezzera & Sial, 2010). These private broadcasts offered a fierce competition to the staid and controlled transmissions of PTV. By the late 1990s, the domestic audience of foreign satellite TV channels and radio stations, such as Start TV and the BBC Urdu service, was in millions¹⁷. These changes whet the appetite of local audiences for private broadcast media in Pakistan, but the 1997 caretaker government's attempt to set up a broadcast regulator for private media was allowed to lapse by the democratic government that followed (Rasul & McDowell, 2012).

It was mostly the political and foreign policy objectives of General Pervez Musharraf's military regime that swiftly liberalised the broadcast sector (Khan & Joseph, 2008; IMS, 2009; Hassan, 2017). The Pakistan Electronic Media Regulatory Authority (PEMRA) was established by a presidential ordinance in 2002 (Akhtar, 2019). The ordinance was amended by the Parliament in 2007¹⁸. The main objectives of the authority were claimed to be to enhance media diversity and media access, facilitate the political participation of citizens, and ensure accountability through the free flow of information.¹⁹ PEMRA was tasked with the licensing and regulation of local broadcast media as well as distribution services and

¹³ 50 Years of Pakistan Volume 1 (1947-1997). Chapter 14: Mass Media. Pakistan Bureau of Statistics. http://www.pbs.gov.pk/sites/default/files/50_years_statistics/vol1/14.pdf

¹⁴ Radio Pakistan. Media Ownership Monitor Pakistan. <https://pakistan.mom-rsf.org/en/media/detail/outlet/radio-pakistan/>

¹⁵ See footnote 6 and the PTV news entry of the Media Ownership Monitor Pakistan for details: <https://pakistan.mom-rsf.org/en/media/detail/outlet/ptv-news/>

¹⁶ PTV Management and Board of Directors: <https://ptv.com.pk/ptvCorporate/Management>

¹⁷ Barracough (2010) cites a 1997 Dawn newspaper article to state that 1.4 million Pakistani households had access to satellite programming, and Mezzera and Sial (2010) claim BBC Urdu had 20 million daily listeners in Pakistan and India in 1998.

¹⁸ PEMRA Ordinance as amended in 2007: https://pemra.gov.pk/uploads/legal/Ordinance_2002.pdf

¹⁹ PEMRA Ordinance as amended in 2007: https://pemra.gov.pk/uploads/legal/Ordinance_2002.pdf

foreign TV and radio services, but its jurisdiction did not extend to the national broadcasters, PTV and Radio Pakistan (Abrar, 2016). PEMRA's chairman and its members — upgraded to 12 from nine in 2007 and then reduced to eight in 2018 — are appointed by the President of Pakistan²⁰. The broadcast regulation called for prohibition of monopolisation, restricted foreign ownership of media, made broadcasters liable to content restrictions, and established a system to receive public complaints against broadcast content²¹. It also gave broad powers to PEMRA to make rules — these would regulate the ownership, licensing, operations, and technical standards of broadcast media — and conduct enforcement action — the authority can prohibit broadcasts, issue fines and penalties for violators, suspend or revoke licences, and conduct inspections. (Critiques of PEMRA's structure and regulatory activities are provided in the next section.)

PEMRA's early years were marked by swift issuance of broadcast licences that rapidly increased the number of TV and FM radio stations in the country (Akhtar, 2019). By 2009, the country had around 50 new TV channels, including 15 news networks (IMS, 2009). At last count, PEMRA had issued licences to 105 satellite TV channels, 175 commercial and 60 non-commercial FM radio licences, 11 IPTV services, and six mobile TV companies as well as landing rights permissions to local companies for broadcasting 42 foreign channels²². The authority now relies on a number of rules, codes, and regulations to manage the broadcast sector. The most important among these are the 2009 rules of business²³, which specifies the licensing criteria, fee structure, and the terms for cross-ownership, and the 2015 revised code of conduct for broadcasters²⁴, which defines public interest, specifies 16 principles for content restrictions, and presents broad standards for compliance for news, entertainment, and advertising content.

Other Media Industries: The media commission report (2013) noted that “there is no legal framework for the professional regulation of the advertising sector” and suggested a statutory standards authority should be set up for this purpose. The advertising industry mostly gets guidance from the Indecent Advertisements Prohibition Act 1963²⁵, the PEMRA code for broadcasters, and self-regulatory codes issued by the Pakistan Advertisers Society²⁶ and the Pakistan Advertising Association²⁷. For the cinema industry, the Motion Pictures Ordinance 1979 established a central board of film censors to regulate the content and screening of films²⁸. After the delegation of powers from the federal to the provincial governments through the 18th Constitutional Amendment in 2010, the provinces enacted their

²⁰ *Ibid.*

²¹ *Ibid.*

²² Statistics collected from licensing lists on the PEMRA website: <https://pemra.gov.pk/licensing.php>

²³ PEMRA Rules 2009 https://pemra.gov.pk/uploads/legal/PEMRA_Rules_2009.pdf

²⁴ Electronic Media Code of Conduct 2015: https://pemra.gov.pk/uploads/legal/Code_of_Conduct.pdf

²⁵ The Indecent Advertisements Prohibition Act, 1963: http://www.moib.gov.pk/MediaLaws/INDECENT_ADVERTISEMENTS_PROHIBITION_ACT.pdf

²⁶ Code of Advertising Practice: <https://pas.org.pk/wp-content/themes/pas/pdf/code-of-advertising-practice-designed.pdf>

²⁷ Code of Ethics: <https://www.paa.com.pk/code.php>

²⁸ The Motion Pictures Ordinance 1979 <https://www.wipo.int/edocs/lexdocs/laws/en/pk/pk047en.pdf>

film regulations²⁹. Now films need certification from provincial and federal film censor boards, which examine films to check if they are suitable for unrestricted public exhibition, family exhibition, recorded public exhibition under parental guidance, and public exhibition restricted to adults³⁰.

Online Media and Convergence: The number of Internet subscribers in Pakistan increased by nearly 400 percent in six years to reach 83 million in 2020³¹, mainly due to mobile broadband services. Still this represents only a 40 percent Internet penetration, and strong growth is projected in the mobile broadband market over the next five years based on adoption of 4G and potentially 5G technologies³². The access of local audiences to Over the Top Television (OTT) streaming services, such as Netflix, and the popularity of video-sharing platforms, such as YouTube and TikTok, have also increased Internet video content use in the country³³. These telecommunication systems and services are regulated by the Pakistan Telecommunication Authority (PTA)³⁴, which also oversees the removal and blocking of unlawful online content under the Prevention of Electronic Crimes Act (PECA) 2016³⁵. Websites and online publications do not need a licence or registration to operate in the country. But in late 2020, PTA began enforcement of its rules of business for online content regulation³⁶ despite widespread criticism of the impact of these rules on online expression and digital media³⁷. The online content regulation imposes new obligations on international social networks including domestic presence and data localisation.

The OTT platforms pose a particular challenge to the Pakistani regulatory regime because of three reasons: the borderless content they offer defies local restrictions, such as the ban on Indian films and dramas; they derive subscription revenue from local subscribers but are unregistered and largely untaxed; and, their entertainment content puts them in market competition with the TV industry which creates a regulatory overlap between PEMRA and PTA. In fact, when PEMRA tried to plan potential regulation of

²⁹ Mahmood, R. (2016). Meet the censor board chairman everyone loves to hate. The Express Tribune. <https://tribune.com.pk/story/1173606/meet-censor-board-chairman-everyone-loves-hate>

³⁰ An example of the film censor board rules is available here: https://icd.punjab.gov.pk/system/files/Punjab%20Censorship%20of%20Film%20Rules%2C%202013.doc_.pdf

³¹ PTA statistics: <https://www.pta.gov.pk/en/telecom-indicators>

³² Analysis on Pakistan's Telecoms, Mobile & Broadband Markets, 1991-2019 & 2024 Forecast. Business Wire. <https://www.businesswire.com/news/home/20191016005673/en/Analysis-on-Pakistans-Telecoms-Mobile-Broadband-Markets-1991-2019-2024-Forecast---ResearchAndMarkets.com>

³³ Butt, K. (2020). Pakistan's Internet use surges amid Covid-19 lockdown. Anadolu Agency. <https://www.aa.com.tr/en/asia-pacific/pakistan-s-internet-use-surges-amid-covid-19-lockdown/1807118>

³⁴ Pakistan Telecommunication Authority Functions. <https://www.pta.gov.pk/en/functions>

³⁵ PECA https://moitt.gov.pk/SiteImage/Misc/files/1472635250_246.pdf

³⁶ Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards), Rules 2020. <https://moitt.gov.pk/SiteImage/Misc/files/Corrected%20Version%20of%20Rules.pdf>

³⁷ Mansouri, A. (2020). Pakistanis demand social media rules 3.0 be denotified, PECA's Section 37 repealed. Digital Rights Monitor. <http://www.digitalrightsmonitor.pk/pakistanis-demand-social-media-rules-3-0-be-denotified-pecas-section-37-repealed/>

OTT and “Web TV” services in January 2020, it was discouraged by a Senate committee on the grounds that the Internet was out of PEMRA’s regulatory jurisdiction³⁸.

Pakistani authorities have not facilitated a serious deliberation on the challenges posed by media and technology convergence. In 2018, the then-information minister Fawad Chaudhry indicated that the government planned to establish a joint media regulator for broadcast, online, and print media³⁹. The draft proposal for this joint regulator was shared with stakeholders by the information ministry⁴⁰. It provoked strong criticism from the civil society⁴¹ because the proposed regulatory scheme appeared to increase government control over the press and online expression. Eventually the government did not pursue the plan. Although the rules for online content regulation do not make it clear, it is likely that content on OTT services will also be regulated by PTA in the same manner as social media content for the immediate future. However, the idea of regulatory convergence can be expected to surface again in Pakistan because many countries around the world are now considering reforms to their broadcast regulatory framework to manage online platforms.

Extralegal Measures: Despite the myriad legislative and regulatory provisions, it is important to note that State and non-state have continued to use extralegal measures to put pressure on Pakistani media sectors. The print and broadcast news media industry have been subjected to threats and intimidation, arrests, financial strangulation through controls on advertisements, and distribution disruptions⁴². Individual expression through digital media has led to the risk of online and offline violence⁴³. Entertainment content producers are also not immune to these pressures, especially when regulators do not exercise independence or take a stand for freedom of expression⁴⁴.

Where Is Independent Regulation Most Needed: TV remains the most popular medium for news and entertainment in Pakistan, with nearly 140 million viewers⁴⁵ and over 40 percent of the total media ad

³⁸ Naeem, W. (2020). PEMRA cannot regulate Web TV & OTT: Senate human rights committee. Digital Rights Monitor. <http://www.digitalrightsmonitor.pk/pemra-ott-senate-human-rights/>

³⁹ Ali, K. (2018). Govt plans new body to regulate media: Fawad. Dawn. <https://www.dawn.com/news/1439946/govt-plans-new-body-to-regulate-media-fawad>

⁴⁰ Media Matters for Democracy’s submission to Ministry of Information on PMRA draft: <http://mediamatters.pk/media-matters-for-democracys-submission-to-the-information-ministry-in-response-to-the-first-draft-of-pakistan-media-regulatory-authority-shared-by-the-information-ministry/>

⁴¹ Butler, S. (2019). Proposed media regulator provokes strong criticism in Pakistan. Committee to Protect Journalists. <https://cpj.org/2019/04/proposed-media-regulator-pakistan-strong-criticism/>

⁴² Butler, S. (2019). Why Pakistan’s crackdown on the press is getting worse by the day. The Washington Post. <https://www.washingtonpost.com/opinions/2019/07/22/why-pakistans-crackdown-press-is-getting-worse-by-day/>

⁴³ Pakistan. Freedom on the Net 2020 report. <https://freedomhouse.org/country/pakistan/freedom-net/2020>

⁴⁴ Zindagi Tamasha: Pakistan film suspended after religious uproar. BBC. <https://www.bbc.com/news/world-asia-51201994>

⁴⁵ See Baig & Cheema (2015)

spend⁴⁶. Households with television access increased by 19 percentage points between 2005 and 2019⁴⁷ and the number of cable operators in the country increased from 1300 to over 4,000 during the same period⁴⁸. The controls of broadcast media, thus, affect the access to information and entertainment for most Pakistani citizens. This mandates a review of the public interest objectives of broadcast media regulation in the country. Even though online media consumption is on the up, a discussion on digital regulation will inevitably have to address convergence with broadcast services. Therefore, the broadcast media regulatory framework is selected for further review for this policy paper. The next section offers an analysis of problems in the broadcast regulation by closely examining the role of PEMRA.

Analysis: The Broadcast Regulator’s Performance

The discussion of issues with Pakistan’s broadcast media regulatory framework, specifically the concerns about PEMRA, are divided into the following themes based on an analysis of research and reportage. (For details about the analysis methodology, please see Annexure A.)

Regulatory Independence

Any notion of PEMRA’s independence from government or political control is dispelled by the legislation that brought about its formation.

Section 5 of the original PEMRA Ordinance⁴⁹ gave the federal government the power to issue binding policy directives to the regulator. The law retained for the government the final authority on policy matters in connection with broadcast regulation. As Rehmat (2016) explained with regards to PEMRA’s content policies, the regulator’s subservience to the transient interests of the government means it is ignoring its duty to the permanent principles of public interest.

The federal government’s control of PEMRA was also consolidated in 2007 when the government and bureaucracy were linked with seven of the 12 seats on the regulator’s board⁵⁰. The federal government was allowed to appoint one full-time member to the regulator; the federal secretaries for information and interior were included in the authority, and the heads of the telecom regulator and revenue board were given seats at the PEMRA table. The federal government could also appoint two more members recommended by the PEMRA Chairman, if needed.

Some of these concessions have since been dialled back, purportedly granting more autonomy to PEMRA. The caretaker government of 2018 introduced an amendment to Section 5 and 6 (“Members of

⁴⁶ Media advertising spend FY 2018-19. Aurora. <https://aurora.dawn.com/news/1143705>

⁴⁷ Proportion of Pakistani households that own TV. Gallup Pakistan. <https://gallup.com.pk/post/30577>

⁴⁸ PEMRA annual report 2015-18: https://pemra.gov.pk/uploads/pub-rep/annual_report_2015-18/FLASH/annual_report_15-18.pdf

⁴⁹ PEMRA Ordinance as amended by Parliament in 2007: https://pemra.gov.pk/uploads/legal/Ordinance_2002.pdf

⁵⁰ *Ibid.*

the Authority”) in pursuance of a Supreme Court order⁵¹. The amendment was promulgated as a presidential ordinance in June 2018⁵². It specified that the federal government can issue directives to PEMRA regarding matters related to the constitutional right to freedom of speech but it has to specify these directions in writing. The amendment also reduced the number of PEMRA members to eight.

Four of these eight members are public representatives, one each nominated by the four provincial governments. A fifth member is to be nominated by the Pakistan Broadcasters Association. The remaining three members are: one full-time permanent representative appointed by the federal government, a federal secretary, and the PTA Chairman. Presidential ordinances lapse if they do not receive parliamentary approval⁵³, so the amendment ordinance was introduced in the Senate in July⁵⁴ and received approval from a Senate panel in August⁵⁵. It was laid before the National Assembly in September and extended for a further and final period of four months⁵⁶. It is unclear if the Parliament fully passed the amendment after that, but PEMRA’s compendium annual report⁵⁷ published in February 2019 recognises the changes in the authority’s composition and introduces its new members, indicating that the amendment’s provisions were in effect. The PEMRA website, however, continues to display 10 members including four ex-officio members and a full-time federal government appointee, which may mean it reverted to the old scheme⁵⁸.

While this is a welcome measure, it in no way satisfies all the concerns about the independence of PEMRA as the broadcast regulator.

First of all, the appointment of the Chairman and the members of PEMRA are to be made by the federal government⁵⁹. As the media commission report (2013) pointed out, the five chairmen of PEMRA appointed between 2002 and 2013 had “almost always been directly associated with the Federal Government and its various entities,” (p. 161) The current PEMRA Chairman, a former bureaucrat with a

⁵¹ PEMRA Ordinance amended following SC orders to caretaker govt. Pakistan Today. <https://www.pakistantoday.com.pk/2018/06/07/pemra-ordinance-amended-following-sc-orders-to-caretaker-govt/>

⁵² Pakistan Electronic Media Regulatory Authority (Amendment) Ordinance, 2018: <http://www.senate.gov.pk/1web/ordinance/ordIXof2018.pdf>

⁵³ Article 89 of the Constitution of Pakistan. <https://pakistanconstitutionlaw.com/article-89-power-of-president-to-promulgate-ordinances/>

⁵⁴ Amendments to PEMRA ordinance submitted to Senate. Dawn. <https://www.dawn.com/news/1419999>

⁵⁵ ‘Parliament will be taken on board in changing media regulatory mechanism’. The News International. <https://www.thenews.com.pk/print/362070-parliament-will-be-taken-on-board-in-changing-media-regulatory-mechanism>

⁵⁶ Orders of the day, 25 September 2018. National Assembly Secretariat. [http://na.gov.pk/uploads/documents/25-09-2018%20\(Tuesday\).pdf](http://na.gov.pk/uploads/documents/25-09-2018%20(Tuesday).pdf)

⁵⁷ PEMRA annual report 2015-18: https://pemra.gov.pk/uploads/pub-rep/annual_report_2015-18/FLASH/annual_report_15-18.pdf

⁵⁸ PEMRA authority members: <https://pemra.gov.pk/members.php>

⁵⁹ This is not any better than the previous language of the law that set down the appointments for the President’s office. In Pakistan’s parliamentary form of government, the presidential office is mostly ceremonial and cooperates with the demands of the executive.

background in government public relations, was appointed by a three-member government committee⁶⁰. His predecessor, a senior journalist, was also shortlisted by a government committee⁶¹. Both have had embattled tenures amid accusations of political influence on PEMRA. Secondly, the political intervention could also affect the nominations of provincial representatives to the authority. Finally, the re-appointment of Chairman and members is still possible, which is not ideal as re-appointments can be exploited as inducements to influence the officers.

The new amendment does not offer any safeguard against these concerns because it does nothing to introduce checks and balances on the appointment procedure. PEMRA rules are also silent on the appointment process. The Supreme Court had noticed this discrepancy during its hearing of the media commission case in April 2018⁶². The amendment to Articles 5 and 6 of the PEMRA Act were in response to the court censure. However, it is important to note that during the case proceedings, the argument was to remove or replace these two articles or seek parliamentary review of these provisions. Parliamentary debate on the topic at the time might have been circumvented because the National Assembly completed its term a month after the apex court's remarks and the presidential ordinance was issued during the caretaker government set up to hold the general elections. The Senate panel that reviewed the amendment ordinance between July and August 2018 only suggested one minor change in the text to clarify the number of public representatives to be nominated by each provincial government to the PEMRA board⁶³. The 14-member committee only discussed the amendment once during the two months, at a meeting where only half of its members were present. It did not publish a detailed report of its deliberations, rather just stated its unanimous approval for the amendment ordinance to be passed as a bill by the Senate.

⁶⁰ Saleem Baig appointed PEMRA chairman. The News International. <https://www.thenews.com.pk/print/323048-saleem-baig-appointed-pemra-chairman>

⁶¹ Absar Alam appointed as PEMRA chairman. The Express Tribune. <https://tribune.com.pk/story/977887/absar-alam-appointed-as-pemra-chairman>

⁶² PEMRA not an independent body: CJP. Business Recorder. <https://fp.brecorder.com/2018/04/20180405357791/>

⁶³ Report No. 02 of 2018. Senate of Pakistan. http://www.senate.gov.pk/uploads/documents/1536133372_783.pdf

International Best Practices: Independence through Appointments

UNESCO guidelines for an independent broadcast regulator offer the following recommendations for appointment of members of the regulatory authority (Salomon, 2008):

- The manner in which members of the regulatory authority are to be appointed and the terms of their appointment must be set out in legislation.
- An appointments process based on political favour or sole discretion of the President or ministers should be avoided.
- Some exemplary models of appointments are:
 - Each major political party is equally represented on the authority's board (example from Estonia).
 - The President, the Parliament, and the Government each nominate a fixed number of members — typically three each (based on example from Italy).
 - Certain sectors from civil society (for example, the judiciary, academia, trade unions, other professions) nominate the members, who are selected by a vote in the Parliament (based on example from Germany).
 - The regulator invites applications for members by publicly advertising them; the applicants are shortlisted by an independent experts' panel and final approval is given by Parliament (based on examples from Slovenia and the UK).
- Careful consideration should be given to the following questions: “What process will deliver the best group of members, who will be able to act independently, and who will have the trust and respect of the industry, the general public, and politicians?” (p. 20).
- The set of skills and experience required for the job should be specified clearly.

It is unclear whether or not the Senate panel consulted any experts on the need or nature of the changes proposed in the amendment, or if the Senators reviewed potential alternatives for ensuring PEMRA's independence from the federal government in the context of the Supreme Court media commission case. It seems unlikely that these considerations were highlighted during the panel's cursory review. Recent parliamentary discussions on PEMRA have instead focussed on the regulator's role in ensuring workers' rights at private broadcast media organisations⁶⁴, which hit a dead end in October ironically on the grounds that PEMRA had allegedly aided press censorship in the past and might misuse the law⁶⁵.

⁶⁴ Senate body on information passes bill to amend PEMRA law. The News International. <https://www.thenews.com.pk/print/706542-senate-body-on-information-passes-bill-to-amend-pemra-law>

⁶⁵ Opposition in Senate blocks passage of bill seeking to empower PEMRA. Dawn. <https://www.dawn.com/news/1587197>

Financial independence and accountability to the public are also key components of a media regulator's overall autonomy. On these fronts, PEMRA's record is sketchy. Section 17 of the PEMRA (Amendment) Act 2017 requires the regulator to publish annual reports. In February 2019, PEMRA published its first annual report in four years⁶⁶. This report covered a three-year period (2015-18), and it is the only source of information on the authority's financial details. PEMRA has not published another annual report since, and it does not provide its yearly account and audit details in a transparent and accessible manner on its website. Even though the law allows PEMRA to prepare its own budget and use licensing fees to fund its operations along with grants from the government, the profits from licensing fees are deposited to a federal consolidated fund⁶⁷. PEMRA had estimated transfers of Rs. 20 million profits to the federal fund in 2017-18 and 2018-19, according to the finance division. However, for 2015-16 and 2016-17, the regulator had recorded losses of Rs. 12 million and Rs. 27 million respectively after taxes, according to its annual report. The regulator has not commented in detail on the nature of its financial situation separately.

A broadcast regulator is also supposed to maintain a balance in its relations with the industry, protecting the public interest from industry pressures on the one hand and facilitating the industry to follow professional standards on the other. But since the establishment of PEMRA, the legislative and enforcement history of broadcast regulation in Pakistan shows a backsliding on measures that could have protected media pluralism and content diversity in the country. Stuck between the State and the emerging lobbies of the broadcast sector, the regulator struggled to respond to ownership concentration, distribution disruptions, technological limitations, and the threats to freedom of expression.

Consolidation and Cross-ownership Concerns

The original PEMRA Ordinance and its accompanying rules⁶⁸ issued in 2002 prohibited cross-ownership, monopolisation, unfair trade practices, and the "undue concentration" of media ownership. These restrictions were imposed presumably to promote competition in the media market and ensure source diversity. Section 4 of the 2002 rules explained that circumstances for undue concentration would exist if an entity is in position to control licences whose combined area population exceeds 35 percent of Pakistan's population or if it has more than one radio or one TV licence for the same area⁶⁹. Section 5 of the original rules defined cross-ownership to exist if one entity controlled both (a) a newspaper and a radio/TV station, (b) a TV and a radio station, or (c) an advertising agency and a radio/TV station⁷⁰.

⁶⁶ PEMRA had released a report in 2015 that had covered a five-year period from 2010 to 2014. For details, see: <https://pakistan.mom-rsf.org/en/context/law/>

⁶⁷ See pages 13-15 of explanatory memorandum for federal receipts by the Finance Division. Federal budget 2018-19. http://finance.gov.pk/budget/Explanatory_Memorandum_2018_19.pdf

⁶⁸ The Pakistan Electronic Media Regulatory Authority (Media Ownership and Control) Regulations, 2002: <http://nasirlawsonline.com/laws/pemocr.htm>

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

Case study: Turning a Blind Eye to Cross-ownership

The 2002 PEMRA regulation barred print media owners to operate a broadcasting service in the country. But one legacy print media enterprise found a lacuna in the cross-ownership provisions. PEMRA was mandated to issue licences to local companies for landing rights of foreign channels. The Jang group of publications, one of the country's largest and oldest media companies, circumvented the cross-ownership protection by using the landing rights licence. It launched its Geo TV channel in 2002 as a satellite network beamed back to Pakistan from the UAE. Geo achieved wide distribution over cable networks quickly and became the fastest growing network in the country (Hassan, 2017).

The Geo/Jang links were obvious to many, but Akhtar (2019) suggests that Geo was allowed to operate by PEMRA because it was mutually beneficial for the Musharraf government and the media group. In time, this relationship would sour tremendously. But in the first few years, Geo's mix of news and entertainment programmes made it a strong competitor for international satellite TV channels in Pakistan. The network offered a stark contrast to the State-run PTV, whose news division never diverged from the official line and whose entertainment programmes had lost much of their past glory by the 2000s. The differences were most obvious in the news and current affairs department. Geo's news operations, which would later be converted into a 24-hour news channel, quickly established a nationwide network of bureaus and journalists by using the Jang group's existing expertise of newsgathering and news distribution. The more independent take on domestic politics that was previously limited to print audiences now started becoming a household feature, increasing the vibrancy of political debate and the demand for watchdog journalism.

Alongside Geo, the ARY Digital Network, which had started operations in the UK in 2000 by positioning towards the Pakistani diaspora, began news broadcasts in the country first as the ARY One World transmission and later in 2004 as ARY News. Geo was not the only TV network with links to legacy print media. Aaj News, launched in 2005, was associated with the media group that published the renowned Business Recorder newspaper. PEMRA similarly turned a blind eye towards the cross-ownership concern in Aaj TV's case, indicating a pattern of regulatory disregard. The cordial relations between the broadcasters and the government were obvious when the Pakistan Broadcasters Association was formed in 2005 and its first president, Geo's Mir Shakilur Rehman, thanked Musharraf and his government ministers for their steps to improve the broadcast media sector.

The success of Geo, Aaj News, and ARY's adversarial editorial positions and national news coverage must have tempted other print media groups to yearn for the lucrative broadcast news market. Whether or not the business interest was a source of motivation for the federal government and the regulator to remove cross-ownership restrictions is difficult to say. But when the PEMRA ordinance was amended in 2007 to relax ownership rules, the first beneficiaries were print media enterprises. Within a year, the managements of Express, Dawn, Nawai-Waqt and Dunya newspapers all got broadcast licenses and now operate multiple news and entertainment channels (Rasul & McDowell, 2012). This regulatory move started the process of turning the Pakistani media market into an oligopoly (Alam, 2010).

However, Akhtar (2019) notes that as early as August 2003 both the federal information minister⁷¹ and the information secretary had hinted about plans to drop the cross-ownership clause and allow print media owners to operate TV stations. The information minister claimed in 2004 that cabinet had approved the relaxation in ownership rules to aid the development of the broadcast sector⁷². But scholarship is divided about the motives behind opening the market to cross-ownership. Rasul and McDowell (2012) imply the government wanted a quid pro quo: favourable coverage in return for a piece of the broadcast pie. So the regulator entertained the large print media holdings in the country. Hassan (2017) suggests this was part of the regime’s seemingly “confused” media policy, which perhaps meant to ingratiate the Musharraf government policies with the press and also boost the economy by allowing foreign and local investments in the media sector.

However, when the amendment to the regulatory framework reached the Parliament in 2005, it was clear that alongside the change in ownership rules the government also wanted to increase its control of PEMRA to rein in popular voices on the airwaves⁷³. The bill became a bone of contention between the National Assembly and Senate⁷⁴, and was finally passed and notified in April 2007⁷⁵. As mentioned previously, it increased the government’s hold over PEMRA’s board. It also excised language from Section 23 (“Exclusion of monopolies”) to imply that one licensee could own and operate more than one media enterprise and by including a vague and benign directive for a cross-ownership licensee to not impede fair competition⁷⁶. The 2009 rules of business issued under the amended regulatory law allowed one media company to own or operate up to four satellite TV channels, four radio stations, and two foreign channels through landing rights⁷⁷. Cross-media owners are required to have separate editorial boards, monitoring facilities, management structures, and accounting records of their multiple media properties. However, PEMRA offers no evidence that it has either conducted audits of compliance to these requirements or enforced them in any way or manner. It is also not clear whether or not PEMRA sought the advice of the commission competition during the awards of broadcast licences or considered the licensing decisions in light of the Competition Act 2010.

The new policy resulted in the concentration of media ownership, with eight leading media groups controlling 29 TV media properties altogether by the year 2014 (Baig & Cheema, 2015). Only two of these media groups were regional-language media. A majority of the over 100 satellite TV channels

⁷¹ Government allows media cross-ownership. IFEX. <https://ifex.org/government-allows-media-cross-ownership/>

⁷² Pemra laws will be amended: Rashid - Cross-media ownership. Dawn. <https://www.dawn.com/news/356922>

⁷³ Passing of media bill a setback to press freedom, says IFJ. IFEX. <https://ifex.org/passing-of-media-bill-a-setback-to-press-freedom-says-ifj/>

⁷⁴ Shareef, A. (2005). Pemra bill outlives 90-day life in Senate. Dawn. <https://www.dawn.com/news/153741/pemra-bill-outlives-90-day-life-in-senate>

⁷⁵ Act No. II of 2017. National Assembly of Pakistan. http://www.na.gov.pk/uploads/documents/1321341849_903.pdf

⁷⁶ *Ibid.*

⁷⁷ Distribution service license holders are barred from owning broadcast licenses. For details, see PEMRA Rules 2009. https://pemra.gov.pk/uploads/legal/PEMRA_Rules_2009.pdf

currently licensed by PEMRA have nationwide coverage through cable networks⁷⁸. These channels compete for roughly the same audiences and the TRP (Television Rating Point) metric used for their relative audience measurement is notoriously flawed, unrepresentative, creates media blindspots, and has been the subject of controversy in the past (Baig & Cheema, 2015; Niazi, 2019). The Media Ownership Monitor found that the ownership concentration is mirrored by an audience concentration: A majority of the audience share is divided among the top four media outlets for each media type (print, TV, radio, and online)⁷⁹. Moreover, the top four media outlets for TV, print, and online news are almost accounted for by only seven private media groups⁸⁰. The monitor stated that the high concentration of media ownership in Pakistan “restricts sources of information available to the public, thereby limiting news-and-opinion diversity and pluralism in the country’s media landscape”. Yusuf (2013) stated that “exorbitant license fees restrict the variety of new entrants to the media market, and new players often have political backing.” (p. 100). The largest media groups also exercise political influence of their own and some suggest that news channels have been a means for owners to gain clout in the corridors of power⁸¹.

The 2007 amendments to PEMRA’s parent law were passed during an extraordinarily turbulent year, which saw the suspension of the Supreme Court Chief Justice Iftikhar Chaudhry, the lawyers’ movement to restore the top judge, the Lal Masjid siege in the capital, a militant insurgency, and the November imposition of emergency rule by President Musharraf in a desperate attempt to protect his reign. The private TV news outlets were on top of these developments, reporting live, wall-to-wall coverage despite facing censorship attempts⁸², threats, and attacks⁸³ throughout the year⁸⁴. These pressures culminated in a coercive ban on all private news channels on the day the emergency was imposed⁸⁵ and it arguably set in motion a new regime of information control that continues to the present day.

Enforcement, Content Restrictions, and Censorship

PEMRA’s enforcement action now extends to broadcast media content. Broadcast licence holders are reminded of the limits to their content through Sections 19, 20, 27 of the PEMRA Act, Section 15 of the PEMRA Rules 2009, the Electronic Media Code of Conduct 2015, and Part V of both the television and

⁷⁸ FM radio stations have geographically-bound licenses.

⁷⁹ Ownership concentration. Media ownership monitor. <https://pakistan.mom-rsf.org/en/findings/concentration/>

⁸⁰ *Ibid.*

⁸¹ Rahman, A. N., & Khan, G. (2013). Blurred vision: Where is Pakistani television headed? The Express Tribune. <https://tribune.com.pk/story/543008/blurred-vision>

⁸² Transmission of leading television news channels blocked. IFEX. <https://ifex.org/transmission-of-leading-television-news-channels-blocked/>

⁸³ Armed men attack Aaj TV office. Dawn. <https://www.dawn.com/news/246780/armed-men-attack-aaj-tv-office>

⁸⁴ Attacks on the press 2007: Pakistan. Committee to Protect Journalists. <https://cpj.org/2008/02/attacks-on-the-press-2007-pakistan/>

⁸⁵ Abbas, M. (2010). Remembering Pakistan’s bad old days of November 2007. Committee to Protect Journalists. <https://cpj.org/2010/11/remembering-pakistans-bad-old-days-of-november-200/>

radio operations regulations issued in 2012⁸⁶. The insistent reminders should be an indicator that content regulation forms the core of PEMRA's enforcement agenda.

According to PEMRA's 2015-18 report, its monitoring wing reviews the content of "more than 50 channels" 24/7⁸⁷ and analyses it to check compliance with the 2015 broadcasting code. Out of these 50 channels, 26 news channels are the subject of close scrutiny and the monitoring wing presumably prepares reports based on extracts from the shows on these news channels. "The extracts are subsequently forwarded through SMS and WhatsApp to the relevant quarters which keep them abreast with latest information as well as trends."⁸⁸ This is an extremely vague yet concerning statement. The PEMRA annual report offers no explanation about the "relevant quarters" it refers to, the nature of the trends and information, and the purpose for which these are shared over messaging services.

The monitoring wing also reviews the content of drama serials aired on entertainment channels for their themes, use of language, and adherence to the "socio-cultural norms of Pakistan". Altogether, the surveillance by the monitoring wing presents an invasive approach, especially since the regulatory framework includes a council of complaints system to receive and hear public complaints about TV and radio broadcast content⁸⁹. Between 2015 and 2017, the six councils received 462 complaints and resolved 387 of these, according to PEMRA⁹⁰. Even though the regulator has set up a records management system for the councils, their detailed orders and decisions are not made public on the PEMRA website. Typically PEMRA enforcement actions are publicised through its Twitter account, which shows a high degree of variation in the amount of details shared about individual cases of violation⁹¹.

The violations of the code of conduct found by the monitoring wing are forwarded to the regulator's enforcement wing. According to PEMRA's own account, the enforcement wing issues advice, warnings, and show-cause notices to broadcasters found in violation. The enforcement wing can also fine broadcasters up to Rs. 1 million and suspend programmes or licences.

In around three years up until 2018, PEMRA prohibited 15 TV programmes for various reasons including anti-judiciary comments, indecent content, derogatory remarks, hate speech, and violence; seven advertisements were edited or barred for objectionable content (including a "indecent" ice-cream ad⁹²), and suspended nine TV channels for reasons including vulgarity, unethical news reporting, speculation about the judiciary, and objectionable language. In 2019, PEMRA issued at least 20 show-cause notices, five advisories, and nine directives, whose contents were seen by the press as attempts at curtailing

⁸⁶ See footnotes 44, 73, and 19 as well as https://pemra.gov.pk/uploads/regulations/Radio_Broadcast_Station_Operations_Regulation_2012.pdf and https://pemra.gov.pk/uploads/regulations/Television_Broadcast_Station_Operations_Regulations_2012.pdf

⁸⁷ See page 40 of PEMRA report: https://pemra.gov.pk/uploads/pub-rep/annual_report_2015-18/

⁸⁸ *Ibid.*

⁸⁹ Council of complaints: <https://pemra.gov.pk/coc.php>

⁹⁰ See Page 39 of the PEMRA report: https://pemra.gov.pk/uploads/pub-rep/annual_report_2015-18/

⁹¹ PEMRA Twitter account: <https://twitter.com/reportpemra>

⁹² PEMRA gives notice to ARY for airing 'seductive' ice cream ad: <https://web.archive.org/web/20190325215453/https://www.pakistantoday.com.pk/2017/07/17/pemra-gives-notice-to-ary-for-airing-seductive-ice-cream-ad/>

freedom of expression and moral policing by the regulator⁹³. As is obvious from the actions, PEMRA regulates the content of news, entertainment programmes, and advertising. For the latter two types of content, it has not developed any classifications, age-based restrictions or watershed timings. Its code only advises a disclaimer for content not suitable for children. Some broadcasters now include disclaimers before shows to protect them from liability, but content ratings are unavailable and not displayed regularly during the programmes, such as after ad intervals. PEMRA's orders and notices also do not show any realisation of how the regulatory actions might affect freedom of speech and press freedom in the country. Instead, the language of the notices seems to show the regulator's literal and broad interpretation of the broadcasting and advertising codes.

⁹³ Pakistan Media Legal Review. Coercive censorship, muted dissent. IRADA: <https://irada.org.pk/wp-content/uploads/2020/02/Pakistan-Media-Legal-Review-2019.pdf>

Who Can Speak on a News Talk Show?

TV news networks in Pakistan are dominated by political current affairs, and the past few years have witnessed major developments on the country's political landscape. The aftermath of the Panama Papers investigation, the dismissal and disqualification of prominent politicians, rigging allegations about the 2018 elections, and the accountability drive against political corruption have all involved litigation. The political drama, therefore, has also brought the judiciary into the limelight. The court judgements and the conduct of judges of both the trial courts and the superior judiciary have all been the subject of news and analysis on an almost equal level as the activities of public figures in politics. The intensity of this spotlight reached its peak in July 2019 when an embattled opposition politician accused an accountability court judge of malfeasance during a press conference that went live on most TV channels

PEMRA quickly issued show cause notices to TV channels, citing the regulatory law's section about the general terms and conditions of a broadcast licence along with several clauses of the broadcasting code. In a tersely worded tweet, the regulator's rationale for the notices was that the live telecast was in violation of PEMRA rules because their content — the politician's comments — was simply “against judiciary and state institutions”. In the detailed show-cause notice which was only shared with the TV channels but not made public, PEMRA reportedly claimed the content was likely to incite violence, cast aspersions on the judiciary, be defamatory, breach privacy, and jeopardise ongoing trials — all fundamental principles in the code that the licencees have to ensure are not breached in their content. The regulator also blamed the broadcasters for insufficient editorial oversight, ineffective delaying mechanism on a live broadcast to self-censor violative content, failure of in-house controls, breach of fairness and balance in airing allegations, and hate speech. No explanation or justification was shared by PEMRA about how it decided all these violations were committed, which parts of the telecast corresponded with which violations, and how it determined the telecast was not in the public interest. The show-cause notices, which went out to 21 news channels, also reportedly referenced a 2018 court order about concerns regarding biased programming to claim the live broadcast of the press conference was in contempt of court.

PEMRA's show-cause notice exposes the farcical nature of the regulator's decision-making process and enforcement. But, over the next four months, PEMRA continued with similar enforcement actions. It fined a channel for not including the National Accountability Bureau's viewpoint in a critique of the bureau's performance and sent a notice to another channel for the same; It also issued notices to channels for inviting Indian guests to their talk shows, for sharing allegedly baseless analysis regarding the dam fund (initiated by a former Supreme Court Chief Justice), and for airing “fake news”. All these actions were related in some way with the judiciary, the accountability bureau or the government and its policies (such as that regarding Indian content, which was interpreted by PEMRA to include a ban on Indian commentators on talk shows). All of these actions were also with regards to news and current affairs programmes.

Finally, on Sunday October 27, PEMRA issued a new directive to the media to “refrain from airing discussion, analysis, speculations etc. on sub-judice matters” after the Islamabad High Court (IHC) had asked the regulator for a report on actions taken against talk shows that may have maligned the judiciary through speculative

Had PEMRA been an independent regulatory body, its obsession with content regulation could be ascribed solely to its vision. But with serious concerns about the regulator's independence, it is important to look at other factors that have contributed to the increasing focus on content in the regulatory scheme. It can be argued that the seeds of the content restrictions were sowed in 2007, first through the April 2007 amendments to the PEMRA ordinance, directions to prohibit live coverage of anti-government protests, then the now-defunct June 2007 ordinance⁹⁴, and finally by forcing broadcasters to sign a code of conduct as a condition to let them back on air after the media blackout of November 3⁹⁵. The rise in militancy and terrorist activities in Pakistan between 2007 and 2010 provided a justification on national security grounds to check media coverage of the law and order situation. A code of conduct for broadcasters was included in the 2009 rules of business⁹⁶. This code was more of a set of guidelines that identified 16 general areas, including discrimination, defamation, and incitement to violence, that broadcasters must avoid in their programmes. In its annual report, PEMRA admits that all the decisions made under the code were challenged in the court. If these legal challenges to content restrictions led to any rulings, PEMRA does not appear to have relied on them as precedent to reduce or reform its content regulation approach.

Between 2010 and 2015, the Pakistan Broadcasters Association (PBA)⁹⁷ and the Ministry of Information⁹⁸ claimed on various occasions⁹⁹ that they had come up with separate codes of conduct for TV broadcasters. The media commission report (2013) had noted that self-regulation did not appear capable to be applied as an exclusive form of content regulation, given the objective conditions of the media industry in Pakistan and the vulnerability of media content to misuse for promotion of conflict and violence. The 2014 Army Public School massacre led to a further rethink of the broadcast content in the context of reporting on terrorism and armed conflict. But even before that, both PEMRA and the media industry had become heavily politicised in the aftermath of Geo anchor Hamid Mir's shooting¹⁰⁰ and during the anti-government demonstrations in the summer¹⁰¹. Once again, like the events of 2007, the tension was rooted in the news and current affairs content broadcast on mainstream TV channels. Perhaps in anticipation of losing control of the media, the prime minister had formed a committee to deliberate on

⁹⁴ Sweeping curbs on Media. Dawn. <https://www.dawn.com/news/250407/sweeping-curbs-on-media-amended-ordinance-empowers-pemra-to-seal-premises-seize-equipment-protests-by-journalists-rights-activists>

⁹⁵ Attacks on the press 2007: Pakistan. Committee to Protect Journalists. <https://cpj.org/2008/02/attacks-on-the-press-2007-pakistan/>

⁹⁶ See Schedule A of the Rules 2009: http://pid.gov.pk/uploads/media_laws/PEMRA_Rules_2009.pdf

⁹⁷ PBA has worked out code of conduct for media. <https://www.pakistanpressfoundation.org/pba-has-worked-out-code-of-conduct-for-media/>

⁹⁸ Government has finalised code of conduct for private TV channels. <https://www.pakistanpressfoundation.org/govt-has-finalised-code-of-conduct-for-private-tv-channels/>

⁹⁹ Senate panel asks government to impose media code by 15th. <https://www.pakistanpressfoundation.org/senate-panel-asks-govt-impose-media-code-15th/>

¹⁰⁰ Leading Pakistani Geo TV channel is ordered off air. BBC. <https://www.bbc.com/news/world-asia-27733077>

¹⁰¹ Ansari, N. (2014). Not fit to print: An insider's account of Pakistani censorship. Foreign Policy. <https://foreignpolicy.com/2014/11/20/not-fit-to-print-an-insider-account-of-pakistani-censorship/>

a broadcasting code earlier that year¹⁰². The committee had prepared a draft code by the time the Supreme Court, displeased at both the reporting of court proceedings in the media¹⁰³ and the commentary on court decisions in the nightly talk shows, directed PEMRA and the government in 2015 to take up the media commission's recommendations, work out a broadcast code with the PBA¹⁰⁴, and get it enforced¹⁰⁵. The 2015 code of conduct emerged in this context¹⁰⁶, with a particular focus on curbing hate speech, restricting violent content, and imposing controls on news content, including the coverage and analysis of sub-judice matters and ongoing trials and investigations. PEMRA has been emboldened to enforce the broadcast code because courts have encouraged it¹⁰⁷ through observations and favourable rulings in cases related to content critical of the judiciary¹⁰⁸. One 2018 Supreme Court judgement about reporting on sub-judice matters is often cited by PEMRA¹⁰⁹.

¹⁰² PM forms body on media code of conduct. The News International. <https://www.thenews.com.pk/archive/print/637821-pm-forms-body-on-media-code-of-conduct>

¹⁰³ SC irked by misreporting of its proceedings. <https://www.pakistanpressfoundation.org/sc-irked-misreporting-proceedings-2/>

¹⁰⁴ SC asks PEMRA to put names of media owners, officers on website. <https://webcache.googleusercontent.com/search?q=cache:slXDVfktT1AJ:https://www.thenews.com.pk/print/43139-sc-asks-pemra-to-put-names-of-media-owners-officers-on-website+&cd=2&hl=en&ct=clnk&gl=pk>

¹⁰⁵ SC orders TV channels to stick to code of conduct. Dawn. <https://www.dawn.com/news/1201592>

¹⁰⁶ Govt unveils PEMRA's fresh code of conduct. The Express Tribune. <https://tribune.com.pk/story/942083/govt-unveils-pemras-fresh-code-of-conduct>

¹⁰⁷ Hussain, S. S. (2018). SC directs PEMRA to implement code of conduct. The Nation. <https://nation.com.pk/09-Nov-2018/sc-directs-pemra-to-implement-code-of-conduct>

¹⁰⁸ Supreme Court upholds PEMRA ban on Aamir Liaquat's 'Aise Nahin Chalega'. The Express Tribune. <https://tribune.com.pk/story/1320557/supreme-court-upholds-pemra-ban-aamir-liaquats-aise-nahin-chalega>

¹⁰⁹ SC directs Pemra to take action against TV channels airing discussions on sub judice matters. Dawn. <https://www.dawn.com/news/1444384/sc-directs-pemra-to-take-action-against-tv-channels-airing-discussions-on-sub-judice-matters>

International Best Practices: Public Interest, Transparency, and Consistency

PEMRA might defend itself against the critiques of its content regulation regime by pointing to examples in other countries where broadcast regulators keep an eye on TV and radio content. One such significant example is the Office of Communications, or Ofcom, in the UK, which is a joint communications regulator that looks after the broadcast, telecommunications, broadband Internet, and postal services and has recently also been recommended to conduct content regulation on the Internet. In addition to ensuring fair market competition and media diversity, Ofcom also tries to make sure that “viewers and listeners are protected from harmful or offensive material on TV, radio and on-demand; (and that) people are protected from unfair treatment in programmes”. A closer examination of the process followed by Ofcom for broadcast content regulation provides context for several issues with the PEMRA code.

In terms of similarities, both regulators have issued broadcasting codes and guidance for broadcasters. In PEMRA’s case, this has been in the form of physical sessions with media organisations. Ofcom supplies detailed written guidance related to at least 11 areas of programming. Both regulators also have a complaints mechanism. The PEMRA code defines public interest in terms of permissible programming and includes sections for the protection of children. The Ofcom code also deals with protection of children and protection of the public from harm. Both regulatory codes do not extend to the public service broadcasters in the respective countries.

There are, however, several major differences in the way the Ofcom and PEMRA see their broadcasting codes. Ofcom’s code is built around protection of the TV and radio audiences; it leads with sections on protection of under-18s, harm and offence, crime, disorder, hatred, and abuse. In contrast, the top principles in Pakistan’s broadcasting are Islamic values, ideology of Pakistan, treason, national security, respect for religion and sectarian harmony, and decency. Protection of children is mentioned half way through the document, and the public interest is defined in Section 21 (out of 24 sections) almost as an afterthought. This gives the impression that the PEMRA code is skewed towards control whereas the Ofcom code has positioned itself towards protection of the public from harmful content.

The Ofcom guidance is also normative and extends to TV, radio, and on-demand services. In the case of harm and offence, the guidance acknowledges that “the rules and this guidance cannot anticipate every situation. Moreover, social mores and sensitivities change both over time and in response to events.” On the other hand, PEMRA’s guidance on the electronic media code of conduct is prescriptive and its modules for the sessions with media organisations are designed to train broadcasters to follow the rules. One module even mentions “self-censorship” mechanisms for media organisations through in-house monitoring teams and time delay mechanisms.

Another important difference between the two regulators is in the handling of complaints. PEMRA has developed a surveillance infrastructure to monitor the content of hundreds of news programmes, advertisements, and entertainment dramas every week. This leads to suo moto actions initiated by the regulator against broadcasters. The public complaints that are forwarded to the council of complaints become almost secondary in this system. In fact, as Abrar (2016) has noted the councils are only authorised to recommend actions to the authority for the complaints they process, which means the final decision to act against violators still rests with the PEMRA

More recently, PEMRA's drive against entertainment content has also picked up steam. In just a two-week period in 2020, the electronic media regulator directed entertainment channels¹¹⁰ to bring their drama scripts in line with Pakistani values, blocked the repeat telecasts of two drama serials¹¹¹, banned an ARY Digital drama serial¹¹² as well as a TikTok-related TV show¹¹³, and released an advisory for broadcasters to review advertisements¹¹⁴ in the aftermath of the Gala biscuit ad controversy. During this short period, the regulator also decided to form an entertainment committee to make an effective policy against indecent and immoral content in TV dramas.¹¹⁵ PEMRA's enthusiasm to regulate entertainment content for sociocultural values begins to make sense in the context of the concerns of the prime minister¹¹⁶, again indicating that PEMRA may not be free of government influence.

However, many of PEMRA's orders are routinely challenged by the broadcasters in court¹¹⁷. Even regarding licensing issues and fine collections, TV channels have received stay orders from courts to continue their transmissions even after suspension orders from the regulator¹¹⁸. The litigation issue led Abrar (2016) to recommend specialist tribunals to process media-related complaints, a proposal that was picked up by the federal cabinet in 2019 as a mechanism external to the broadcast and print media regulators¹¹⁹. But the proposal was unanimously rejected by media bodies, journalist trade unions, political parties, and other civil society groups, which termed it a government move to silence the independent press¹²⁰. The reaction to the government's move indicated the trust deficit that exists between the media and the authorities, especially when the government tries to impose a policy measure without

¹¹⁰ Chairman PEMRA statement about themes of drama serials. PEMRA official Twitter account. Tweet in Urdu: <https://twitter.com/reportpemra/status/1299310795847864322>

¹¹¹ Ban on repeat telecast of two shows. PEMRA official Twitter account. Tweet in Urdu: <https://twitter.com/reportpemra/status/1301820758637842432>

¹¹² PEMRA ban on ARY Digital show. PEMRA official Twitter account. Tweet in Urdu: <https://twitter.com/reportpemra/status/1304039044398092288>

¹¹³ PEMRA press release about ban on TikTok related show on Bol. PEMRA official Twitter account. Tweet in Urdu: <https://twitter.com/reportpemra/status/1304375769339244544>

¹¹⁴ Hussain, J. (2020). PEMRA asks broadcasters, advertisers to review biscuit ad following complaints. Dawn. <https://www.dawn.com/news/1583559>

¹¹⁵ PEMRA to form policies against 'immoral', 'indecent' drama content. Samaa. <https://www.samaa.tv/news/pakistan/2020/09/pemra-policies-dramas/>

¹¹⁶ Abbasi, A. (2020). Imran wants to put an end to obscenity, TikTok banned. The News International. <https://www.thenews.com.pk/print/720452-imran-wants-to-put-an-end-to-obscenity-tiktok-banned>

¹¹⁷ Cheema, U. (2017). PM wants PEMRA to withdraw 500 cases. Here is why. The News International. <https://www.thenews.com.pk/print/252806-pm-wants-pemra-to-withdraw-500-cases-here-is-why>

¹¹⁸ See footnote 117 as well as PEMRA tweet about restoring Bol transmission on Sindh High Court's stay order after PEMRA suspended its license for non-payment of nearly Rs. 5 million in fines. PEMRA official Twitter account. Tweet in Urdu: <https://twitter.com/reportpemra/status/1337357416002969602>

¹¹⁹ Raza, S. I. (2019). Cabinet approves plan to form 'media courts'. Dawn. <https://www.dawn.com/news/1505851>

¹²⁰ Political parties, HR, media bodies reject media courts. The News International. <https://www.thenews.com.pk/print/528793-political-parties-hr-media-bodies-reject-media-courts>

consultation with the media stakeholders. In the face of the backlash, the government appeared to backtrack on the idea and attempted to appease the working journalists¹²¹.

¹²¹ Wasim, A. (2019). Final draft of bill on media courts not yet ready: Firdous. Dawn. <https://www.dawn.com/news/1506250>

Authorised Media Blackout and Judicial Censure

In early October 2017, the government hastily passed an amended elections law from the National Assembly. The law was controversial in the prevailing political climate of the country, but one modification started a new dispute. Opposition legislators pointed out that a change had been made in the candidacy form prescribed by the law whereby election candidates would now only declare their belief in the finality of the Prophet Muhammad (PBUH) rather than swear a formal oath. The government denied any malicious intent. But *khatam-e nabuwat* is a sensitive religious topic, being on the wrong side of which could often have severe political and personal ramifications in Pakistan. The issue had already invited criticism on social media when the House Speaker announced the form would be restored to its original condition, which was done promptly. But the issue did not go away as the government had expected, and soon the broadcast media was involved in the kerfuffle.

By the end of October, religious activists had started anti-government protests in the capital over the now-rescinded change and on November 8 a rally of religious parties reached Islamabad from Lahore to begin a sit-in at Faizabad. Led by the relatively unknown Tehreek-e Labbaik group, the protesters demanded the resignation of the law minister. Over the next three weeks, the sit-in paralysed life and the transport network in the capital. The organisers issued provocative speeches to stoke the religious sentiments of their followers, even going so far as to incite violence against the law minister and his family. The saga played out on television as the government representatives and opposition politicians as well as the Islamabad High Court stepped in with statements and observations. After directions from the high court to evict the protestors, government negotiations with the sit-in organisers failed and several reminders to the demonstrators to leave peacefully went unheard. Law enforcement launched an operation to clear the area on November 25. While the crackdown failed to completely disperse spectators, PEMRA issued a notification to TV channels on the same day to “refrain from live coverage” of the police action citing Section 8(8) of the broadcast code of conduct and several channels were taken off the airwaves. The media blackout led to more rumours and failed to curb unrest, which spilled on to other cities and the law minister’s house was attacked in Punjab by the sit-in sympathisers.

The protest finally ended two days later when the government gave in to the demands of the demonstrators in a pact brokered by the army. Six days before that, the Supreme Court had taken a suo motu notice of the demonstration in the public interest and to determine what steps were taken by the government during the sit-in to ensure the protection of the constitutional rights of the citizens. The court also asked PEMRA about actions it took against TV channels whose media coverage of the sit-in may have relayed the hatred, abuse, and incitement to violence promoted by the protest organisers.

The court’s 10 hearings were spread over a year and its detailed verdict was released in February 2019. Taking stock of the responsibilities of TV channels and the duties of PEMRA, the court noted that “PEMRA abdicated its statutory duty” by not taking action against broadcasters that violated the terms of their licences during the coverage of the sit-in protest. It also found that PEMRA “failed to protect the legitimate rights of its licensed broadcasters” whose services were interrupted by cable operators in some parts of the country. The court directed PEMRA to proceed against broadcasters who violate the regulations by broadcasting messages that advocate or incite the commission of an offence. The judgement also stated, “Cable operators who stopped or interrupted

While on the one hand the media industry challenges PEMRA’s regulatory alacrity, on the other hand the media organisations also remain vulnerable to “extralegal techniques” in the form of censorship, self-censorship, and other forms of pressures and intimidation¹²². Examples of such extra-regulatory pressures are aplenty and their record now dates back over a decade. But the incidence has increased in recent years in the context of escalating conflicts between the different stakeholders of power in the country (Alam, 2019). These incidents include online and offline attacks on the press¹²³, murders¹²⁴ and abductions¹²⁵ of journalists, withdrawal of government advertisement to exert financial pressure¹²⁶, interference with news programming¹²⁷, and the abrupt blocking of news channels¹²⁸. For the latter, the most common tactic employed, allegedly by State functionaries, is to coerce cable operators to either block the transmission of a persecuted TV channel or relegate its position in the channel directory to ensure that audiences do not discover it.

The cable distribution system, which supplies broadcast transmission to 65 percent of viewers according to PEMRA’s own survey¹²⁹, has served as a simple point of control for powerful interest groups to circumvent regulatory reprimand and cut media access to the public. The cable networks in Pakistan have also become an awkward but significant part of the political economy of the media. The 4,060 licensed cable operators are unionised and present a major lobby in the broadcast sector because two-thirds of PEMRA’s annual income is derived from licensing fees of cable operators. Where the cable operators might have turned¹³⁰ or been turned¹³¹ into tools for broadcast censorship, their demands and their business concerns might have also affected the introduction of new broadcast technology to the country.

Technology and Convergence

¹²² Akhtar (2019) counts violence against journalists, disruption to cable broadcasts and newspaper circulation, and withdrawing advertisements as extralegal techniques to capture media in Pakistan.

¹²³ UN expresses concern over attacks on journalists, rights activists in Pakistan. Dawn. <https://www.dawn.com/news/1578583/un-expresses-concern-over-attacks-on-journalists-rights-activists-in-pakistan>

¹²⁴ 33 journalists killed in Pakistan in past six years: report. Dawn. <https://www.dawn.com/news/1514131>

¹²⁵ Abi-Habib, M. (2020). Abductions, censorship and layoffs: Pakistani critics are under siege. The New York Times. <https://www.nytimes.com/2020/08/03/world/asia/pakistan-media-abductions.html>

¹²⁶ Pakistan government suspends advertising in 2 independent media groups . Committee to Protect Journalists. <https://cpj.org/2020/03/pakistan-government-suspends-advertising-in-2-inde/>

¹²⁷ Zardari’s interview censored for ‘violating NAB, PEMRA, NA rules’: Firdous. Pakistan Today. <https://webcache.googleusercontent.com/search?q=cache:rghCMduwMbkJ:https://www.pakistantoday.com.pk/2019/07/03/zardaris-interview-censored-for-violating-nab-pemra-na-rules-firdous/+&cd=1&hl=en&ct=clnk&gl=pk>

¹²⁸ News TV blackouts in Pakistan draw fresh accusations of censorship. Reuters. <https://www.reuters.com/article/us-pakistan-media-idUSKCN1UQ1GD>

¹²⁹ See Page 13 of the PEMRA report: https://pemra.gov.pk/uploads/pub-rep/annual_report_2015-18/

¹³⁰ Angry cable operators may shut down Geo TV. Samaa TV. <https://www.samaa.tv/news/2014/05/angry-cable-operators-may-shut-down-geo-tv/>

¹³¹ Television news channels go off air in Karachi for 6 hours. <https://www.pakistanpressfoundation.org/television-news-channels-go-air-karachi-6-hours/>

By 2013, the Pakistani TV broadcast sector had reportedly hit the proverbial brick-wall in terms of distribution technology¹³². There were more licensed satellite TV channels than the carrying capacity of the analog cable system used to transmit the TV signals. Moreover, all these channels are transmitted as “free-to-air” so while audiences are only paying subscription fees to cable operators to get access to over 80 channels, the broadcasters themselves had no way to charge for their content and the estimated annual turnover of the cable distributors was higher than the annual ad spend on TV (Baig & Cheema, 2015). A switchover of the cable networks to digital technology could solve these problems by providing increased channel carrying capacity, better quality, and pay-per-view or subscription options for broadcasters. The digital cable system could also supply another way of collecting audience data and reduce the reliance of TV channels on TRPs, which create a skewed programming focus that ignores non-urban and regional-language audiences (Baig & Cheema, 2015).

As a signatory of the 2006 Geneva Agreement of the International Telecommunication Union (ITU), Pakistan had promised to switch from analogue to digital television broadcasting by June 2015¹³³. In its 2009 annual report, PEMRA approved a two-phase “digitalisation” plan for cable operators (Khan, 2010, p. 4). In the first phase from January 2009 to December 2011, digital cable TV licences were to be issued in metropolitan cities with the digital conversion of headends (the main facility that receives TV signals for distribution over the cable network) and a partial shift of the network to fiber optic cable for transmission. In the second phase between January 2010 and December 2015, the conversion of existing cable licences at district levels was to take place¹³⁴. Khan (2010) states that it was a poor plan because PEMRA did not take into account the heavy financial investments required for the switchover and the consumer affordability of digital cable services.

For these same reasons, the cable operators were initially averse to the idea of a digital switchover. They argued that the investment required on their part to upgrade the system was too steep and the cost to the consumers in the form of digital set-top boxes and higher subscription fees was prohibitive¹³⁵. Naturally PEMRA failed to meet its 2015 deadline and the cutoff date was extended¹³⁶. To facilitate the cable operators, PEMRA set the next deadline to 30 September 2016, issued standards for digital technology, and asked the government to offer a tax exemption on the import of equipment required for the digital

¹³² Rahman, A. N., & Khan, G. (2013). Blurred vision: Where is Pakistani television headed? The Express Tribune. <https://tribune.com.pk/story/543008/blurred-vision>

¹³³ Zaidi, H. B. (2015). ‘Pakistan unprepared for digital broadcasting age’. Dawn. <https://www.dawn.com/news/1166003>

¹³⁴ PEMRA annual report 2009: http://www.gilanifoundation.com/homepage/Free_Pub/PEMRA/Pemra%20annual_report_2009.pdf

¹³⁵ Rahman, A. N., & Khan, G. (2013). Blurred vision: Where is Pakistani television headed? The Express Tribune. <https://tribune.com.pk/story/543008/blurred-vision>

¹³⁶ Cable digitalisation: PEMRA agrees to extend deadline. The Express Tribune. <https://tribune.com.pk/story/1020537/cable-digitalisation-pemra-agrees-to-extend-deadline>

switchover¹³⁷. The renewed switchover efforts were expected to be focussed on 12 cities¹³⁸. In its 2019 report, PEMRA admitted that 60 percent of the total cable licences are concentrated in remote and rural areas, where the cable networks relay only up to 50 TV channels. It also stated that most cable networks were still in analogue mode. It also vaguely claimed that cable operators in many of the major cities were providing digital services without supplying any exact figures¹³⁹. Pakistan has also not reported its digital switchover status to the ITU¹⁴⁰.

Both the cable operators and the broadcasters association had also protested against PEMRA's efforts to introduce Direct-To-Home (DTH) services¹⁴¹ in the country citing negative impact of DTH introduction on their cable business and the domestic broadcast industry respectively¹⁴². PEMRA had auctioned three DTH licences for around Rs. 5 billion each in November 2016¹⁴³, after getting conditional approval for the auction from the Supreme Court¹⁴⁴. The apex court then reinstated the auction results¹⁴⁵ after the Lahore High Court had found the licensing process to be in violation of the regulatory rules¹⁴⁶. At the start of 2020, the DTH service was yet to launch after two of the three licencees were facing delays in getting security clearance to operate in Pakistan and the third had payment issues¹⁴⁷. In the absence of legally authorised DTH services in the country, a bulk of PEMRA's enforcement attention is dedicated to finding and destroying illegal Indian DTH equipment. Despite these setbacks and slow progress, PEMRA auctioned 58 new TV channel licenses in May 2019¹⁴⁸. When broadcasters challenged the licensing in

¹³⁷ PEMRA finalises standards for digital cable TV set top boxes. The News International. <https://www.thenews.com.pk/print/107400-Pemra-finalises-standards-for-digital-cable-TV-set-top-boxes>

¹³⁸ Yusufzai, A. (2016). Cable TV system in Pakistan to be converted to digital within a year. Pro Pakistani. <https://propakistani.pk/2016/02/15/cable-tv-system-in-pakistan-to-be-converted-to-digital-within-a-year/>

¹³⁹ See Pages 29 to 31 of PEMRA report: https://pemra.gov.pk/uploads/pub-rep/annual_report_2015-18/

¹⁴⁰ Status of the transition to digital terrestrial television. ITU. <https://www.itu.int/en/ITU-D/Spectrum-Broadcasting/DSO/Pages/countries.aspx>

¹⁴¹ PEMRA had issued one DTH licence each to ARY and a sister concern of Geo in 2003, but both companies neither launched the services nor vacated the licences until 2013, thereby putting the DTH launch behind by 10 years. See: <https://www.thenews.com.pk/print/15819-pemra-rebuts-report-on-dth-licensing-process>

¹⁴² PBA, cable operators join forces on DTH issue. The News International. <https://www.thenews.com.pk/print/167070-PBA-cable-operators-join-forces-on-DTH-issue+com%2FcwEr+%28Today%27s+Top+stories+%7C+thenews.com.pk%29>

¹⁴³ PEMRA auctions three DTH licenses for Rs 14.69 billion. Geo TV. <https://www.geo.tv/latest/121461-First-three-DTH-licenses-auctioned-by-PEMRA-for-Rs-1479-billion>

¹⁴⁴ Supreme court permits bidding of DTH licenses. ARY News. <https://arynews.tv/en/supreme-court-permits-bidding-of-dth-licences/>

¹⁴⁵ Bhatti, H. (2018). SC overturns Lahore High Court verdict staying DTH licence auction. Dawn. <https://www.dawn.com/news/1406399>

¹⁴⁶ Ghumman, T. (2016). LHC rules PEMRA violated its own law while conducting DTH licence auction. Dawn. <https://www.dawn.com/news/1304982/lhc-rules-pemra-violated-its-own-law-while-conducting-dth-licence-auction>

¹⁴⁷ Kasuri, Z. (2020). DTH again in doldrums. The News International. <https://www.thenews.com.pk/print/606378-dth-project-again-in-doldrums>

¹⁴⁸ PEMRA auctions 58 television channels. Dawn. <https://www.dawn.com/news/1480164>

court on the grounds that the cable system cannot carry any more channels, PEMRA used the DTH and digital cable networks as justifications for issuing more TV channel licences¹⁴⁹. The broadcasters have now challenged the new licensing auction in the Supreme Court¹⁵⁰.

While the regulator has struggled to introduce technology upgrades to the broadcast sector, Pakistani consumers now have access to borderless OTT on-demand platforms regardless of PEMRA. Netflix, one of the leading global content streaming services, offers a Pakistan homepage for local audiences in the country and has domestic payment arrangements with telecom service providers, Telenor and PTCL¹⁵¹. Users can also access Amazon Prime Video and other such services via credit card payments¹⁵². The government and private sector have also expressed interest in launching local OTT platforms¹⁵³.

¹⁴⁹ Asad, M. (2019). IHC allows PEMRA to issue licences to new TV channels. Dawn. <https://www.dawn.com/news/1491609>

¹⁵⁰ Sigamony, T. J. (2020). Issuance of more licences: SC asks PEMRA to file comprehensive reply. Business Recorder. <https://www.brecorder.com/news/40023104>

¹⁵¹ Gardezi, A. (2020). How to pay for Netflix in Pakistan. Pro Pakistani. <https://propakistani.pk/how-to/how-to-pay-for-netflix-in-pakistan/>

¹⁵² Munir, S. (2020). Amazon Prime Video is now available in Pakistan. Tech Juice. <https://www.techjuice.pk/amazon-prime-video-is-now-in-available-in-pakistan-and-more-than-200-other-countries/>

¹⁵³ See <https://dailytimes.com.pk/682070/fawad-chaudhry-announces-pakistans-first-ott-platform/> and <https://www.samaa.tv/entertainment/2020/11/urduflix-first-urdu-ott-platform-in-pakistan/>

International Best Practices: The Example of ACMA

The ACMA (Australian Communications and Media Authority) was one of the first statutory regulatory bodies in the world to adopt a joint regulatory approach. The ACMA's mandate covers Internet, phones, TV, radio, content, spectrum, and equipment compliance. It makes rules about communications and media services and the markets, issues licences, looks into complaints, conducts enforcement, and plans and manages the airwaves in Australia. This might seem a heavy regulatory regime but the policy approach adopted by ACMA for compliance and enforcement is actually the opposite of hard regulation despite being complex and expansive.

Under the applicable legislation, the ACMA uses a co-regulatory approach to address consumer issues and citizen complaints regarding the broadcast and telecommunications sectors, meaning industry codes of practice are relied upon mainly. The ACMA spells out its strategic intent by stating that it aims “to deliver public interest outcomes with the minimum regulatory burden necessary, while managing risks and protecting the interests of the community.” The ACMA has devised for itself a ‘compliance pyramid’ on which the level of regulatory intervention increases with the level of harm from “encouraging voluntary compliance” at the bottom of the pyramid to “civil and criminal action” at the top. In taking decisions about enforcement, the ACMA takes into consideration 10 factors including the regulatory objective, deliberate intent, extent of harm, and systemic nature of issue, among others.

To encourage voluntary compliance, the ACMA works on educating and informing the community to reduce the need to intervene. It also publishes guidance documents and outcomes of its investigations to help the industry. The self- and co-regulatory practices supported by the ACMA also have legislative cover, as in the law allows for these through specific provisions.

In its 2017-18 annual report, the ACMA stated that it received 1,166 written complaints and enquiries, almost all of which were dealt with within seven days. However, the authority opened investigations into only 78 matters based on the public interest and other factors and used its discretion to decline to investigate 101 matters. Out of the investigations, almost half were found in non-breach of rules — a majority of these non-breach findings were about compliance with codes of practice. In several cases related to local and Australian content, the ACMA withheld formal enforcement action after accounting for the nature and severity of the non-compliance. The ACMA model then offers a view of regulatory restraint. In contrast, PEMRA almost takes pride in the high volume of its enforcement actions.

The ACMA, similar to Ofcom but unlike PEMRA, publishes the details of its broadcast content investigation on a quarterly basis. One important aspect of the ACMA's work is that it also assesses the need for reforms to improve regulation and reduce regulatory compulsions on the industry. It also has a research wing, which provides evidence to the authority for decision-making and to understand market trends. PEMRA also has a research and policy wing but its annual research output is inaccessible to the public.

Online content regulation in Australia is regulated under the Broadcasting Services Act of 1992 through a complaints mechanism. For online content regulation, the ACMA supports the office of an independent eSafety Commissioner. It is a statutory

In January 2020, PEMRA issued a consultation paper on the regulation of OTT and Web TV services, in which it suggested imposing the broadcast code of conduct on these digital content services¹⁵⁴. However, digital rights groups identified several flaws in PEMRA’s approach, including heavy registration fees and the treatment of on-demand content in the same way as linear broadcasts,¹⁵⁵ and the proposal was struck down by a Senate human rights panel¹⁵⁶.

Since then, one attempt was made to restrict streaming content and that was done by the telecom regulator under the cybercrimes law¹⁵⁷. Since Indian content is banned in Pakistan but available on OTT platforms, it is likely that PEMRA will move to regulate the digital media services again in the future under the influence of State policy.

The issues with independence, market control, content restrictions, and convergence regarding the broadcast regulatory framework necessitate urgent review. The following section offers policy recommendations to enhance the independence of the broadcast regulator while also considering the effects of technology convergence on the media industry.

Policy Recommendations

The following recommendations are being made to reform the broadcast regulatory framework in Pakistan and ensure independent media regulation.

- 1. Establish a Regulatory Convergence Review Commission:** The government should form an independent commission to conduct a review of media and communication laws and associated regulatory frameworks in Pakistan. The commission should be tasked to determine the potential for regulatory convergence in order to meet technological demands and provide recommendations for modernising the governance of the broadcast and communication industries.

The commission should be external to the government and composed of five to 10 experts appointed from the fields of media, communications, technology, human rights, and law. The panel may be provided terms of reference by the government but it should be given the flexibility

¹⁵⁴ See PEMRA consultation paper here: https://pemra.gov.pk/uploads/cp/Regulating_the_Web_TV_OTT_CP.pdf

¹⁵⁵ PEMRA’s OTT and Web TV policy ‘unacceptable’. Digital Rights Monitor. <http://www.digitalrightsmonitor.pk/pemras-ott-web-tv-policy-unacceptable-leading-digital-media-outlets-media-digital-rights-activists-prominent-journalists/>

¹⁵⁶ Naeem, W. (2020). PEMRA cannot regulate Web TV & OTT: Senate Human Rights Committee. Digital Rights Monitor. <http://www.digitalrightsmonitor.pk/pemra-ott-senate-human-rights/>

¹⁵⁷ ‘Churails’ was taken down in compliance with directives we received: Zee5. The Express Tribune. <https://tribune.com.pk/story/2267665/churails-was-taken-down-in-compliance-with-directives-we-received-zee5>

to deliberate on the best approach to media regulation in the public interest. The commission should also be given sufficient time to review existing legislative and regulatory frameworks, conduct an audit of the public interest objectives of the regulation, collect written submissions from the industry and civil society, hold meetings and discussions with stakeholders, including local communities and marginalised groups, study international best practices, and develop a comprehensive set of recommendations for policymakers and legislators to restructure and reform the media regulatory framework.

In conducting an independent review of domestic media regulation, Pakistan will not be the first country. Governments around the world have realised the transformative effects of technology on the nature and operations of the media industries, the information consumption patterns of citizens, and the sector-specific regulatory frameworks. The response is predominantly in the form of a comprehensive review of existing legislation to identify rules and policies that are disrupted by technological trends and identify the impact of convergence on regulation and content¹⁵⁸. Recent examples from Canada, South Africa, and Singapore can be used as models by the review commission to understand how different countries are approaching the objectives of public interest, diversity, localism, and protection from harm in a shifting media landscape where content producers are undeterred by borders and information is consumed on demand.

The 2013 Media Commission, appointed by the Supreme Court to look into several issues including allegations of corruption in media in the context of the general elections, had also brought up the matter of convergence. The commission stated in its recommendations related to the regulatory functions of PEMRA that there was “an urgent need to revisit and reconstruct the law, regulations and rules by which PEMRA exists” in part because regulation needs to be relevant to “new realities” such as those “evident in the phenomenon of continuing convergence” of technology (Media commission report, 2013, p. 193). But in the seven years since the recommendations were made public, no effort was made to review either the regulatory framework or the regulator’s performance.

Instead the government has tried to follow a top-down approach of regulation, where policy proposals are developed without consultation and announced abruptly without forethought. Such impositions will never engender trust for the government’s media regulatory framework among the broadcasters, journalists, distributors, service providers, and other stakeholders. In fact, the industry would most likely respond to such measures with skepticism and circumspection. As demonstrated by past examples, such policy proposals will also be blind to the public interest and the most important industry concerns.

The formation of an independent commission will placate such anxieties among the industry stakeholders and allow for an honest, constructive, and meaningful conversation on independent and potentially converged media regulation in the country. This will also help in developing ownership of the commission’s recommendations. It may motivate the engaged stakeholders to ensure that elected representatives do not ignore the changes suggested by the review panel as they did to the recommendations of the media commission.

¹⁵⁸ Flew (2012) had noted that four separate review commissions were constituted in Australia in 2011-12 to determine the impact of convergence on regulation and content. Some countries, such as Malaysia and Australia, had already shifted to converged media regulation as early as 2005 (Hargrave et al., 2006).

- 2. Amend the PEMRA Act to Enhance Regulatory Independence:** The most recent changes made to the composition of the broadcast regulator, PEMRA, were done through a presidential ordinance when the National Assembly was not in sessions, and it is now unclear if the modifications have lapsed or not. Even so, the changes were cosmetic and may have done nothing to significantly improve the autonomy of the regulator as indicated by the incidents of media censorship and regulatory pressures under political influence as well as instances of regulatory oversight to benefit powerful media organisations. Therefore, the structure and composition of the regulatory authority needs to be immediately changed.

While the review commission might offer comprehensive recommendations for reforms of the regulatory framework, its findings might take time to formulate. In the interim, it is recommended that the PEMRA Act should be amended through legislation to bring about improvements in the appointment of the authority's chairperson and members¹⁵⁹. The amendment below is after a model broadcasting law proposed for Pakistan (Mendel, Rehmat & Ali, 2016).

Amendment to Section 6 of PEMRA Ordinance 2002 as amended by the PEMRA (Amendment) Act 2007¹⁶⁰:

- (1) The Authority shall consist of a Chairperson and six members.
- (2) The Chairperson and members shall be eminent citizens with known integrity, impartiality, and competence and having significant expertise through education or experience in the areas of media, communications, law, policy, and/or business.
- (3) A person will not be eligible for appointment to the Authority if he or she is:
 - (a) Not a citizen of Pakistan;
 - (b) Bankrupt or insolvent;
 - (c) Convicted of a violent crime and/or a crime of moral turpitude unless five years have passed after the sentence was served;
 - (d) An employee or was employed within the last two years in the civil service or any branch of government;
 - (e) An elected official or held an elected position within the last two years in the legislature or executive at the federal, provincial or local government level.

¹⁵⁹ In this regard, both the Media Commission Report (2013) and Mendel, Rehmat & Alam (2016) made substantial recommendations for the appointment of PEMRA members. The commission suggested that the appointments should be made either by a six-member committee of senators and members of the National Assembly or by the Prime Minister out of three names recommended by a diverse committee comprising legislators and eminent citizens. Mendel, Rehmat & Alam (2016) were more clear and thorough in their prescribed appointment procedure, which is borrowed here with slight modifications.

¹⁶⁰ Text to replace existing sub-sections.

(4) The following procedure will be used for the appointment of the Chairperson and members:

- (a) The Authority will advertise the vacancy publicly with an open call for applications to interested candidates. The announcement shall include details, such as but not limited to, a job description, the professional standards expected of the candidate, the remuneration for the post, the deadline for applications, and the timeline for the appointment process.
- (b) The Authority will publicly notify a three-member expert panel to review the applications. The panel shall comprise one representative of the Authority and two independent experts from the media and broadcasting industry.
- (c) The panel will review the applications received by the designated channels until the deadline in light of the criteria mentioned in Sub-sections (2) and (3) and shortlist at least three candidates after preliminary interviews.
- (d) The panel will forward the names of the shortlisted candidates to a select parliamentary committee notified by the Speaker of the National Assembly whose members will include
 - (i) Two members of the National Assembly Standing Committee on Information and Broadcasting, one of whom each will be nominated by the Leader of the House and the Leader of the Opposition for the National Assembly.
 - (ii) Two members from the Senate Standing Committee on Information and Broadcasting, one of whom each will be nominated by the Leader of the House and the Leader of the Opposition for the Senate.
- (e) The select parliamentary committee will interview the shortlisted candidates with the assistance of the expert panel and nominate one candidate for the post.
- (f) The final nominee will be required to appear before the Senate Committee on Information and Broadcasting for a confirmation hearing which will be open for the public.
- (g) After receiving confirmation of the nominee from the Senate Committee, the select parliamentary committee will forward the name of the nominee to the President of Pakistan for formal appointment to the Authority.

Amendment to Section 7 of PEMRA Ordinance 2002 as amended by the PEMRA (Amendment) Act 2007:

- (1) The Chairperson and members, unless earlier removed for misconduct as defined in Section 6, sub-section 3 or physical or mental incapacity, shall hold office for a period of four years and shall not be eligible for re-appointment for a similar term to the Authority¹⁶¹.

¹⁶¹ Text to replace original text of Sub-section 1 of Section 7.

Amendment to Section 5 of PEMRA Ordinance 2002 as amended by the PEMRA (Amendment) Act 2007:

Power of the Federal Government to issue advice.- The Federal Government may, as and when it considers necessary, issue advice to the Authority on matters of policy, and the Authority may choose to follow such advice, where it does not see it as prejudicial to its functions or as undue interference in its work, in light of the Authority's mandate as provided in the preamble of the Ordinance or considerations for the public interest¹⁶².

- 3. Adopt a Co-regulatory Approach for Content Regulation:** The regulator and the industry stakeholders should share the responsibility to protect citizens from harm that may be caused by content. In the co-regulatory approach, the Pakistani broadcasters would have relative independence to comply with industry codes of practices and content standards, but these codes, standards, and rules will have statutory protection and the regulator will supervise their compliance only to intervene if the legally determined objectives are not being achieved.

This change in regulatory approach will have to be through legislation, most probably through an amendment of the PEMRA law. Policymakers can consider several options to implement this system. One option can be to set up a broadcast standards authority, which would be an independent body tasked to come up with content standards, age-based classifications, and rules for local content quotas, among other provisions, and monitor the compliance of these sets of rules. Another option could be to get the broadcast industry to set up a professional association that would perform the same tasks, with financial and administrative support from the individual broadcasters, including the establishment of public complaints mechanisms at the media organisations to directly address concerns from viewers about programming. Finally, a content board can be set up within PEMRA to supplement the enforcement by encouraging voluntary compliance and keeping a complaints-based check on extreme violations. In all of these options, the policymakers will have the opportunity to engage with platform-neutral and technology-independent content regulation, which could apply to linear as well as on-demand content. The exact details of this co-regulatory setup should be determined by holding broad-based stakeholder consultations in the run-up to the legislative drafting.

The co-regulatory approach is warranted due to two important reasons: First of all, despite PEMRA's enforcement of the electronic media code of conduct, PEMRA has been unable to create a culture of compliance within the broadcasters. Violators are fined or suspended but often resort to litigation to challenge the enforcement and similar violations are committed by the same or other broadcasters afterwards. Even in the cases of commentary perceived to be anti-judiciary, anchorpersons and broadcasters have tendered apologies when threatened by the courts with contempt proceedings but similar offences are repeated in the future. PEMRA's enforcement actions have failed to take stock of these patterns of non-compliance and proceeded with an amnesiac application of the broadcasting code. Secondly, PEMRA has continued to literally and broadly apply its content restrictions on news, entertainment, and advertising without providing sufficient reasoning and justification and without adequate transparency, accountability or consideration for the impact on the public interest and freedom of expression.

¹⁶² Text to replace existing text of Section 5.

The co-regulatory approach will reduce the content regulation burden from PEMRA and allow it to focus on regulating the market and ensuring the interest of the citizens and consumers better.

- 4. Improve the Public Complaints Mechanism and Transparency of Enforcement:** PEMRA should disband its invasive monitoring wing that conducts daily surveillance of TV channels and instead move to an open, independent, and transparent public complaints mechanism to address concerns about non-compliance of content regulations. In keeping with the co-regulatory approach proposed above, PEMRA should encourage citizens to first use the complaints mechanisms provided by the media organisations. For the complaints it processes, PEMRA should be bound to publish its decisions and the detailed reasoning behind them publicly on its website and through regular reporting. The reasoned decisions can also form the basis of the regulator’s guidance to other broadcasters to avoid similar issues in the future. Transparency in PEMRA’s content enforcement decisions is very important, and ensuring transparency will also bring consistency and an adherence to the public interest and freedom of expression in its content decisions. The regulator should use the funds saved from the monitoring activities on efforts to educate the consumers about their rights and guide the broadcasters about their responsibilities so that the co-regulatory approach can be made effective.

These recommendations offer some of the most immediate remedies warranted by the current state of broadcast media regulation in the country. The media industry, civil society, and press freedom advocates can use these suggestions as a starting point to re-issue calls for regulatory reforms in the broadcast sector. It is hoped that the recommendations may be refined further in the future in support of and as a result of multi-stakeholder efforts for independent media regulation in Pakistan.

Appendix A Methodology

The policy paper attempted to address the following research questions:

1. What are the major issues with the existing model of media regulation in Pakistan?
2. What is the need of an independent media regulator in Pakistan?
3. What are the best practices of media regulation internationally?
4. What is the ideal model of media regulation in the local context?

Secondary research or desk research was used to review existing literature about media regulation worldwide and the regulatory framework in Pakistan. Online search techniques were used to identify scholarly research on media regulation, critiques of media regulation models in the local and international contexts, previous research and recommendations on the role of PEMRA especially its independence from government policy, and the major interventions of the media regulator in the past. Keywords, such as “media regulation”, “PEMRA”, and “independence of media regulator in Pakistan” among others, were used for preliminary research results. The keywords were refined based on the output to narrow the scope of the results. Legislative documents, books, journal papers, research reports, regulatory policy briefs, and news articles were identified and studied. Altogether around 270 documents were reviewed for the research. Care was exercised to use reliable information sources, including trustworthy news sources, international regulatory associations, independent media policy organisations, and peer-reviewed journals.

The desk research was also used to identify significant intervention (or lack thereof) from the media regulator in Pakistan between 2002 and 2020. An informal criteria based on prominence and impact of the incident was used to review some of these cases for further analysis. A truncated case study approach was applied to these incidents to develop a brief summary that could provide an understanding of the independence and effectiveness of regulatory action. The brief case descriptions were used to inform the analysis.

The data collected through desk research was informally codified to the following categories: critiques of media regulation in Pakistan, status of regulator's independence, recommendations for media regulation, and policy responses from the government on media regulation. The qualitative analysis of the coded categories was done in the context of the research questions identified above. The review of international models of media regulation was done to check alignment with human rights law, media pluralism, and media freedom. The analysis of the data was used in the discussion to highlight policy implications and offer recommendations regarding media regulation.

Limitations and potential revisions: Initial discussions about the methodology for the policy paper included interviews of relevant stakeholders. However, due to the coronavirus pandemic and lockdown, co-ordination for the interviews became difficult. It was, therefore, decided to focus on desk research as the primary research method. The findings and recommendations will be updated in light of the advice and input from a working group of experts on independent media regulation. The working group is being set up under the Civil society for Independent Media and Expression (CIME), for which this policy paper was also prepared.

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ABOUT MEDIA MATTERS FOR DEMOCRACY

Media Matters for Democracy works to defend freedom of expression and digital rights in Pakistan. We undertake various initiatives including research, policy advocacy, training, and strategic litigation to work towards a future with an inclusive and independent media and cyberspace in Pakistan where citizens and journalists can express themselves and share news and information without fear of harm.

