

Regulation of Electronic Media in Pakistan, the US and the UK

Yasir Aleem Fatiana*
Harlida Abdul Wahab
Rohizan Halim

School of Law,
College of Law, Government and International Studies,
Universiti Utara Malaysia

*Correspondent email: yasir.aleem@hotmail.com

ABSTRACT

Regulation of electronic media is a vital aspect of freedom of expression of electronic media. However, in Pakistan it is alleged that freedom of expression is heavily regulated and there is very little space for freedom of expression on electronic media. This article examines this assertion of heavy regulation by comparing the regulatory systems of Pakistan with regulatory systems of England and America. Comparative legal research method is used under this study. Comparative legal research method is supported by the socio legal method of research. Under socio legal methods, three legal experts were interviewed, for expert opinion on the matter. This article concludes that Pakistan lacks in several key areas of regulation of electronic media as compared to the USA and UK. At the end this article presents future implications regarding regulation of electronic media.

Keywords: *Freedom of Expression, Electronic Media, Comparison, Regulation.*

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INTRODUCTION

Expression is a matter of right and liberty. Right to know and liberty of thinking are the foundations of expression (Blasi, 1995). Expression is vital to the development and completion of individual personality (Lingens v. Austria , 1986). Freedom of expression is required to fulfill numerous objectives including, search of truth (On Liberty. , 2016), personnel autonomy

(Alexander, 2000) and promotion of democracy (Meiklejohn, 2001). Democracy provides an opportunity to the people to rule their countries. Freedom of expression is indispensable in democracy and in making people sovereign rulers (Kent, 1989). Although Freedom of expression is one of the most debated of constitutional rights but even then it can be found in almost all parts of the world. Constitutions drawn from all continents, throughout Europe, Asia, America, Africa and Australia have protected freedom of expression. Even freedom of expression is available (by some other ways) in those countries that don't afford a comprehensive constitutional mechanism for protection of freedom of expression. Right of expression is indispensable to commune the views, thoughts, philosophy, activities and ideas. Electronic Media provides opportunity to individuals to reach out to other persons and institutions. Although the right to expression is available to every organization, institution and individual, but it becomes peremptorily essential in the field of media (Sridhar, 2007). Regulation is an important aspect of freedom of expression. It also becomes imperative in the field of electronic media.

There is a strong perception that electronic media across the world, can have significant effect on economic, social and political policies of the countries. It has also tendency to affect the lives of the peoples. Electronic media is regulated due to these presumed effects of the media. Different systems of the regulation of media can be found in world. This article makes a comparison of electronic media regulation in three countries: Pakistan, United States, and England. These three countries present a great variety of approaches about regulation of electronic media.

RESEARCH METHODOLOGY

Anwarul Yaqin book (Yaqin, 2008) has stated that usually legal research involves four diverse methods, namely descriptive, analytical, historical and comparative. Under this article comparative legal research method is applied to ascertain and describe the attitude of different countries towards regulation of electronic media. Comparative legal research alone is not sufficient to address the subject of regulation. The socio legal method of research is also adopted to assist comparative law research. Under socio legal method of research three legal experts were interviewed to get detailed understanding of methodologic differences of regulation of electronic media in these countries.

REGULATION OF ELECTRONIC MEDIA

Regulation of electronic Media is a vital aspect of freedom of expression of electronic media. Electronic media has the tendency to influence the social, political and overall life of everyone in the country. Regulation comprises of influences over electronic media operations and content. That influence can be internal and external (McKenzie, 2011). Therefore, regulation of the media can present different levels of influences, ranging from recommendations from media industry, suggestions by public, to advices from international organizations and to direct regulation by state. However, within a state, it is the government that determines the nature of media content. So for this purpose the regulation is defined as the legally binding rules which are applicable on the content of media industry in a country.

Regulation in different countries

The USA

The government body for the regulation broadcast in United States is Federal Communications Commission (FCC). It was created by Communications Act which was passed in 1934. FCC deals with all television, radio operations and telecommunications. The FCC has the authority to develop regulations and enforce such regulations. Three zones of regulation of content are mostly supervised by the FCC. Those include *indecentcy*, *commercial advertising by a non-commercial broadcaster* and *children's programming*. The Communications Act proscribes the broadcasting of obscenity. Obscenity is defined in *Miller v. California* (Miller v. California, 413, 1973). Indecency is defined as "language that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs. Again, the test of what is decent and what is indecent is in the hands of consumers (McKenzie, 2011).

A second category of regulation is in *commercial advertising by a non-commercial broadcaster*. Non-commercial broadcaster's public, college and university stations and community broadcasters are barred from airing advertisements. However, there are some exceptions to this rule. *Children's programming* is another important area of regulation for FCC. Through an amalgamation of a Children's Television Act and FCC rules, following

requirements for children programmes are made. There are two requirements for children programming in US. It is mandatory for all stations to telecast at least three hours of programming in a week for children. Secondly, bumpers must be telecasted between advertising and children's programs. There is also a requirement related with advertisement. During weekdays, advertising can be allowed to 10.5 minutes per hour and up to a maximum of 12 minutes per hour at weekends. The FCC has two powers to implement its decisions. First is the revocation of license and second is the imposition of the fine. A fine can only be levied by the Enforcement Bureau of the FCC. For violations related to content, the FCC mostly relies on citizens' complaints.

United Kingdom

The Office of Communications (Ofcom) regulates commercial television and radio stations in the UK. It also regulates video-on-demand and the airwaves over which wireless devices operate. The Office of Communications (Ofcom) has, since 29 December 2003, assumed the functions carried out by these bodies. Previously, these were carried out by not fewer than five bodies for different aspects of mass media and telecommunications policy. Those bodies included the Independent Television Commission (ITC), Radio Authority, OfTel, the Broadcasting Standards Commission, and the Radiocommunications Agency. Ofcom regulates that how the programmes are transmitted and program content (including journalism). Ofcom's powers include fining media organizations for breaching regulations and closing illegal 'pirate' broadcasters, and commercial broadcasters where necessary (Smartt, 2014). These powers of statutory regulation were granted to Ofcom by the Communication Act of 2003. Part 1 of the Communications Act 2003 defines Ofcom's general duties and functions, Part 2 deals with the regulation of electronic communications networks and delivery infrastructures.

The UK tradition of public service broadcasting is respected around the globe. This tradition includes several commercial public service television broadcasters. Ofcom regulation of broadcasting encompasses the following different aspects.

- a) **Content**, ensuring high program standards
- b) **Competition**, promoting choice of viewing and listening
- c) **Media ownership**, guarding plurality
- d) **Media Literacy**, empowering consumers in accessing services
- e) **Spectrum management**, ensuring efficient use of spectrum

When it comes to regulation of content, the ofcom has defined the scope of the regulation in within three tiers,

- 1) Concerns negative content regulation across all radio and television broadcasters in the UK. The principles are provided later
- 2) It is also related with BBC and relates to quantitative matters as quotes for independent television production, regional production and original EU/UK production.
- 3) Covers the public service broadcasting remits of channels 3, channel 4 and channel five. This also includes format regulation for the radio. Ofcom does not regulate the BBC Tiers regulations which are the responsibility of the BBC governors.

Ofcom also provides the broadcasting code for the media in UK. The Ofcom Broadcasting Code, the latest edition of which covers all programmes broadcast since 3 April 2017, provides rules which broadcast journalists must adhere to, or face sanctions from their employers. One crucial requirement of the Ofcom Code is that all broadcast journalists must produce politically impartial content although, this does not require them to be politically impartial themselves. The major sections of the broadcasting code are following. Protection of children, offence and harm, crime, religion, undue prominence and impartiality, rules for election and referendums in UK, rules for fairness, rules for protection of privacy, and commercial referencing. Ofcom code for content is a comprehensive document and covers all aspects of the media.

The Pakistan

Pakistan Electronic Media Regulatory Authority Ordinance 2002 (Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>) created Pakistan Electronic Media Regulatory (PEMRA) authority to facilitate and regulate the private electronic media. On 8 April 2005, by an Ordinance, the Government incorporated the Enforcement Committee. The PEMRA is one of the major stakeholders of committees. Cable TV Regulations, Broadcasting Regulations, Copyright Ordinance were incorporated to assist PEMRA law (Abrar, 2016). Initially electronic media was governed by Pakistan Telecommunication Authority (PTA), but ever since the formation of PEMRA, electronic media is regulated by the PEMRA. The public owned electronic media is not controlled by PEMRA (Ali, 2011). The preamble of PEMRA Act states the following (Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>) :

“First to improve the standard of information, education and entertainment, enlarge the choice available to the people of Pakistan in the news media, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest; secondly, to facilitate the devolution of responsibility and power to the grass-roots by improving access of the people to mass media at the local and community level and thirdly, to ensure accountability, transparency and good governance by optimizing the free flow of information”.

The main obligation of the PEMRA is to regulate all broadcast media and distribution services in the country. The PEMRA Authority also controls the distribution of foreign and local TV and radio channels in Pakistan. The PEMRA Authority, as a regulating forum has executive, judicial and legislative powers. It makes rules for TV industry, implements those rules, and entertains complaints of alleged violation of rules. The PEMRA Authority can also penalize against infringements. The verdicts of the authority can be judicial reviewed. The regulation of electronic media has direct relationship with freedom of expression. The same was asserted by a legal expert in the following words;

“The role of the PEMRA Authority is of paramount importance for ensuring freedom of expression of electronic media in the Pakistan. Freedom of expression and regulation of freedom of expression has a direct relationship with each other. Thereby independent working of regulatory body is imperative for ensuring freedom of expression of electronic media (1, 2018)”

Importance of PEMRA and authority was reiterated by the interviews conducted. The views of another legal expert regarding role of PEMRA as regulator of freedom of expression of electronic media are

“PEMRA is an independent body for the establishment and application of rules for electronic media in the country. PEMRA authority under section 4 is responsible for the regulation of electronic media in the country and for that purposes it has made several rules. Those rules include Cable TV Regulations 2002, Broadcasting Regulations, 2002 and

PEMRA (Councils of Complaints), Rules 2010 and most noteworthy PEMRA code of conduct for Electronic Media (2, 2018)”

Similar views on the regulation of electronic media and freedom of expression were presented by the other legal expert who was interviewed for this study. The journalists believed that

“Freedom of expression is an important concept and is of supreme interest for the Electronic media in any country. Freedom of expression improves the living conditions of the society. PEMRA is an organization established by the military dictator for the issuance of license and regulating electronic media in the country. The role of PEMRA as an independent body has always remained suspicious. PEMRA should be free enough to effectively consider matters of freedom of expression in the country” (3, 2018).

Regulatory Process of PEMRA.

The regulatory process of the PEMRA is consisted of two things. Code of conduct for electronic media and the rules for enforcement of that code is also presented under the PEMRA law.

Code of conduct for electronic media

PEMRA has also provided a comprehensive code of conduct for electronic media in the country. It has covered different aspects of the regulation of media. Code of conduct has made rules for regulation of content of news, violence, crime, religion, privacy, children, advertising, hate speech, decency, morality, aspersions against judiciary. Although code of conduct has touched upon all matters of the content for regulation but has not provided comprehensive regulations as compared to USA and UK Ofcom rules. The method of enforcement is presented below.

Enforcement Mechanism of PEMRA

The second part deals with Enforcement Process. Enforcement process is conducted by the council of complaints. Council of complaints is a body responsible for entertaining applications against any aspect of program on broadcast media in the country

Council of complaints is the chief and first body which is responsible for regulation of electronic media in the country and if it is disputed one than all the process of the regulations becomes suspicious. PEMRA Authority and council of complaints are the main bodies of the PEMRA and if they are brought onto dispute than the whole system is brought in to dispute (Ali, 2011).

Table 1

Summary Table Comparing the Regulation of Media

	Government Bodies	Media Regulated	Priority Content	Enforcement options
Areas				
USA	FCC	Radio, Television	Indecency, Advertising by noncommercial Broadcasters, Children	Fines, License Revocation
UK	OFCOM	Radio, Television	Protecting the Under- Eighteens, Harm and Offence, crime, disorder, hatred and abuse, religion, Privacy, commercial referencing	Fines, License Revocation
Pakistan	PEMRA	Radio, Television	News, violence, crime, Religion, Privacy, Children, Advertising, Hate speech, decency, morality	Fines, License Revocation

Communication and media policies are framed by the PEMRA. In recent times PEMRA has received a reasonable amount of condemnation for its failure to effectively regulate electronic media and sometimes not acting timely on different complaints regarding electronic media in the country. Legal experts stated that

“According to the Media Commission Report released in April 2014, 89 licensed TV channels, including 29 news channels, are currently operating in Pakistan with access to 15 million households or about 75 million viewers. Similarly, nearly 180 FM radio stations with access to 78 million listeners have also sprung up across the country. Now the list has crossed the no 100 and much more FM channels are granted licenses in the country (1, 2018)”.

However, PEMRA’s role in growing the broadcast sector has been obscured by its feeble performance on various other fronts. The UK and the US are two advanced countries with strong roots of liberal democracies. Legal expert on the comparison with UK law stated that;

“The commercial sector is regulated by the Office of Communications popularly known as Ofcom. Before Ofcom was set up in December 2003, following the adoption of the Communication Act 2003, the country’s media and telecom sectors were governed by five different regulators. However, as part of the reforms aimed at addressing the challenges posed by an increasingly complex and convergent media and telecommunication landscape, Ofcom was established to replace the former regulators for both the broadcasting and telecom sectors. As defined in the Communications Act 2003, the principal duty of Ofcom is to “further the interests of citizens in relation to communications matters; and (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition” (2, 2018).

Regarding system of electronic media control in US the legal expert stated that:

“In the United States, policy making, and regulation of broadcasting is a matter for federal law. All forms of broadcasting, including telecommunication, are regulated and controlled by the Federal Communications Commission (FCC) which is an independent regulatory authority overseen by the Congress. The mandate of the FCC includes regulation of interstate and international communications by radio, television, wire, satellite and cable throughout the country” (3, 2018).

Regarding role of PEMRA for regulation of electronic media, the legal expert stated that

“In Pakistan the PEMRA only regulates the electronic media but the Ofcom in UK regulates both the broadcast media and the telecom sector. For telecom sector regulation Pakistan Telecommunications Authority is established under the law. The object of PEMRA is to improve the standers of education and information and enlarge the viewer’s choices whereas the object of the ofcom is to further the interests of the UK citizens in relations to communication matters as provided under communication act” (1, 2018).

Regarding restrictions or regulating the conduct of broadcasting media the codes of ofcom are much more comprehensive as compared to PEMRA code of code. The communication act 2003 provides the basic rules of business and ofcom code is presented based on that communication act. The ofcom code also provides the explanations of each part of the code of ofcom for regulation of broadcast media in UK but PEMRA only provides the code which is also lacking several things. It is wrongly believed that in Pakistan the electronic media is heavily regulated. If we compare the both regulations of UK and Pakistan about restrictions and code of conduct than we can easily conclude that the ofcom code is easily more comprehensive, more detailed, more easily understandable and covers all matters of importance including the emerging matters. However, the same cannot be said about PEMRA. Ofcom has made total of 9 categories of regulations of broadcast media. PEMRA has also tried to follow the regulations of the Ofcom but has failed to do so. PEMRA instead of adopting comprehensive approach to explain and present detailed regulations has adopted the summary method of regulations. The ofcom method is to explain and elaborate each concept of regulations of broadcast media whereas PEMRA code is opposite in nature. PEMRA code although discuss all major concept but leaves the room of misinterpretation as it not explained in detail. The other difference of PEMRA with ofcom includes the independence of regulatory body and the provision of finances by the government. Ofcom receives the funds from the government whereas the PEMRA is required to create its own resources and then submit budget reports to the government of the time. Ofcom is working as an independent body under the Broadcasting Act 2011 whereas PEMRA is working under the umbrella of the federal government.

while comparing PEMRA system with USA the legal experts stated that;

“Although there are many similarities between the USA and UK media policies but there are significant differences as well. The US media system allows for minimum governmental involvement in the media affairs and allows the media and market to decide and dictate media outlook in the USA. Like Ofcom in UK and unlike PEMRA in Pakistan, the FCC regulates both the telecom and the broadcast sectors. As opposed to ofcom the FCC in USA resorts to minimal interference or regulations” (2, 2018).

However, in certain areas FCC intervene in media regulations. Those areas include indecency, advertising and children programing as the laws requires that minimum of 3 hours in a week must be dedicated towards programs for children in USA. In Pakistan the advertising laws are available in the PEMRA laws but with regards to indecency and child programming there are issues. About decency in Pakistan there is a huge discussion going on as the exact meaning of decency are not known. The legal expert opinion on this matter was that;

“Even last year when PEMRA issued warning to some TV channels on airing indecent programs, there was a huge hue and cry even from some politicians over the behavior of PEMRA. Some of them even termed PEMRA as policemen for the broadcast media in the country” (3, 2018).

There is lack of workable definition of decency in the PEMRA laws and PEMRA even called for a meeting for deciding the meaning and even the religious scholars were called in to present their views on the matter, but the meeting could not bear the desired fruit of defining properly decency and indecency. Another major area of concern is child programming and other matters were also highlighted by the legal expert in the following words;

“About Child programming there is no such laws in PEMRA code of conduct or other laws which calls for mandatory child programing on broadcast media in the country. There is another huge difference regarding adoption of new code or rules by the Federal Communications Commission (FCC) and Pakistan Electronic Media Regulatory Authority

(PEMRA) in Pakistan. FCC adopts the rules and after the ‘notice and comment’ process where the public is served with the opportunity to present its opinions on rules and opinion is considered while deciding about the fate of rules in USA. Whereas in Pakistan even the stakeholders of the PEMRA are not taken into confidence while presenting new rules or code of conduct relating to broadcast media in Pakistan” (1, 2018).

At the end we may conclude that although PEMRA is trying hard to regulate electronic media in the country, but it has not achieved the desired results so far. At the same time the notion of heavy regulation of electronic media in Pakistan is completely wrong and PEMRA lacks in several areas as compared to UK and USA regulatory system. PEMRA can and should learn about strategies for effectively regulation from ofcom of UK. It must also consider the US rule of child programmes and decency matters.

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