

REGULATING BROADCAST MEDIA: Challenges & Reforms



PIPS International Conference 2016

CONFERENCE REPORT



PAK INSTITUTE FOR PEACE STUDIES (PIPS)



Foreword

On 21 July 2016, more than 50 media professionals including journalists, media trainers, regulators, participated in the International Conference on Media Regulations in Islamabad. Participants shared thoughts on the need for regulating the broadcast media in Pakistan and how to do that effectively.

The conference was organized by Pak Institute for Peace Studies (PIPS), through the support of International Media Support (IMS).

This report encapsulates the conference discussion. PIPS may not necessarily agree with all views expressed in this report, which are extracted from the conference.

The report has been made with due diligence. Any error found would not be intentional or deliberate.

This resource has been produced by PIPS with assistance of International Media Support under a media development program for Pakistan supported by DANIDA. The contents of this resource do not necessarily reflect the views and findings of the IMS or DANIDA.

CONTENTS



4

EXECUTIVE SUMMARY

BOOM IN BROADCAST MEDIA

7



10

THE NEED FOR REGULATOR

FORMAL REGULATION

12





15

INFORMAL RESTRICTIONS

WAY FORWARD

18



23

CONFERENCE STATEMENT

ANNEXURE 24

Agenda 24

Media Coverage 25



Executive summary

The work of broadcast journalists can help expose wrongs and uphold rights. That can be achieved, if the broadcast media, recent entrant with great following, is regulated in line with the global standards. These call for making regulator an independent body, tightening laws to do away with loopholes restricting speech on ambiguous grounds, and diversifying the revenue pool of TV channels.

The phenomenal growth of broadcast media since 2002 has opened new vistas to citizens, beyond the state-run television. But their broadcast is far from perfect. One element missing from this sector is diversity. There is monotony of content with same programs shown over and over. The perspective is often of urban areas. Outlets are owned by a few owners. Even the viewers, to whom the content is shaped, are in urban areas.

An overarching body is supposed to regulate the entire broadcast media industry, so that the content telecasted is acceptable to the people of Pakistan. What exactly is meant by acceptable is contested. Even though the Constitution of Pakistan upholds the right to freely express one's thought, and since 2010, the right to seek information, these rights come with some restrictions in the name of public morality and national security. Thus, in practice, authorities and courts have often invoked those exemptions. Journalists call such restrictions as attempts to tame media.

This debate finds its way in the recent work of Pakistan Electronic Media Regulation Authority (PEMRA), as it tries to fine TV channels and their anchors for what the authority sees as transgressions.

Much of the other challenges PEMRA has to deal with, are inherent in the way entire industry works.

The association of broadcast outlets, Pakistan Broadcasters Association, is basically a group of media owners, with no representation from journalists, who produce the content. Also missing are the consumers, the people. They cannot file complaints properly, nor can much hold the financial strings of



the channels. The broadcast media rather generates money through advertisements, which are allocated on the basis of ratings drawn from meters installed in selected households in the country, mostly urban areas.

In the coming future, broadcast media will shift from digital satellite to the internet, in which case, the need for having a regulator – a primary task of which is to issue licenses – will be revisited. Questions will also be raised on whether the regulator will be able to enforce restrictions in the name of morality or security, given that viewers can access similar content from all over the web.

Any knee-jerk reaction then could be best avoided now.

Working for effective regulation is one way. Efforts must be made to shape PEMRA an autonomous body, independent from both government and media industry. The body should be empowered to appoint its staff and allocate resources, with oversight of the parliament. Thoughts must be given for a system that diversifies sources of income of media outlets; this system should engage the consumers so as to incorporate their priorities. A tighter legal definition of the exemptions to the freedom of expression is also required.

In 2013, the Supreme Court constituted a two-member commission, led by former information minister and architect of PEMRA, Javed Jabbar, to look into issues related to media reforms. The commission's report has been endorsed by several officials, including members at the National Assembly's standing committee on information and broadcasting. Mindful of that report, a group of civil society organizations, which includes PIPS, have been contributing towards reforming media comprehensively. Such efforts can be refined and further taken forward.

Boom in broadcast media

From its inception in 1964, the State TV channel, Pakistan Television, known by its abbreviation PTV, remained the country's sole television station. Its monopoly was broken only in 2002 when the private sector was allowed entry to operate, resulting in a jump from scarcity to a significant surplus. As speakers at the conference noted, today, there are more than 90 TV channels in Pakistan.

This phenomenal growth of media is touted for opening up new vistas to the citizens, who were earlier fed only with State-oriented information. Many journalists have played the role of being

the eyes and the ears of the citizens, watching and reporting on government. Their opinions do matter.

But not all are convinced that the broadcast media highlights all issues properly and fairly. The problem of the media portraying issues in a sensational and selective way was made at the conference, with some complaining of religious, political and ethnic biases within the media. One journalist complained that a segment of the media has been promoting its own agenda.

Below are some of the general concerns with the new broadcast media environment that were identified during the Conference.





"Providing people with access to balanced information empowers communities and individuals."
Jakob Jakobson, Deputy Head of Mission,
 Royal Danish Embassy



In Sri Lanka, now, "our challenge is: can we have content regulation and in what form, while protecting the democratic status we hardly achieved?"
Hon. Karunaratna Paranawithana, Deputy Minister for
 Parliamentary Reforms and Mass Media, Sri Lanka

Monotony

Diversity was flagged as a clearly missing element in media content, with one speaker wondering if the term "mass" was even appropriate for the media.⁽¹⁾ Media was accused of being "monotonous", with the same programs airing over and over.⁽²⁾ The head of Society for Alternative Media and Research (SAMAR), an NGO which monitors media content on daily basis, Mazhar Arif, observed:

There are about 100 top columnists and anchors; of them, more than 50 are from Punjab, 25 to 30 are Urdu speakers. And about 12-15 are retired civil or military bureaucrats. And you will see about 100 people daily or weekly on one channel or another channel. The same taste, same news.

He termed the broadcast media as "border media" accommodating Lahore, Karachi, and Islamabad, but ignoring the rural, inland country. At times, diversity of thought comes from a diversity of brains. An analyst questioned if there was diversity in that sense with media houses. "How many media owners are Balochis or Pashtuns", he asked.⁽³⁾

As a result, media reinforce the existing power relations among different groups, without much empowering those on the fringes. Amjad Bhatti, a media analyst, noted:

The issues, the images, the stereotypes, the knowledge product, the perspective, the way, and the lens ... are [all] urban-centric. ... Whenever there is flood anywhere in the country, we always reflect upon the miseries of the flood, without looking into the resilience of [the people affected by] the flood. Why? Because we have not experienced that flood.

Industry of owners

Participants lamented how the media industry ignores both the journalists and the people. The association of broadcast outlets, Pakistan Broadcaster Association (PBA), is an alliance of media owners. There is no representation of media professionals – the producers of

content – and the people – the consumers of content. Participants lamented how different TV channels have been slandering and abusing each other, in the guise of media freedom.

The audience for broadcasters doesn't have an opportunity to share their own opinions. Contrast that with the public sector radio station in the past, when time slots were dedicated for airing people's views. The diversity is also killed by concentration of media outlets by same owners. Toby Mendel shared that in Canada, as a result of the increasing concentration of local newspapers ownership, it is much cheaper to syndicate one news story across all local newspapers than to produce an actual local story. "Syndication requires one journalist to produce one story and print that in 50 newspapers, than to have 50 stories, which would require 50 journalists." That is how diversity of content is undermined, he concluded.

Neglected resource

Several speakers linked the issues in media's coverage to lack of professionalism. Mazhar Abbas, a senior journalist, said, "Had there been lot of professionals, right people at the right places, we may not need that kind of regulation."

A journalist blamed universities, which don't have capacity to give the kind of expertise needed for broadcast industry in Pakistan mostly. But some disagreed, noticing there are already 35 or 36 campus radio stations in the country to train the future journalists.

Ranga Kalansooriya shared how all the "leftovers" in Sri Lanka joined journalism. "Most of those who join journalism are those who can't get into medical colleges, law colleges, engineering." There are no perks, salaries for them, thereby resulting in them being underpaid. Many are getting below the minimum salary sanctioned by the government. The situation is not much different in Pakistan. It was shared that many media workers are not paid in time; besides, there is a great difference between the amounts an anchor receives versus the cameraman.

1. Shared by Amjad Bhatti.
 2. Shared by Mazhar Arif.
 3. Shared by Amjad Bhatti.



"Media center in Pakistan is largely, border media, in Karachi, Lahore and Peshawar. The whole mainland of Pakistan is not represented." Mazhar Arif, Executive Director, Society for Alternative Media and Research



"I think we can benefit from the legal framework, if you want to secure the journalist. That's why the government of Pakistan has engaged us to come up with a [journalist protection] law." Iqbal Khattak, Journalist / Media Development Expert

Ad-based economy

Many noted that, at the end of the day, a media house is a giant corporate entity, engaged in "corporate competition" with other media houses. Today, media rely very heavily on advertising revenue.⁽⁴⁾ Former information minister, Javed Jabbar, remarked:

At the moment, a subscriber pays a token fee to the cable TV distributor, who does not pass it to the owner of TV, who provides a large load of content; that content is entirely dependent on advertising.

The consumer is absent from this and, eventually, their interests are left out. Media outlets, on the other hand, produce content aimed at attracting more ads and selling content like a "commodity" to the viewers.⁽⁵⁾

This economy also perpetuates the divide discussed earlier at the cost of promoting diversity. The ads are often allocated on the basis of ratings of a show or channel. The choices of urban viewers prevail: 86% of urban households have cable, as opposed to 30% for rural viewers, according to Gallup Pakistan.⁽⁶⁾ Even the rating meters, which indicate which TV channels are being viewed, are installed largely in urban households.

4. Shared by Javed Jabbar.

5. Shared by Amjad Bhatti.

6. *Cable Viewership in Pakistan*, 2013.

Are rating systems scientific?

Sharing experience from Sri Lanka, Ranga Kalansooriya, Director General at Sri Lanka's Government Information Department, argued that the driving force behind content in Sri Lanka is "no longer the newsroom or owner, but the rating companies. One or two rating companies", he complained, "with no relations with the media industry, decide the future of any country." He narrated the reasons they believed their rating system was flawed:

Sri Lanka has one dominant rating system and one small one. The dominant one decides the popularity or the so-called ratings. In June 2016, the Sri Lankan government, acting upon complaints, established an independent panel to look into the rating system of that company. The company was asked to explain their research methodology. The panel found that to monitor what viewers like, out of the 5 million households in Sri Lanka receiving TV channels, less than 2000 meters are installed for TVs, only in urban areas, and only 600 meters for radio channels. As of now, the ratings of the channels are being audited. The initial findings of the audit revealed that the system is nowhere scientific.



There is thus a great yearning for the media to play its due role. Muhammad Ziauddin, contrasting his lifetime journalistic experience in print media with the advent of the private broadcast sector, argued that there are no gatekeepers in broadcast media. "In newspapers, there are so many gatekeepers, that irresponsible does not get carried", he added.





The need for regulator

The first issue for a regulator to deal with is the licensing or registering of the media. It is a global principle that broadcasters have to be licensed. If there is no check, airwaves will be consumed completely and interfered with. When it comes to newspapers, many democracies do not impose any constraints while in other countries there is a technical licensing procedure which does not involved asking for permission.

Regulating the broadcasting sector often also covers promoting professionalism.⁷⁹ “The purpose of regulating content is essentially to promote professionalism.” Regulation shows media outlets what is appropriate and what is not. The regulator may also have a key role in promoting media literacy as well as conducting trainings for journalists. Absent regulation, there is a greater risk that the media industry will carry questionable content.

Regulating media outlets for professionalism would stop incendiary programs from being aired in the first place. Even if they still do this, the ones instigating hate would be brought to justice. “It was because their content was not checked. Had they been checked, a few lives could have been saved”, Mazhar noted.

At the same time, some participants called upon regulatory system to

promote the safety of journalists and their sources. Journalism in Pakistan is a risky profession. Journalists face threats from a range of actors, especially in conflict-zones, like Balochistan or FATA, where they are viewed as collaborator of one side or the other. A senior journalist shared that, today, nine newspapers in Balochistan are facing high-treason cases for publishing statements by proscribed organizations. These papers told the courts, “We accept your decision that we should not publish the statements. But can you save our lives, if we don’t publish those stories?”⁸⁰ Even in metropolitan Karachi and Islamabad, journalists have faced threats.

Investigative reports and analyses into wrongdoings of the government help correct the course. But, as Senator Farhatullah Babar noted: “The issue of national security has become so ingrained in the psyche of the nation that even journalists, without being asked, exercises their own self-censorship.” Partly because of insecurity, one of the new trends of reporting has been self-censorship. As a result, to quote former Senator Afrasiab Khattak: “No questions were asked on the stay of Osama bin Laden in Pakistan, on missing persons, on the bloodshed in Balochistan, among other things”.

Participants wondered if there is any difference in the way media is to be

79. Shared by Toby Mendel

80. Shared by Mazhar Abbas



"If media is an industry, which it is, because it is a profit-making institution, ... it has to come within some ... regulatory framework [which deals with] registration, licensing, media ownership concentration, revenue sharing, taxation, public interest messaging, professional training, wage awards, labour laws, security of the working journalist, insurance and corporate social responsibility."

Amjad Bhatti, Research and Knowledge Management, Development Alternatives Inc.



regulated in a pre-conflict setting and a post-conflict one. Yet another called for upholding the right to access information held by the public sector, including security bodies.

provide TV channels to viewers, also fall within the scope of the regulatory system. On their own, cable operators in Pakistan largely do not produce new content, though many of them show pirated material or their own limited-budgeted

Types of regulations:

- (1) Pure self-regulatory system, which is by the media industry itself;
- (2) Co-regulatory system, whereby the industry essentially runs the system but is empowered through a law to have more teeth;
- (3) Statutory system, which empowers a statutory body to look after the media.

One of the goals of the regulator should be to ensure that diversity of the people is present in the media. Consumers should have access to a wide range of information sources; content should be diverse, from diverse owners. Strong regulatory intervention would prevent undue concentration of ownership.

Moreover, the cable operators or distributors, who

Does self-regulation work?

Many journalists, wary of how the media has been subject to control in the name of regulation, advocate in favour of self-regulation. Senator Afrasiab Khattak also viewed self-regulation as the best way of preventing journalistic excesses in the long-term. But former information minister Javed Jabbar questioned whether self-regulation is of any use, terming it a "myth" and calling for holding accountable 'self-regulatory' bodies.

In 2010, it emerged that *The News of the World*, a UK-based newspaper, had bribed a policeman to report for a story. To Javed Jabbar, the incident was an example of failure of self-regulation. But Toby argued the issue there was "criminal, not editorial." But they agreed that self-regulation presumes some level of maturity on part of the media.

Formal regulation

PEMRA

Pakistan Electronic Media Regulatory Authority (PEMRA) was established in 2002 as an autonomous regulator for broadcast sector only.

As of now, it regulates the private broadcast sector, with some exceptions such as state-run Pakistan Television, and radio stations licensed by Pakistan Broadcasters Association (PBA), including the military-run ISPR. Some religious channels are operating without PEMRA's authorization.

The Board of PEMRA includes:

- ★ The Chairman, who heads the organization;
- ★ Executive member;
- ★ Ex-officio members namely Secretary, Ministry of Information; Secretary, Ministry of Interior; and Chairman, Pakistan Telecommunication Authority; and Chairman, Federal Board of Revenue; all appointed for 4 years; and
- ★ 5 private members, representing 4 provinces and Islamabad, also appointed for 4 years.

Importantly, for the first time, the PEMRA Chairman has been appointed through a competitive process, including an interview, on the recommendation of PM.

As a regulator, PEMRA prepares regulation rules and Codes of Conduct. PEMRA regulates

based on the following sets of rules:

- ★ PEMRA Act 2007;
- ★ PEMRA Rules 2009;
- ★ PEMRA (Council of Complaints) Rules 2010;
- ★ PEMRA (Distribution Service Operations) Regulations 2011;
- ★ PEMRA (Television Broadcast Operations) Regulations 2012;
- ★ PEMRA (Radio Broadcast Operations) Regulations 2012;
- ★ Electronic Media (Programmes and Advertisements) Code of Conduct 2015

PEMRA is bound to follow the guidelines of the federal government.

The following are the licences that have been issued by PEMRA:

Satellite TV	91
Landing rights	about 20
Cable TV	4,237
FM radio	206
IPTV	1
Mobile TV	4
Mobile audio	1

As of now, there are 27 news/current affairs TV channels, 28 entertainment channels, and 4 specialized subject channels. Most of those awarded FM licenses are commercial based – 158 in total. Still, 48 are non-commercial too, including for Islamabad Police Traffic, Around



"Is the primary role of the regulator, regulating the sector or regulating content?"

Adnan Rehmat, Programs Manager,
International Media Support - Pakistan



"There is no representation of journalists in media regulation [structure]. In the end, journalists are being penalized."

Mubashir Zaidi, Anchor, Dawn News TV

200,000 people are employed in the entire media sector.

Still, not a single license was given to community-based channel, TV or FM. Campus radio stations cannot be classified as such.

PEMRA has stopped issuing TV licenses since 2010. It invited an Expression of Interest in 2015, but the matter was challenged in court. It has also stopped issuing cable TV licenses in urban areas. In rural areas, there is less than 2 percent coverage.

Pakistani broadcast channels are moving to direct-to-home (DTH) digital satellite licenses and the cable TV network is being digitized.

Licensing

A PEMRA official stated that the licensing process is quite rigorous, ensuring that the licensee complies with certain criteria, such as minimum paid-up capital, and that bidding is undertaken to shortlist applicants. Moreover, the company's business credentials are audited by the Interior Ministry for security clearance. The applicant is also asked to give a content presentation in the category in which they have

applied. Finally, there is a public hearing and successful applications are forwarded to PTA for frequency allocation.

At the same time, former Information Minister Javed Jabbar said PEMRA has not fulfilled its mandate due to not applying rigorous criteria on who is eligible to be given a license. He called for establishing a system that weights credentials like past record, professional record.

Licenses can also be revoked after consultation with the Council of Complaints, but that is rarely applied.

There are restrictions on how many channels one licensee can operate. One single company can have 4 satellite TVs; 4 FM radio licenses and 2 landing rights, at a maximum.

PEMRA is present in all big cities of the country. All provincial capitals have regional offices. In Punjab alone, PEMRA has three regional offices.

Council of Complaints

PEMRA takes action on the complaints it receives.





"We are not regulating content. It's just complaint-based system, where we file complaint with PTA. Those complaints may be related to some anti-social or porn [content]. ... You just send a complaint, we investigate that complaint, just to verify whether that complaint is okay, then, we take action ... to block the content."
 Khurram Mehran, Pakistan Telecommunication Authority



Complaints received from	17,700
2003 to 2016	
Complaints rectified by	17,350
Council of Complaint	

Participants even questioned the rationale of PEMRA, when broadcast of TV channels is taken down, without taking the authority into confidence. PEMRA's director general said that Geo TV was banned for two weeks in 2014 on the recommendations of the Council in Karachi.

PEMRA allows for only 10% of the broadcast time in twenty-four hours to be foreign based.

Enforcement

While PEMRA too has enforcement powers, some of them are weak. For instance, it can impose fines, but there is no mechanism to recover those fines. Many of its notices are ignored. One participant blamed courts for issuing orders that neutralize the regulatory body. The PEMRA official admitted they cannot enforce law in areas where the office is not present:

Our culture and norms are such that when there is presence of PEMRA, only then is there enforcement. ... Unless and until you are sitting there, and observing the operation, it's difficult to implement our rules.⁹

There are some other glaring issues. When PEMRA extends licenses to production

houses, there is a provision that the media houses are responsible for training and upkeep of the journalists, reminded a participant. Similarly, although there is a law that in-house monitoring committees would be set up, participants questioned if all have done so. PEMRA also has other responsibilities. One way out was suggested by Amjad Bhatti, who asked PEMRA to invest 5% of the total profit from each media outlet into training of the personnel working for that outlet.

PEMRA of internet?

Regulation of the telecom sector is in hands of the Pakistan Telecomm Authority (PTA). A participant said that some people consider PTA to be the Internet version of PEMRA. Others took it to task for regulating online content.

But PTA's spokesman disputed that they regulate content. PTA, he clarified, follows up on complaints lodged by citizens. These complaints, he claimed, are verified before action is taken against anyone. If the complaints are authentic, PTA sends link to the international Internet companies responsible to block the content, in what he described as a "limited arrangement".¹⁰

Strikingly, this regulation of the Internet is done not under any specific law, but on the direction of the courts. In August 2016, however, the Pakistani parliament passed the Prevention of Electronic Crimes Act, which empowers PTA to regulate the Internet.

9. Shared by PEMRA Director General, Mukhtar Ahmed.
 10. Shared by PTA spokesman, Khurram.

Informal restrictions

'Controlling bodies'

Although participants overwhelmingly agreed that gatekeepers were needed, not all were convinced that it was necessary to have an overarching regulator. They fear that regulation is another name for control. Freedom and regulation are seen as strange bedfellows in this country, noted Bhatti.¹¹ Many also fear that "policing citizens' thoughts" would be sold as "regulating content". This is in part due to history where military regimes, and even civilian governments, have tried to bring the media under their thumb.

Ziauddin observed: "In today's context, no regulatory body in this country can be described as a purely regulatory body. They are controlling bodies". Another participant said: "If people realize that the independence of the private media is as compromised as the state-run PTV's, they cannot have respect for that media."¹²

Participants warned of a recent trend whereby the state has been competing with media in terms of manufacturing consent. Some participants suggested that it was important to know who controls the media now, even after the return of democracy in 2008. One participant noted when, in 2008, the American aid package meant to increase civilian aid and reduce military aid, or the Kerry-Lugar Bill, was debated, there were

instances of talking points landing in TV stations; these questions were meant to grill civilians for apparently accepting the terms of the KLB.

Many measures which have been justified as regulation are nothing short of censorship. Former Senator Afrasiab Khattak recalled that a PTA director was asked to assess if the ban on YouTube was effective, he responded in the negative. Still, the decision was taken.

But participants were reminded of the difference between censorship and regulation. "The problem is bad content censorship, not good content regulation", Toby said. It was pointed out that the regulation of the media in a democratic dispensation should be distinguished from manufacturing consent under a military regime.



11. Shared by Amjad Bhatti.

12. Shared by I.A. Rehman.



Ziauddin: "In today's context, no regulatory bodies in this country can be described as truly regulatory body. They are controlling body. Legally-sanctioned bodies to control."



"We have formal regulation, which is PEMRA Then, we have informal regulations, which, unfortunately, have expanded over a period of time."
Afrasiab Khattak, Senior Leader, Awami National Party



Industry itself

In addition to interference by State institutions, speakers clearly underlined that regulation is not possible if there is a risk of "regulatory capture by the industry."¹³ One speaker said that in many developed countries, regulatory capture by the industry is the biggest threat to regulation.

Usually, the regulator has to lead the agenda for the industry. But in Pakistan, it's the reverse: Industry leads the regulator. Even the negotiation with the regulator is somehow bipolar, between government and owners, because government is the regulator, while owners represent media houses. Media analyst Bhatti noted how in all of these negotiations, there is convergence of corporate interests, political interests and executives' incentives, among other things, leaving out the consumers.

Bhatti also called for separating content regulation from corporate regulation. Content regulation, he said, includes the question of agenda setting, thought policing, censoring content and ethics, within which there are questions of obscenity, profanity and indecency. But corporate regulation is about

regulating a profit-making industry like media. It entails bringing media within some framework of regulation, which includes licensing, media ownership concentration, revenue sharing, taxation, public interest messaging, professional training, wage awards, labour laws, security of the working journalist, insurance and corporate social responsibility.

The debates on corporate regulation are often presented as content regulation, he noted. In Pakistan, however, whenever there was talk about regulating the corporate side of the media, the response was as if there was an attack on media freedom.

Legal restrictions

Media's space to report freely on issues generally emanate from a basic right: freedom of expression. This right ensures the right to seek, receive and impart information, so that the speaker is only one of three actors which are protected; the seeker and receiver are also protected, leading to a further specific guarantee, the Right to Information. While the Constitution of Pakistan guarantees both of these rights, these articles also place certain restrictions on the same rights.

Article 19 of the Constitution of Pakistan protects the right to freedom of expression: "Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence."

Article 19-A protects the right to information as follows: "Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law."

13. Shared by Toby Mendel.



"The dilemma of Pakistan is that there is a RTI [Right to Information Bill] pending with the parliament, which is so good, as my friends declare, that they [those in power] don't want to enact it. Then, there is cybercrime bill, which everyone in the world has denounced. But they want to pass it."

– Challenges and Reforms

21 July 2016

Serena Hotel, Islamabad



Authorities and courts have often invoked these restrictive provisions to limit the media. A lawyer noted that the courts too have leaned towards these "exceptions" so as to suit the executive.

Media workers, often having limited knowledge about the law, are exposed to abuse "merely on the wording" of the law, noted a lawyer. Likewise, many rights workers and media personnel are not aware of how they can obtain information through the RTI laws.

In some cases, there are not even laws, leading to ad hoc arrangements. A spokesman of Pakistan Telecommunication Authority defended the PTA in regulating the Internet even in the absence of legal rules to this effect, citing a court's order to do so.

Participants called upon legislators to make tighter laws that are less vulnerable to misuse. One argued that there needs to be specific laws for issues like morality, issues under which media's freedom is curtailed. Clearly, the law requires all institutions to follow the rules, at least publically.

To be sure, it is not that parliamentarians lack interest or capacity. When questions were asked about a report into the death of a FATA-based journalist, Hayataullah, or

about the report of an inquiry into an attack on another journalist, Hamid Mir, no responses were provided.

Since the Right to Information (RTI) clause was inserted in the Constitution in 2010, all provinces have enacted RTI laws. However, the federal government has yet to pass a reformed RTI Act.

Senator Farhatullah Babar, a member of the Senate's committee on information and broadcasting, which drafted a new federal RTI Act, revealed that the committee was told that the Act infringes upon national security:

We asked the Minister of Defence; here is a law being enacted. You please come, this is the draft, and if you have any observation and objection, please share that with us. ... There was a formal letter from the Ministry of Defence saying that this is a very important piece of legislation which infringes upon national security. Therefore the Committee should not proceed with making the draft law without obtaining a NoC from us.

The committee has finalized the bill and it is now waiting to be formally presented to parliament.





Way forward

Emerging challenges

Pakistan's media is largely second generation in nature, with private TV and radio operators all being distributed via digital satellite. As of now, Pakistan is struggling to catch up to the third generation broadcast distribution approach, which transmits channels through Internet. Robust Internet is missing from large parts of the country.

But eventually it will have to move forward, especially in areas with better Internet services. In any case, the different generations can co-exist with each other.

Each new generation of broadcasting distribution reduces the problem of scarce frequencies. Whereas the first generation, terrestrial-based, provided up to ten channels and the second, from 100 to 400, Internet distribution will allow for unlimited channels. There will thus be no need to regulate based on scarcity, raising questions about the very need of regulator.

Clearly, the newer generation broadcasting systems will directly impact diversity. More channels mean the possibility of showing content from multiple angles. These could be diverse in nature. Yet there remains concern about missing certain angles, and simply continuing to reflect the same approaches and perspectives as the previous generation of

broadcasting. The concern is grave in Pakistan's case, where urban residents with better Internet services can influence the content, in the same way as happens with broadcast content today.

Another challenge, related to diversity, is lack of quality. Revenues from ads will have to be divided among many players. To attract viewers, broadcasters will show more "juicy" content.¹⁴ Meanwhile, the regulator will have few tools at its disposal to promote diversity, including because the entire justification for doing so would have diminished.

The intersection of different broadcasting generations is by itself a regulatory challenge. A conference hosted in a hotel in Islamabad may be streamed live and fed directly to a TV channel, noted digital rights activist Nighat Dad, thereby falling into the domain of both broadcast media and Internet. "What should the role of the regulator be in such cases?" he asked.

To be sure, the notion of content regulation in its current form may need to be changed. Participants wondered if the regulator can still justify its actions on the same grounds it has been invoking to restrict broadcast sector. Morality is one such ground. Toby argued, "If consumers can access the global Internet, checks in the name of culture may be difficult to justify."

14. Shared by Toby Mendel.



"Many mainstream media channels ... have their social media presence. They have hundreds and thousands of followers. ... They break news on TVs later, but on social media first."
Nighat Dad, Executive Director, Digital Rights Foundation



The Internet is "a decentralized platform. There is no one entity that controls it or can control it, both jurisdictionally and technically. That's our biggest problem here."
Fareiha Aziz, Director Bolo Bhi

Making effective regulations

To allay concerns of the journalists, a regulator has to have independence. Independence not only is the "first and cardinal principle" of regulation, but is also key to legitimacy.⁽¹⁰⁾ Independence in turn entails freedom from State bodies as well as commercial forces or the industry itself.

PEMRA should be transformed into an autonomous body, with powers to appoint staff and allocate resources. Participants argued the government should not make appointments either to the PEMRA Board or within the organization.

The body should instead be answerable to the parliament, which may look for ways to strengthening PEMRA's enforcement mechanisms as well as its application of the rules. It is hoped that the parliament, mirroring its diversity, will be better able to protect the independence of the regulatory body.

Facilitating the establishment of community channels is one way to promote diversity. A participant suggested that Pakistan could emulate other countries, where cable operators or distributors are mandated to allocate space for community purposes, thereby engaging the people. It was also shared that not all outlets need to be profit-based. Public TV channels like PTV should broadcast content relevant to communities across the country, rather than be concerned with commercial avenues solely. Participants also discussed if the country should have legislation providing for the three different types of broadcasters: public service, commercial, and community broadcasters. Some questioned whether we should have separate regulatory bodies for different mediums, like broadcast and Internet. One proposed solution would be to merge PTA with PEMRA, although the efficacy of this in the current environment is questionable.

Participants also asked the regulator to look into ways to diversify sources of income for media outlets. This system should engage

consumers so as to reflect their priorities.

A former information minister called for a system that guarantees that at least 30-40% of the revenue from subscribers goes to content producers. It was also suggested that the ownership of media houses should be in the "public realm, quoted on the stock exchange, and reported to shareholders." Javed Jabbar recalled that PBA has yet to fulfil its commitment to the media reforms commission of placing their entire advertisement rate online. A participant questioned whether Pakistan Television should be the sole beneficiary of the licensee fee. Yet others called for revising the rules on cross-media ownership.

Participants called for better connecting journalists, legislators, courts and civil society, so as to advance the development of better regulations. Civil society should be encouraged to keep a check on media and the regulatory body, as well as to assist parliamentarians with backgrounders. A rigorous exercise was already undertaken by the media reform commission.

As of now, there are few organizations dedicated to media reform. One way the civil society can interact is through citizen-media forums, independent bodies which monitor media policies, practices and content, in line with the public interest, such as advocating for public broadcast.



15. Shared by Toby Mendel



"If there is an issue of obscenity, you cannot just go and block the media channel. You can deal with obscenity through laws if framed on obscenity. And if not framed, make legislation to that extent."
Khalid Ishaq, Lawyer

Media Commission, what's next?

In 2010, the Supreme Court of Pakistan tasked a two-member commission, led by former information minister, Javed Jabbar, to look into issues related to media reforms.

The commission's report provides a constitutional analysis of freedom of expression and the rights of citizens. It also analyzes the law regulating the print media as

well as the rules governing the broadcasting sector, and addresses public service broadcasting issues, besides reviewing restrictions on content.

The commission calls for the revision of 64 media related laws, including the following key points:

- Structural changes in the composition of PEMRA, including the appointment of the chairman through a bi-partisan parliamentary oversight.
- New standards of transparency of media owners.

OfCom – a strong regulatory model

United Kingdom's broadcast regulator, Ofcom, is often touted as a strong regulatory model. Below are some of its key points extracted from the presentation of Maria Done, International Policy Manager, Ofcom:

Foundation:

Ofcom was established in 2003 by merging a number of regulators. Its mandate covers the entire range of communication actors in the UK, including postal services. That is why Ofcom is more aptly known as the "communications regulator". Its duties are set out in the Ofcom law.

Structure:

Some key elements of the body include:

- ★ Ofcom's board, comprising executive and non-executive members, to provide "strategic direction" to Ofcom;
- ★ Ofcom's Chief Executive, who runs the organization
- ★ Ofcom staff, who are responsible for undertaking day-to-day activities.
- ★ A number of advisory committees,

intended to reflect specific interests/interest groups, national or social.

- ★ A number of specific committees, to decide on individual aspects of Ofcom's work, including decisions about broadcasting content.

Importantly, none of the board members are allowed to represent political groups. They are appointed for 2-5 years. Moreover, Ofcom's employees/staff are not civil service employees.

Relation with government and parliament

In important respects, the body is separate from the government. The government can oversee certain matters of public interest. Moreover, the chairman is appointed by the Secretary of State for the Ministry of State





"In Canada, we have one piece of legislation that deals with both general or [private] and public broadcasting. I am often asked: 'should these go together?' I say it's perfectly irrelevant. What's relevant is what the law says. ... You can't just float [it], for example, within jurisdiction of [a] ministry or float [it] as private company under public control."

Toby Mendel, Executive Director, Centre for Law and Democracy

- Privatization of PTV, Radio Pakistan, and Associated Press.
- De-centralization of the control of advertising by the Public Information Department.

Later, the NA standing committee on information endorsed 30 out of 35 recommendations. The Senate forum for policy research endorsed all of the recommendations. Furthermore, the minister, on the floor of the House, supported most of the recommendations.

The Supreme Court stated that a task force will be set up to that end, but more than two and half years later, this has still not been done. The commission's head noted:

As much as I respect SC, the SC is also responsible for not following up, setting up a commission, dealing with all of the work and now, zero is the result. The SC hasn't bothered us to say that it is okay and please consider the recommendations. What do the recommendations call for?



which is responsible for culture.

All the appointments to the boards and rest of Ofcom are done by Ofcom themselves, in consultation with government departments and, in some cases, with parliament.

Ofcom's chairman and chief executive appear before the parliament every year to answer questions about the work the body has done, and how it has met the objectives set out in the annual plan.

Finances

Funding for Ofcom comes from its regulatory activities, like spectrum auctions and the money is paid directly to Ofcom. Ofcom manages the budget on its own. Like other public bodies, Ofcom faces pressure on funding, after being subjected to certain caps the government might apply. The body is also externally audited.

Decisions

The decisions are always directly or indirectly based on public consultation, mostly with industry and civil society, following established procedures, which are available via the website. These decisions may or may not be appealed. Ofcom publishes all of their decisions to ensure transparency.

Enforcement

Ofcom has a sanctions regime that underpins the decisions it takes. These include a broad range of tools like financial penalties, reputational risks, etc. The real strength of Ofcom lies in its eventual power to cancel licences.

Licensing

Licences are allocated through a mix of open competition and transparent decision making. There is no licensing of cinema.

Someone applying for a licence has to be a decent and upstanding member of society and company. Licensees are asked to meet a full range of conditions, like quota requirements, the kind of content that broadcasters commit to producing and making available.





Conference statement

We, the participants at the International Conference on Media Regulation – Challenges and Reforms, having met at the Serena Hotel in Islamabad on 21 July 2016, adopt the following Statement:

Noting the overriding importance of ensuring strong protection for freedom of expression and of the media as an underpinning of democracy, as a tool to combat corruption and other forms of wrongdoing, and as a fundamental human right:

Recognising the need, as a matter of priority, for substantial reform of the law and practice regarding media regulation and related matters in Pakistan, to bring it into line with relevant constitutional and international human rights standards:

Stressing the important role to be played in this process by different stakeholders, including the government, the parliament, the Pakistan Electronic Media Regulatory Authority (PEMRA), media outlets, journalists and media workers, and civil society actors, as well as the supportive role to be played by the international community:

Commending the work that has been done by the Media Reforms Agenda Experts Committee to prepare the draft Agenda for Change, and the support that has been provided to this end by International Media Support (IMS), Institute for Research, Advocacy and Development (IRADA) and Pakistan Institute of Peace Studies (PIPS), among others:

We express our support for this process and call on the Media Reforms Agenda Experts Committee to work to finalise the Agenda for Change in line with the discussions and recommendations made during this Conference.

Agenda

International Conference on Media Regulation – Challenges and Reforms Thursday, 21 July 2016, Islamabad

INAUGURAL SESSION

- Speakers:** **Muhammad Amir Rana**
Director, Pakistan Institute of Peace Studies
Honourable Karunaratna Paranawithana
Deputy Minister for Parliamentary Reforms and Mass Media, Government of Sri Lanka
Mr. Jakob Rogild Jakobsen
Deputy Head of Mission, Royal Danish Embassy in Islamabad, Pakistan
Adnan Rehmat
Programs Manager, International Media Support - Pakistan

SESSION 1: AGENDA FOR REFORMS

- Moderator** **Muhammad Amir Rana**
Director, Pakistan Institute of Peace Studies
- Speakers:** **Toby Mendel**
Executive Director, Centre for Law and Democracy
Khalid Ishaq
Lawyer
Amjad Bhatti
Research and Knowledge Management, Development Alternatives Inc.

SESSION 2: REGULATORS AND LICENSING OF BROADCASTERS

- Moderator** **Muhammad Aftab Alam**
Legal, Regulatory & Professional Codes Expert, International Media Support (IMS) – Pakistan
- Speakers:** **Javed Jabbar**
Former Federal Minister for Information

- Maria Donde**
International Policy Manager, OfCom, UK
Mukhtar Ahmed
Director General, Licensing and Broadcasting, PEMRA

SESSION 3: REGULATING CONTENT

- Moderator** **Toby Mendel**
Executive Director, Centre for Law and Democracy
- Speakers:** **Ranga Kalansooriya**
Director General, Government Information Department, Government of Sri Lanka
Mazhar Arif
Executive Director, Society for Alternative Media
Nighat Dad
Executive Director, Digital Rights Foundation
I. A. Rehman
Director, Human Rights Commission of Pakistan

CLOSING SESSION

- Moderator** **I. A. Rehman**
Director, Human Rights Commission of Pakistan
- Speakers:** **Senator Farhatullah Babar**
Member of Parliamentary Standing Committee on Information, Broadcasting and National Heritage
Afrasiab Khattak
Senior Leader, Awami National Party
Muhammad Ziauddin
Member, Media Reforms Agenda Experts Committee
Adnan Rehmat
Programs Manager, International Media Support - Pakistan

Media Coverage

'Freedom of expression is stifled in the name of security, morality'

DAWN 22 July 2016

Right to Information

Defence Ministry advises not to legislate without its NOC

THE NEWS 22 July 2016

ISPR runs FM channels under accord with Pakistan Radio: Pemra

THE NEWS 22 July 2016

'Freedom of Expression stifled in name of national security, says PPP senator'

PAKISTAN TODAY 22 July 2016

تمام مذہبی ٹی وی چینلز حکم امتناعی پر بغیر لائسنس چل رہے ہیں، آئی ایس پی آر ریڈیو پاکستان کیساتھ معاہدے کے تحت ایف ایم چینل چلا رہا ہے، پیمر

JANG 22 July 2016

میڈیا کے ضابطہ ریاستوں کیلئے چیلنج بن چکے ہیں، عالمی کانفرنس اطلاعات تک رسائی کا قانون جاری ہو میں نے تو بے لاکھ روپے میں نہیں بنی کا فرشتہ اللہ ہار

JAHAN PAKISTAN 22 July 2016

مذہبی ٹی وی چینلز لائسنس کے بغیر چل رہے ہیں، پیمر فورٹ رائیو پاکستان سے معاہدہ کے تحت ایف ایم چلاتی ہے، لائسنس جاری نہیں کیا سرکاری میڈیا پیمر کے دائرہ اختیار میں نہیں آتا، سینٹر افسر ڈاکٹر جتوئی کا حکمہ خیال

EXPRESS 22 July 2016

'Freedom of expression being gagged on pretext of national security'

DAILY TIMES 22 July 2016



JANG 22 July 2016



NAWA-E-WAQT 22 July 2016

Effective regulation of media is a dire requisite for a sound democracy - Dep. Minister says in Islamabad

NEWS.LK 21 July 2016

Pak Institute for Peace Studies (PIPS) is an independent, non-governmental research and advocacy think-tank. An initiative of leading Pakistani scholars, researchers and journalists, PIPS conducts wide-ranging research and analysis of political, social and religious conflicts that have a direct bearing on both national and international security. The PIPS approach is grounded in field research. Our surveys and policy analyses are informed by the work of a team of researchers, reporters and political analysts located in different areas of conflict in Pakistan.

PIPS carries out and disseminates policy analysis and research studies on the regional and global strategic issues such as conflict and development, political violence, religious extremism, ethnic strife, terrorism, governance and democracy, foreign relations, and cultural learning of policy-making processes. It also conducts dialogues, trainings and other educational programs for strengthening partnerships and resolving inter-state conflicts, and clashes between the government and the public - including various sections of the public within the framework of civil society.



PAK INSTITUTE FOR PEACE STUDIES (PIPS)

P. O. Box No. 2110, Islamabad, Pakistan
Tel: +92-51-8359475 Fax: +92-51-8359474
Email: pips@pakpips.com
www.pakpips.com