

## NEWS CONTENT ON PRIVATE TV CHANNELS IN PAKISTAN: PEMRA STANDARDS AND INTERNATIONAL BEST PRACTICES

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### Abstract

*This article addresses issues like misinformation, violent content, distorted conflict reporting, infringement of privacy, and biased coverage of elections by private Pakistani channels. Vocal media, no doubt, strengthens democratic institutions but the misuse of freedom of expression must be avoided - a freedom that comes with certain pre requisites and responsibilities. Content regulation creates a balance between rights and responsibilities of both the regulated and the regulator. It entails protection for the media from commercial interests, pressure groups or state bureaucracy; and for the public so that its right to information and privacy is guarded against misinformation, propaganda or menacing content. In this context, current Pakistan Electronic Media Regulatory Authority's (PEMRA) standards need to be re-evaluated in view of ongoing compliance related issues in news content. The article analyses PEMRA standards for news programmes in light of the modern broadcasting codes/rules/conventions to address the problem of content violations in Pakistan.*

**Keywords:** *Media Freedom, Fake-news, Media Content, Standards of Reporting, Responsible Journalism, Pakistani media*

### Introduction

**A**fter the establishment of Pakistan Electronic Media Regulatory Authority (PEMRA) in 2002, the local media industry witnessed a mushroom growth of private TV channels. This massive expansion

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has resulted in saturation of the media market, where each TV channel is selling its programmes' content in a competitive environment. To increase viewership, the Channels have adopted/developed certain practices which lead the viewers to ultimately criticize the news content as being hyped, inaccurate and politically biased. There is a need for adequate regulation to curb such practices.

Private TV Channels in response argue by using the notion of 'free media', which no doubt is protected under Article 19 of the Constitution of Pakistan, with certain internationally recognized qualifications and restrictions. The Supreme Court of Pakistan, while interpreting Article 19 held that 'reasonable restrictions on reasonable grounds can always be imposed' and that '[r]easonable classification is always permissible and law permits so.'<sup>1</sup> The Supreme Court has established jurisprudence that media cannot publish whatever it wishes.<sup>2</sup> Right to freedom of expression and media freedom has constitutional qualifications to meet, which justify regulation.

### **Rationale Behind Regulating Information Content: Public Interest Considerations**

A good regulatory code creates a balance between public and private interests for greater good. Inspired from the qualifications laid down in Article 19 of the Constitution, PEMRA Code provides for the protection of privacy, personal life, private communication etc., which is otherwise a restriction on freedom of media. These protections, however, may not be available where there is an overriding public interest. PEMRA Code enumerates such public interest considerations.<sup>3</sup> This jurisprudence is a long established tradition in the leading common law jurisdictions.<sup>4</sup>

Despite a growing inclination towards social media in Pakistan,<sup>5</sup> the role and importance of TV news will prevail for some time to come, due to its ability to influence people. Rightly observed by the Supreme Court of India, television is unique in the way it intrudes into our homes;

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<sup>1</sup> Engineer Jameel Ahmed Malik v. Pakistan Ordnance Factories Board, 2004 SCMR 164.

<sup>2</sup> Sheikh Muhammad Rasheed v. Majid Nizami, Editor-in-Chief, The Nation and Nawa-e-Waqt. PLD 2002, SC 514.

<sup>3</sup> PEMRA Code, s 21.

<sup>4</sup> Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review*, 4 (1890): 193.

<sup>5</sup> Rasmus Kleis Nielsen and Richard Sambrook, "What is Happening to the Television News?" *Digital News Project, Reuters Institute for the Study of Journalism*, London, 2016, <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2017-06/What%20is%20Happening%20to%20Television%20News.pdf>.

the images and sound combined together create a tremendous impact on millions.<sup>6</sup> Hence, it participates in the democratic process.<sup>7</sup> In view of these considerations, it is inevitable to provide certain standards and rules to save the viewers - as television consumers<sup>8</sup> - from inaccurate, false, misleading or harmful content.

Independent regulation is also in the interest of media so it can freely serve the role of a trustworthy source of information. State-favouring regulations always have the potential to put media under pressure through licensing and sanctions to control free flow of information. Also, it is meant to protect a person's right to information and right to free speech.<sup>9</sup> Protection of an individual's privacy is another important reason for regulation of informative content since television has an unparalleled ability to interfere into a person's private life.

Another justification for content regulation is increasing commercialism. Commercial news channels broadcasting news for TV consumers cannot be left unregulated, as commercial activities are likely to cause an imbalance between the interests of private TV enterprises and of the public seeking reliable information.

### **PEMRA Legislation and Standards**

Despite PEMRA Code 2015 (PEMRA Code) being in force for the last few years, content compliance has not significantly improved in news programmes. The very first mandate of PEMRA is to improve standards of information.<sup>10</sup> PEMRA legislation on regulation of information content is scattered in the PEMRA Ordinance, Regulations, Rules and Code of Conduct. The recent development was PEMRA Code, issued by the PEMRA at the directions of Supreme Court of Pakistan in certain Constitutional Petitions<sup>11</sup> on media related issues, in line with the PEMRA Rules.<sup>12</sup> As compared to earlier Code of Conduct (Schedule - A to PEMRA Rules) the present PEMRA Code is relatively more detailed. It provides certain fundamental principles requiring compliance in mandatory terms.<sup>13</sup>

Fundamental principles of the PEMRA Code prohibit broadcast of content that is against Islamic values, Pakistan's ideology or the founding

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<sup>6</sup> 1995 AIR 1236.

<sup>7</sup> Eve Salomon, *Guidelines for Broadcasting Regulation*, 2<sup>nd</sup> Ed. (London: Commonwealth Broadcasting Association, 2008), 11.

<sup>8</sup> *Ibid.*, 42.

<sup>9</sup> *Ibid.*

<sup>10</sup> PEMRA Ordinance, Preamble (i).

<sup>11</sup> Constitutional Petitions: No. 53/2012, 104/2012, 105/2012 and 117/12.

<sup>12</sup> PEMRA Rules, 2009, s 2(1)(f) and 15(1).

<sup>13</sup> PEMRA Code, 2015, Section 3.

fathers;<sup>14</sup> incites derailment of democratic set up;<sup>15</sup> calls for arms against Pakistan's security, integrity or defence;<sup>16</sup> is contemptuous of any religion or sect;<sup>17</sup> is pornographic, obscene, indecent or abusive,<sup>18</sup> or content that incites hatred on the basis of nationality, race, ethnicity, language, color, religion, sect, age, gender or any other physical or psychological disability.<sup>19</sup> Violation of copyrights or property rights is also prohibited in the code.<sup>20</sup> Furthermore, disruption of public order,<sup>21</sup> knowingly spreading false content,<sup>22</sup> aspersions against judiciary or armed forces,<sup>23</sup> intimidation, false incrimination or accusations, or blackmailing<sup>24</sup> and defaming a person,<sup>25</sup> or airing statements of any terrorists are the major do-nots laid down by the Code.<sup>26</sup> As for the protection of privacy, the Code does not allow broadcast of any private information, correspondence or behavior of a person<sup>27</sup> except in compelling circumstances of public interest. The Code also prohibits airing of plagiarized content in news and requires the licensee to ensure that it gives credit to the source; sources of facts/figures are to be mentioned for ensuring credibility.<sup>28</sup>

In view of public complaints, a substantial part of the Code is mandatory guidelines related to news and current affairs programmes,<sup>29</sup> live coverage,<sup>30</sup> and reporting and coverage of accidents, crimes and violence.<sup>31</sup> This was done in the context of ongoing war on terrorism across the north-western borders and the acts of terrorism committed on Pakistani soil, recklessly covered by private TV channels. Similarly, the

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<sup>14</sup> Ibid., Section 3(1)(a).

<sup>15</sup> Ibid., Section 3(1) (b).

<sup>16</sup> Ibid., Section 3(1) (c).

<sup>17</sup> Ibid., Section 3(1)(d).

<sup>18</sup> Ibid., Section 3(1)(e).

<sup>19</sup> Ibid., Section 3(1)(f).

<sup>20</sup> Ibid., Section 3(1)(g).

<sup>21</sup> Ibid., Section 3(1)(h).

<sup>22</sup> Ibid., Section 3(1)(i).

<sup>23</sup> Ibid., Section 3(1)(j).

<sup>24</sup> Ibid., Section 3(1)(k).

<sup>25</sup> Ibid., Section 3(1)(l).

<sup>26</sup> Ibid., Section 3(3).

<sup>27</sup> Ibid., Section 3(4).

<sup>28</sup> Ibid., Section 7(1) and 7(2)

<sup>29</sup> Ibid., Section 4.

<sup>30</sup> Ibid., Section 5.

<sup>31</sup> Ibid., Section 6.

Code prohibits broadcasting of any allegations without credible evidence<sup>32</sup> and affording him or her opportunity to reply.<sup>33</sup> To crosscheck the appropriateness according to the PEMRA standards on news content, this study—article has comparatively analysed it in the light of international guidelines on content regulation and recent or relevant codes of conduct in the UK, Malaysia and Australia. Selection of these jurisdictions for reference is based on the common law roots shared by the legal systems of these countries. Malaysia is more relevant as it not only has common law roots, but also shares a majority Muslim population, Islam as an official religion and ethnic diversity. In case of UK and Australia, a more liberal and advanced approach is followed in terms of media regulation, which seeks to protect media freedom.

### **Basic Principles and Standards: A Comparative Analysis**

Detailed rules are based on guiding principles, which reflect the public policy objectives of a regulation. This approach is common in content regulations like the Malaysian Communication and Multimedia Content Code<sup>34</sup> (Malaysian Code) developed by the Communication and Multimedia Content Forum<sup>35</sup> (CMCF). The Content Code provides General Principles<sup>36</sup> followed by Guidelines on Content,<sup>37</sup> which collectively provide fundamental principles of content regulation. UK's Ofcom<sup>38</sup> also employs a principle-based approach in devising its Ofcom Code.<sup>39</sup>

### **Accuracy**

Internationally, it is acknowledged that there is requirement of accuracy and truthfulness for news content.<sup>40</sup> While the possibility of error is not denied in media regulation, the procedure for verification of information content, its source and correction of mistakes has to be in

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<sup>32</sup> Ibid., Section 22(1).

<sup>33</sup> Ibid., Section 22(2).

<sup>34</sup> The Malaysian Communications and Multimedia Content Code, <https://www.mcmc.gov.my/skmmgovmy/files/attachments/ContentCode.pdf> (accessed September 26, 2017); Section 213 of the Malaysian Communications and Multimedia Act, 1998.

<sup>35</sup> Establishment of Content Forum is required by the Malaysian Communications and Multimedia Act, 1998. See Section 212 of the Act.

<sup>36</sup> Malaysian Code, Part One, Section 2.0.

<sup>37</sup> Ibid., Part 2, Section 1.0.

<sup>38</sup> United Kingdom Office of Communication, <https://www.ofcom.org.uk/home> (accessed October 16, 2017).

<sup>39</sup> Ofcom Broadcasting Code, 2017.

<sup>40</sup> UNESCO Guidelines, 42.

place and followed by the television station. It would be unrealistic to expect from the television to guarantee the truth,<sup>41</sup> therefore the regulation expects facts-check based on the idea of a reasonable man's due diligence in dealing with a news item.

PEMRA Code mandates that news programmes shall disseminate information in accurate manner.<sup>42</sup> Though the Code does not employ the term 'fake-news', it requires the licensee to ensure that the news content is not false.<sup>43</sup> The Code introduces the term 'aspersion' which, as a kind of false news, is defined to mean spreading false and harmful allegations against a person, targeting his reputation,<sup>44</sup> and more specifically against the judiciary and armed forces.<sup>45</sup>

It equally prohibits broadcast of any news known to be untrue, or for which there is a reason to believe that it may not be true beyond reasonable doubt,<sup>46</sup> or apparently known to be false. TV broadcaster will exercise due diligence when there is reasonable doubt about truthfulness of the content. To ensure accuracy it is imperative that editorial supervision is legally required.

To deal with a situation where inaccurate information is aired by the television, the licensee is required to acknowledge the inaccuracy and issue a correction, at the same level and magnitude at which the false information was aired, in order to reverse its harmful impact(s).<sup>47</sup> To ensure accuracy, the procedure, concept and practice of having editorial boards or in-house monitoring are also provided in the Malaysian and UK regulatory codes.

The UK broadcast regulator Ofcom, follows a more detailed approach by placing requirement of 'due accuracy' in the news<sup>48</sup> which is inspired from the Code's Principles on accuracy.<sup>49</sup> The UK Communications Act, 2003 puts accuracy in news among public policy considerations even in case of mergers of broadcasting enterprises.<sup>50</sup> The Act brought about amendment in another relevant statute to assert the

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<sup>41</sup> Julie Posettie et al., *Journalism, 'Fake News' and Disinformation* (Paris: UNESCO Paris, 2018), 22.

<sup>42</sup> PEMRA Code, Section 4(1).

<sup>43</sup> Ibid., Section 7(a).

<sup>44</sup> Ibid., Section 2(1)(a).

<sup>45</sup> Ibid., Section 3(1)(j).

<sup>46</sup> Ibid., Section 3(1)(i).

<sup>47</sup> Ibid., Section 18.

<sup>48</sup> The UK Communications Act, 2003, Section 319(2)(b).

<sup>49</sup> Ofcom Code, Section 5, Principles and Rules.

<sup>50</sup> UK Communications Act, 2003 Section 375(1).

need of accurate news among specific considerations.<sup>51</sup> The Malaysian Code too requires accurate presentation of news. Likewise the Australian Commercial Television Industry Code of Practice 2015 (Australian Code) also mandates accuracy in news content.<sup>52</sup>

PEMRA Code, like Malaysian Code, Ofcom and Australian codes, recognizes the requirement of accuracy. However, it does not follow a detailed approach considering the margin of error and complex environment of collection of information. Ofcom employs a rather surgical approach by mandating 'due accuracy' instead of 'accuracy' allowing margin of human error with fact-check procedures and due diligence in place. PEMRA standards on accuracy can improve compliance by incorporating detailed rules in this regard and checks on internal editorial boards of television channels.

## **Impartiality**

Impartiality may be considered too idealistic a principle for today's commercial television which is politically opinionated and focused on increasing viewership for more profits. It can be argued that since the print media has not been impartial, why television should be so (impartial).<sup>53</sup> However, there can be more convincing argument in favor of impartial news on television that, it is in the public interest that impartiality should build public trust in media. If political bias is condoned, the informative content on television will not be a trusted source for public. There is another risk which is practically there, that taking political sides may affect a television channel with the change of political governments and their policies, especially in allocation of government advertisements, licensing or renewal of licensee, availing any incentives etc. Therefore, best practices place impartiality as a principle followed by detailed rules in the regulation.

PEMRA legislation, specifically PEMRA Code, does not require impartiality in principle, except in cases where personal interests of a presenter may affect due impartiality of the content. In that case, such interest will be revealed with a disclaimer notice.<sup>54</sup> This requirement of 'due impartiality' applies only in cases where there is a personal interest of the journalist or presenter, which is similar to that of Ofcom Code.<sup>55</sup> However, it does not impose this responsibility on the broadcaster as organization, since it will also disclose conflict of interest. Secondly, this

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<sup>51</sup> Following promulgation of the UK Communication Act, 2003, Sub-Section 2A was added to Section 58 of the UK Enterprise Act, 2002 to this effect.

<sup>52</sup> Australian Code, Section 3.4.1(a).

<sup>53</sup> UNESCO Guidelines, 42.

<sup>54</sup> PEMRA Code, Section 4(8).

<sup>55</sup> Ofcom Code, Rule 5.8.

requirement is not presented like a principle - which has detailed rules - like in Ofcom Code.

Ofcom Code provides a separate section on due impartiality<sup>56</sup> and defines *due* as adequate and appropriate to the nature and subject of a programme. It further explains that due impartiality approach does not mean allocation of equal time to each viewpoint. In fact, due impartiality when applied may vary according to the nature and subject of a programme, the expectations of viewers and the way content is presented to them. The Code lays down Rules like prohibiting a politician on television screen presenting news or reporting except when there is editorial justification and his or her political allegiance is disclosed.<sup>57</sup> The Australian Code also dedicates, though brief and precise, a section on impartiality.<sup>58</sup> The Code requires that reporting on factual matters shall be distinguishable from any commentary,<sup>59</sup> which is identical with PEMRA Code.<sup>60</sup>

Impartiality, no doubt, is recognised as principle in these jurisdictions, however, detailed rules are provided only in Ofcom Code. In case of PEMRA, due impartiality as regulatory requirement with detail-oriented approach is missing in its Code, which needs to be incorporated as news on private television mostly involve reporting on viewpoints of opposing sides, on controversial and public policy matters, where private news channels are mostly driven by a biased approach. International best practices, like Ofcom Code can serve as a guide for PEMRA.

## Fairness

Regulation seeks to ensure that news segments are presented in a fair manner. This is in view of the public interest that the information content on television should not be negatively affected by personal views or commercial interests of the broadcasters.

PEMRA Code, perhaps following the previous United States Federal Communications Commission's fairness doctrine (now revoked)<sup>61</sup> requires fairness, objectiveness and unbiasedness in presentation of informative content. Fairness is second in line after accuracy in the PEMRA standards,<sup>62</sup> however, when it comes to news content the term fairness

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<sup>56</sup> Ibid., Section 5.

<sup>57</sup> Ibid., Rule 5.3.

<sup>58</sup> Australian Code, Section 3.4.1(a).

<sup>59</sup> Ibid, Section 3.4.1(b).

<sup>60</sup> PEMRA Code, Section 4(4).

<sup>61</sup> US Federal Communications Commission implemented Fairness Doctrine for around thirty-eight years starting from 1949. It was revoked later on the grounds of public interest and being against First Amendment.

<sup>62</sup> PEMRA Code, Section 4(1).

itself is not defined in the Code. Another aspect is angling in the news or current affairs programme - not defined in the Code but covered by the principle of fairness. 'Angling' implies reporting news in a way that leads to formation of viewers' opinion in a certain direction; like reporting on investigations or court proceedings in a manner that may affect them.

In jurisdictions like UK, fairness is recognized as a principle, followed by detailed rules,<sup>63</sup> which are purposed to ensure that no individual or organization is treated unfairly by a broadcaster. In Malaysia too, the present regulatory standards require fairness and objectiveness in news.<sup>64</sup> PEMRA Code needs to impose requirement of fairness and provide detailed rules on how fairness is to be gauged and how will it be applied by the broadcaster.

### **Right to Reply**

Right to reply is recognized in media regulation and international instruments to ensure that any allegations made against any person do not go one sided on air. The European convention on Trans-frontier Television provides that every person, irrespective of nationality or residence, shall have right to reply in relation to a programme broadcasted by a television channel in the relevant jurisdiction.<sup>65</sup> The Directive Television without Frontiers<sup>66</sup> also protects a person's right to reply in addition to any other remedies like civil or criminal action, and requires the broadcaster to facilitate effective exercise of right to reply with appropriate timing.<sup>67</sup>

Principally, PEMRA Code prohibits broadcast of allegations against an individual or organization without credible evidence and affording opportunity to defend,<sup>68</sup> or present any content as evidence against any person, unless such content can be used as evidence.<sup>69</sup> Thereby the legislature seeks to protect the principle of 'no one should be condemned unheard' in media regulation as per international regulatory guidelines.<sup>70</sup>

The Ofcom, on right to reply, has incorporated the relevant terms of European Union legislation in its Code<sup>71</sup> and recognizes that as a right,<sup>72</sup>

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<sup>63</sup> Ofcom Standards, Section Seven.

<sup>64</sup> Malaysian Code, Section 3.9(a).

<sup>65</sup> European Convention on Transfrontier Television, Article 8.

<sup>66</sup> The Directive Television without Frontiers, Article 23 (Directive No. 89/552/EEC).

<sup>67</sup> The same has been reiterated in Article 28 of the later European Union Audio-visual Media Services Directive (Directive 2010/13/EU), whose relevant sections have been incorporated in to Ofcom Code as Appendix II.

<sup>68</sup> PEMRA Code, Section 22(1).

<sup>69</sup> Ibid., Section 22(4).

<sup>70</sup> UNESCO Guidelines, page 48.

<sup>71</sup> Ofcom Code, Appendix II.

though it is also covered by the Code under the concept of fairness with detailed rules.<sup>73</sup> In contrast, PEMRA Code lacks these details and has no well-articulated approach for dealing with cases where a person gets affected by factual programme content. The Code, while providing right to reply, has missed to lay down the time frame within which the aggrieved person will be given an opportunity to reply to the allegations against him, in a manner having same effect as that which aired such allegations. In the latter case, the Code should specify how the right to reply be manifested such that it reaches maximum viewers who might have come across earlier allegations against that person. In an active political environment like in Pakistan, it is imperative that the PEMRA Code provides rules on exercising the right to reply under PEMRA. The code also needs to elaborate upon the operation of other relevant statutes like defamation law and penal code. This is needed as otherwise, it will be double jeopardy for the broadcaster to be fined by PEMRA on violation of right to reply and at the same time pay compensation for defamation.

### **Protection of Privacy**

The Universal Declaration of Human Rights provides that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence.<sup>74</sup> Freedom of media and right to privacy has to be exercised in a balanced way, which is a challenging task.<sup>75</sup> Primarily, the justification for interference into privacy is premised on the public interest argument.

The UK Broadcasting Standards Commission Code<sup>76</sup> stated:

An infringement of privacy has to be justified by an overriding public interest in disclosure of the information. This would include revealing or detecting crime or disreputable behaviour, protecting public health or safety, exposing misleading claims made by individuals or organisations, or disclosing significant incompetence in public office.<sup>77</sup>

The UK Broadcasting Act, 1996 (as amended) made it duty of the Ofcom to devise a code and standards to avoid unwarranted intervention

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<sup>72</sup> Ofcom Code, Rule 7.11.

<sup>73</sup> Ofcom Code, Section 7 (Foreword).

<sup>74</sup> Universal Declaration of Human Rights, 1948, Article 12, available at United Nation's website, <http://www.un.org/en/universal-declaration-human-rights/>. (accessed October 10, 2017)

<sup>75</sup> UNESCO Guidelines, page 47.

<sup>76</sup> This Code came into force in 1998 and was later replaced by Ofcom Code, 2003.

<sup>77</sup> UK Broadcasting Standards Commission Code on Fairness and Privacy, 1998, Section 16, <http://www.mediawise.org.uk/uk-10/> (accessed on May 1, 2018)

into privacy<sup>78</sup> The clarification of 'warranted' in Ofcom is identical with the 'public interest considerations' in PEMRA Code. Ofcom approach seems to be inspired from the European Commission on Human Rights allowing interference into an individual's fundamental right to privacy on account of some justified grounds like national security, public safety, protection of law and order, health or rights of others.<sup>79</sup> This right is protected at constitutional level in many jurisdictions including Pakistan where as a fundamental right privacy of home is inviolable.<sup>80</sup> Under the Code, revealing a person's private life, communications or personal information is not allowed, unless there is compelling public interest.<sup>81</sup>

For the purpose of reporting on matter of public interest, PEMRA Code has laid down circumstances justifying door-stepping.<sup>82</sup> First of all, door-stepping is justified only in cases of a factual programme<sup>83</sup> and not for entertainment programmes or advertisements. For factual programmes, it can take place only where a request for interview is not entertained by the interviewee but it is warranted by identifiable public interest;<sup>84</sup> such interview will not be imposed or attempted unless consented to by the interviewee, except when it is in the public interest.<sup>85</sup>

In terms of protection of privacy the PEMRA Code seems to focus on the subject of door-stepping and is not as detailed as the Ofcom Code is. Further, the terms and concepts like 'factual programme', 'warranted', 'consent' employed by the PEMRA Code are not defined in the Code unlike the Australian and Ofcom codes. It also appears that the PEMRA, unlike Ofcom, has not considered other scenarios involving violation of privacy like: surreptitious recording, filming of people in emergencies (under the subject of privacy), and filming of vulnerable and underage people. PEMRA

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<sup>78</sup> UK Broadcasting Act 1996, Section 107.

<sup>79</sup> European Convention on Human Rights, 1953, Article 8 (Right to Respect for Private and Family Life), [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf) (accessed October 12, 2017).

<sup>80</sup> Pakistan Constitution, Article 14(1).

<sup>81</sup> Op. Cit., PEMRA Code, Section 3(4) and 4(7)(d).

<sup>82</sup> Door-stepping, under Section Eight of Ofcom Code, means filming or recording of an interview or an attempted interview, or announcing that a call is being recorded for the purpose of broadcasting without any warning in advance. PEMRA Code explains door-stepping in the same words under Section 11(a).

<sup>83</sup> The term 'factual programme' though used by the PEMRA Code, is not defined anywhere in PEMRA legislation. Australian Code, Section 8, defines a Factual Programme as Current Affairs Programme, Infotainment Programme or a Documentary Programme, each specifically defined there-under.

<sup>84</sup> PEMRA Code, Section 11(1).

<sup>85</sup> Ibid., Section 11(2).

Code also does not consider any special protections for privacy of children like in Australian Code, contemporaneously issued in 2015, which requires that the television broadcaster must be extra cautious before airing any content related to children's privacy and personal matters.<sup>86</sup>

### **Reporting on Matters under Investigation or *Sub Judice***

Justification for regulation of reporting on *sub judice* matters has been both a legal and historical experience: the former is based on the principles of accuracy, fairness, impartiality, protection of privacy and ensuring uninfluenced conduct of inquiries, investigations and judicial proceedings. The latter is based on experience learnt from numerous cases mishandled by the media, like Richard Jewell<sup>87</sup> and Bush vs. Gore<sup>88</sup> in US and Panama leaks in Pakistan.

PEMRA Code mandates reporting on any ongoing trial or judicial proceedings in an informative and objective manner on the condition that the content is not prejudicial to such proceedings<sup>89</sup> and any reference to court records is correct or fair.<sup>90</sup> This is in line with the principle of accuracy and fairness<sup>91</sup> as the purpose is to keep the viewers informed and not to influence the proceedings. The Code also requires the news to be distinguishable from analysis.<sup>92</sup> Such rules are justifiable by the fact that

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<sup>86</sup> Australian Code, Section 3.5.2.

<sup>87</sup> Richard Jewell, the security guard who alerted authorities and helped people evacuate the Centennial Olympic Park, USA was initially acclaimed as a hero by the media and later was portrayed as a suspect in the bomb-blast that took two lives. Resultantly, the Federal Bureau of Investigation investigated Jewell also and it was finally declared that he was not involved in the crime. However, the media coverage of Richard Jewell as suspect had already caused considerable pain to him and his family, which resulted in various claims filed by Jewell against the involved media organizations that painted him as possible suspect. Some of the cases were: Jewell v. NYP Holdings, Inc. 23 F. Supp. 2d 348 (SDNY) 1998; Jewell v. Capital Cities/ABC, Inc., No. 97 Civ. 5617 LAP, 1998 WL 702286 (SDNY 1998 October 7, 1998); Jewell v. Cox Enterprises Inc. which was later joined with Atlanta Journal-Constitution v. Jewell, 55 S.E.2d 175 (Ga. CT. App. 2001).

<sup>88</sup> Bush v. Gore, 531 U.S. 98 (2000). In USA, for the 2000-election coverage by media was sensational and politicized during the litigation, that analysts see media as deciding the outcome.

<sup>89</sup> PEMRA Code, Section 4(3).

<sup>90</sup> Ibid., Section 4(6).

<sup>91</sup> PEMRA Code, Section 4(1).

<sup>92</sup> Ibid., Section 4(4).

news channels' content is for commercial consumption, while the court proceedings are for dispensation of justice.<sup>93</sup>

Ofcom Code comparatively employs more detailed approach, specifically on broadcaster's conduct while reporting on trials involving juvenile offenders,<sup>94</sup> and prohibits offering the case witnesses any amount for getting information.<sup>95</sup> Unfortunately, the PEMRA Code does not contain detailed provisions on this issue, except for general guidelines. Issues like leaking of any relevant documents which are part of any investigations or judicial proceedings, and which may prematurely affect public opinion need to be regulated through PEMRA Code. It is imperative to specify in the Code that the evidence of the case, unless allowed by the relevant judicial forum must not be aired, especially in cases involving high profile crimes, terrorism and political parties. During the trial, undue projection of any party to the litigation need also be curbed by the Code as it may drive public opinion in favour of or against one of the litigants. More particularly, reporting on investigations led by police or any other law enforcement agencies need regulation too, as it may negatively affect public opinion at the very early stage of a trial. These issues need to be addressed in the Code.

### **Coverage of Elections**

It is admitted that regulating election coverage is a complex phenomenon, where the objective is to balance between different political parties. It is therefore imperative that the television follows a specific code of conduct so that the contesting parties get proper coverage and fair treatment on television.

The PEMRA legislation itself does not provide any guidelines on election coverage like in Ofcom Code. Practically, the issue of election coverage by private TV channels is not covered by the PEMRA Code. It is the Election Commission of Pakistan (ECP)<sup>96</sup> that issues a code of conduct for media regarding general and local elections, including any by-elections. This shows that on elections coverage the regulation is not uniform under one regulator. The general elections in 2018 will be the first national polls

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<sup>93</sup> Jessica E. Jackson, "Sensationalism in the Newsroom: Its Yellow Beginnings, the Nineteenth Century Legal Transformation, and the Current Seizure of the American Press", *Notre Dame Journal of Law, Ethics & Public Policy*, Vol. 19, No. 2 (2005): 789. <http://scholarship.law.nd.edu/ndjlepp/vol19/iss2/22> (accessed March4, 2018)

<sup>94</sup> Ofcom Code, Section 1, Article 1.8.

<sup>95</sup> Ofcom Code, Section 3, Rule 3.4.

<sup>96</sup> Election Commission of Pakistan is a constitutional body established under Article 218 of the Constitution of Islamic Republic of Pakistan, <https://www.ecp.gov.pk/> (accessed March4, 2018)

after PEMRA Code 2015 came into force. ECP has issued a code of media<sup>97</sup> (ECP Code) as one of the steps to ensure conduct of fair elections guarding against corrupt practices.<sup>98</sup>

The ECP Code 2018<sup>99</sup> was for all categories of media providing that the foremost duty of media is to inform the public about electoral process and voting procedure.<sup>100</sup> Secondly, the Code obligates media to ensure impartiality, accuracy and a balanced approach in the elections coverage.<sup>101</sup> In relation to news, the electronic media, television and radio will act fairly and without bias instead of favouring any particular party contesting elections.<sup>102</sup> Duty to act fairly is in line with the international guidelines<sup>103</sup> and best practices. It is also required from the media to not spread any speculations concerning elections<sup>104</sup> or broadcast any hate speech.<sup>105</sup>

Thirdly, the ECP Code imposes duty to promote tolerance.<sup>106</sup> At the same time, freedom of expression<sup>107</sup> and access to information before and after elections<sup>108</sup> has been protected under the Code by ensuring that there will be no restrictions on journalists in election coverage. Authorities will neither exercise any prior restraint or censor, nor interfere in broadcast of information concerning election coverage,<sup>109</sup> except when such broadcast is imminently harmful and can cause violence.<sup>110</sup>

The Code also mandates that all parties should be given appropriate coverage<sup>111</sup> depending on a party's number of candidates and the seats they contest for.<sup>112</sup> Any polls and projections broadcasted by a television channel will be presented in a fair and accurate manner with an

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<sup>97</sup> The Elections Act, 2017, Section 233(2).

<sup>98</sup> Constitution, Article 218(3).

<sup>99</sup> Issued by Election Commission of Pakistan Notification No. F. 14(1)/2016-PR.(2) July 2, 2018 <https://www.ecp.gov.pk/PrintDocument.aspx?PressId=55366&type=PDF> (accessed April 10, 2018)

<sup>100</sup> ECP Code of Conduct for Media for the General Elections, 2018, s A(a)(i).

<sup>101</sup> *Ibid.*, Section A(b)(ii).

<sup>102</sup> *Ibid.*, Section A(b)(iii).

<sup>103</sup> UNESCO Guidelines, 43.

<sup>104</sup> ECP Code, Section A(b)(vi)(a).

<sup>105</sup> *Ibid.*, Section A(b)(vi)(b).

<sup>106</sup> *Ibid.*, Section A(c).

<sup>107</sup> *Ibid.*, Section B(a)(i).

<sup>108</sup> *Ibid.*, Section B(a)(ii).

<sup>109</sup> *Ibid.*, Section B(b)(i).

<sup>110</sup> *Ibid.*, Section B(b)(ii).

<sup>111</sup> *Ibid.*, Section A(b)(v).

<sup>112</sup> UNESCO Guidelines, 43.

explanation of their contexts and limitations.<sup>113</sup> It is further required that the broadcaster clarifies as to who paid for the polls, the data, timing of polls, possibility of error in the results,<sup>114</sup> so that viewers can evaluate their independence.

The ECP Code, like PEMRA Code<sup>115</sup> recognizes a person's right to reply to any allegations levelled by a broadcaster and provides that a party or its candidate when subjected to defamatory critique will be entitled to such right or a correction to be aired by the broadcaster.<sup>116</sup> Camera-coverage of voting process by designated media staff inside a polling station is permitted<sup>117</sup> conditional upon the protection of secrecy of ballot. TV channels will not announce any unofficial results until one hour from the time polling ends, and that too with clear notice of unofficial results.<sup>118</sup> Final results will be broadcasted by a TV channel only after the results are officially declared.<sup>119</sup>

The ECP Code provides a complaint addressing system by establishment of Complaint Committee headed by the Director General of Commission on Public Relations and consisting members from public, private, print and electronic media regulators (including PEMRA) and industry representatives.<sup>120</sup> Surprisingly, the Code neither specifies any penalties for violators nor any complaint management system explaining the procedure for handling complaints despite being cognizant of the fact that elections are time-sensitive. It is also not clear how the powers of Commission and PEMRA will be exercised on an issue common to their jurisdictions.

ECP Code is limited to general and by-elections of 2018, which means the Commission will issue another or at least re-issue the present Code in the next elections. Secondly, it does not extend to any local government elections. This reflects on how ECP Code stands isolated from media regulation in general and broadcast content regulation in particular. To the extent of electronic media, PEMRA Code needs to include rules on coverage of elections by private TV channels, and such rules can be applicable to any elections at local and national level, so that election coverage regulation is in a uniform form.

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<sup>113</sup> ECP Code, Section C(e)(i).

<sup>114</sup> *Ibid.*, Section C(e)(ii).

<sup>115</sup> PEMRA Code, Section 18 and 22.

<sup>116</sup> ECP Code, Section C(f)(i).

<sup>117</sup> *Ibid.*, Section C(g)(i).

<sup>118</sup> *Ibid.*, Section C(g)(ii).

<sup>119</sup> *Ibid.*, Section C(g)(iii).

<sup>120</sup> *Ibid.*, Section D(b).

## Editorial Oversight and Compliance Responsibility

Under the present PEMRA Code, a television licensee is required to ensure editorial oversight over the programme content, like news or documentaries etc., so that they are fully compliant with the Code.<sup>121</sup> To this end, the PEMRA Code further obligates the licensee by requiring appointment of an in-house monitoring committee to watch over compliance with the Code. Appointment of the monitoring committee is required to be intimated to PEMRA.<sup>122</sup> However, there is no requirement as such in the Code that obligates monthly or quarterly compliance report by such editorial committees. It is also prohibited for the licensee to conduct live coverage of a programme without a working delay mechanism in the interest of editorial supervision. Practically, however, this remains a cosmetic clause in the Code as the complaint statistics show inefficiency of editorial supervision. Unless there is mandatory compliance report from each broadcaster, monthly or quarterly, and strict monitoring by PEMRA, existence of internal editorial supervision will not be that effective, as such editorial committees consist of broadcaster's own employees, who are likely to be under its influence in the absence of strong monitoring by PEMRA.

The Code provides that responsibility to comply with the PEMRA standards is solely on the broadcaster.<sup>123</sup> As regards the employees of broadcasters who are involved in development and presentation of television content, the television channel will ensure that they broadcast content in full compliance with the Code.<sup>124</sup> A record of the programme content will be maintained by the television channel at least for a period of forty five days.<sup>125</sup> The broadcaster is also responsible for training of employees to assist them in complying with the Code.<sup>126</sup> However, the regulation does provide for professional qualifications of the employees involved in content production, or at least calls for ensuring if they have the required knowledge of content standards. As per PEMRA Code, it is incumbent on the broadcaster to ensure that the programme content is reviewed by producers,<sup>127</sup> though an express approval by the editorial committee would be more effective instead of review by the content producers themselves.

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<sup>121</sup> PEMRA Code, Section 4(10).

<sup>122</sup> *Ibid.*, Section 17.

<sup>123</sup> *Ibid.*, Section 20(1).

<sup>124</sup> *Ibid.*, Section 24(2).

<sup>125</sup> *Ibid.*, Rule 15(4).

<sup>126</sup> *Ibid.*, Section 20(2).

<sup>127</sup> *Ibid.*, Section 10.

## Analysis of PEMRA Content Standards

Promulgation of PEMRA content standards was not a result of any detailed deliberations. PEMRA Code was hastily issued by the regulator to comply with the orders of the Supreme Court of Pakistan. An analysis of the Code supports this argument. Lack of structural coherence is manifested by the way Code has been drafted. In any best-practices code, general-to-specific approach is followed on important content related issues; principles followed by rules. For example, on accuracy the principle is that viewers should know the accurate information.

Based on these principles, further rules are developed to ensure that the information broadcasted by the TV channel is accurate, like editorial supervision of the news content before broadcast. This approach does not coherently exist in the Code, though in the beginning certain fundamental principles are given. However, the content compliance subjects like due accuracy, due impartiality, right to privacy etc. have not been dealt in detail or in a constructive manner, unlike those in Ofcom and Malaysian codes. The informative content regulation regime under PEMRA is vague and the enforcement mechanism falls short of any specialized media judiciary.

The PEMRA Code seems to have borrowed or used certain expressions from other codes. However, it has not defined these expressions and terms. For example, the Code used the term 'factual programme'<sup>128</sup> but did not define it like the Australian Code does.<sup>129</sup> It also defines the term 'propaganda' but other than the definition clause,<sup>130</sup> it is no-where used in the Code to provide any rules on that. A new kind of programme 'infotainment'<sup>131</sup> is nowhere regulated under the Code, while there are numerous infotainment programmes aired by private channels. Expressions like 'due impartiality' have been used in PEMRA Code without any definition, unlike Ofcom Code, where not only the specific meaning has been attributed to the expression but also principles and detailed rules have been laid down. The Code, unlike Malaysian Code, does not explain violence and what form it may take: physical or psychological.<sup>132</sup>

PEMRA Code has not touched upon the aspect of TV content shared on internet or social media forums. As the interaction and integration of TV content with social media is growing, the regulatory challenges are increasing. According to latest statistics the number of

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<sup>128</sup> Ibid., Section 11(a).

<sup>129</sup> Australian Code, Section 8, *Factual Program*.

<sup>130</sup> PEMRA Code, Section 2(1)(j).

<sup>131</sup> Australian Code, Section 8 defines *infotainment programme* as a programme whose main objective is to present information in an entertaining way.

<sup>132</sup> Malaysian Code, Part 4.

internet users in Pakistan has crossed 44.5million.<sup>133</sup> This makes it incumbent on the regulator to devise rules on how penetration of TV content into internet will be regulated.

In case of violations, there are no defined sanctions in the PEMRA Code except for the provisions in PEMRA Ordinance, which give it wide discretionary powers to choose which sanctions it finds appropriate. It is more realistic and fair for the private television industry that the sanctions against violations are defined by the Code. This will increase private sector confidence as well as compliance.

Pakistan has experienced sectarian violence and lack of tolerance among different sects, where sectarian harmony has to be ensured with a well-articulated code that eradicates the menace of sectarianism and disharmony among different sects and minorities.

It is important that PEMRA, in consultation with the media industry and professionals, consider an overhaul of the Code based on internationally recognised principles of content regulation and the Malaysian and Ofcom experience.

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<sup>133</sup> Internet Usage in Asia, <https://www.internetworldstats.com/stats3.htm> (accessed on April 20, 2018 )

