

A firm grip on electronic media

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THE Pakistan Electronic Media Regulatory (Pemra) Amendment Bill of 2005 passed on May 16 by the National Assembly replaces the Pemra ordinance of 2002 which till now provided the framework under which the regulatory authority was operating. The legislation, which gives sweeping powers to Pemra to regulate the electronic media in the country, will now be laid before the Senate which will vote on it in its next session. Once that is done and the president signs the bill, its various provisions will come into effect.

The manner in which the new law was passed by the lower house of parliament was pretty similar to much of the legislation that has been passed by this government — that is, rushed through without any debate and without considering any points raised by the opposition, or, as the case may be, by any member from the treasury benches. Prior to its tabling before the National Assembly, the amendment bill was presented to the parliamentary committees on information and broadcasting where members of parliament were to discuss and debate the proposals and make suggestions.

However, at no stage did the government solicit any feedback or seek any advice from proprietors of TV channels, cable operators or radio stations. A delegation of cable operators did recently meet the Pemra chairman (who is a former senior police official) and conveyed to him its concern regarding the new law. The chairman is reported to have told them that unless they planned to break the law they should not be too worried.

As for the new law itself, a closer examination of its provisions and a comparison of these with the text of the 2002 ordinance will reveal that the regulator's power to shut down broadcasts and cable operations has been significantly increased. In addition, some checks and balances provided in the old

Pandora's box in that there is great divergence of views on what constitutes vulgarity or obscenity.

This new provision becomes even more alarming when Pemra's actions in recent months against cable operators are taken into account. In almost all cases, the regulator acted against operators on charges that they were showing films or programmes, with pornographic or vulgar content and even took the rather extreme step of ordering a ban on some English channels. In not a single case was action taken against any operator on grounds of unreliable or shoddy service, something that seems to be missing entirely from the regulator's mandate. That the programmes telecast on Indian channels were perhaps equally 'vulgar' or that those channels had taken on the mantle of guardian of public morality, was apparently lost on Pemra.

Governments in Pakistan have often used loosely defined or ambiguously worded rules and regulations to control the

inclusion of the CBR chief on the Pemra board as an ex-officio member would raise some questions.

Licence holders will also be required to constitute an 'in-house monitoring committee' to regulate all content that goes on the air.

The logic of this is debatable especially since most credible TV channels would have a defined hierarchy for editorial supervision and control of on-air content.

Under the 2002 ordinance, licence holders had the right to contest any action by Pemra by referring the matter to a government-constituted committee headed by a retired high court judge. The new law omits this provision altogether.

Similarly, under the 2002 ordinance, the authority was granted the right to exempt any broadcaster from following the rules and regulations provided that such grant of exemption was given in writing and based on "guidelines and criteria identified in the Rules" and made "in conformity with the principles of equality and equity as enshrined in the Constitution".

The new law abridges this significantly and Pemra now has the right to grant exemptions if it is of the view that it "serves the public interest". Again, this provision could well be used as part of a carrot and stick policy to reward broadcasters who toe the government line.

The new law gives further teeth to Pemra in that "officers of federal, provincial and local governments, including the capital and provincial police, shall" assist the authority in the discharge of its functions and in applying the provisions of the new law to any broadcaster. This was something missing in the 2002 ordinance. Pemra will also now be able to seize a broadcaster's

equipment after determining that its on-air content violated the provisions of the terms and conditions under which the licence was granted.

This means that the authority can now shut down a channel and confiscate its equipment if any of its programmes are deemed to be in violation of "commonly accepted standards of decency" or if they are considered to be against the "national, cultural, social and religious val-

The most disturbing change has been in the terms and conditions of granting a licence. Pemra has now been empowered to cancel a licence if a broadcaster airs programmes or advertisements that contain "pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency". This clause was absent in the 2002 ordinance and contains words that are vague and a phrase — 'commonly accepted standards of decency' — whose meaning can be open to widely divergent interpretations.

media and this particular one with a vague reference to adherence of 'commonly accepted standards of decency' seems to be just another such device. Under the new Pemra law any TV channel could have its licence revoked if it telecast material, which in the eyes of Pemra, was contrary to the standards vaguely mentioned by it. This can be easily used by the government to shut down channels airing programmes critical

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As for the new law itself, a closer examination of its provisions and a comparison of these with the text of the 2002 ordinance will reveal that the regulator's power to shut down broadcasts and cable operations has been significantly increased. In addition, some checks and balances provided in the old law, like providing the licence-holders a forum for redressal of grievances, have been done away with and the discretionary powers of Pemra to grant licence-holders exemptions from certain provisions of the broadcasting law have been enhanced.

Perhaps the most disturbing change has been in the terms and conditions of grant of a licence. Pemra has now been empowered to shut down or cancel a licence if a broadcaster airs programmes or advertisements that contain "pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency". This clause was absent in the 2002 ordinance and contains words that are vague and ambiguous and a phrase — 'commonly accepted standards of decency' — whose meaning and intent can be open to widely divergent interpretations.

There are many in this country who are of the opinion that even PTV and other Pakistani channels telecast profanity and vulgar programmes and if any of them were to become the head of Pemra or if the current head were sympathetic to such views, it could well lead to quite a number of channels being heavily fined or even shut down on the grounds that they are essentially frivolous and wasteful.

A standard for broadcasting that uses a criterion as subjective as this is bound to open up a

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Admittedly, there is no such thing as absolute freedom of expression, but such freedom should be qualified by limitations that have more to do with libel, defamation, slander and the right to privacy and not a government official's interpretation of vulgarity or worse still, 'commonly accepted standards of decency'.

Other than this, the number of members who will sit on the board of Pemra has been increased from nine under the 2002 ordinance to 12. Compared to before when four of the nine members were to be government nominees, now the number of such appointees or nominees has been raised to seven. This also means that the government's influence and control over the regulator has been increased since all decisions of the authority will be taken by a majority vote.

The chairman of the Central Board of Revenue has also been co-opted as an ex-officio member, perhaps because of the fact that under the new law all dues such as outstanding licence fees, renewal fees or fines imposed by Pemra on a broadcaster will be recovered as land revenue arrears.

Besides, in the past, governments have used the tried and tested method of harassing media organizations by simply sending their proprietors tax notices and in that context the

broadcaster's equipment after determining that its on-air content violated the provisions of the terms and conditions under which the licence was granted.

This means that the authority can now shut down a channel and confiscate its equipment if any of its programmes are deemed to be in violation of "commonly accepted standards of decency" or if they are considered to be against the "national, cultural, social and religious values and the principles of public policy as enshrined in the Constitution of the Islamic Republic of Pakistan".

Clearly, this will allow the authority considerable leeway since it has been invested with the authority to determine whether a programme or show is violative of any of these.

Certain provisions of the new law are well-meaning, especially the one that relates to the requirements of the authority's chairman/woman, that he or she be "an eminent professional of known integrity and competence having substantial experience in media, business, management, finance, economics or law". However, the current chairman, though a senior ex-government servant, was a police official and served for many years in that capacity. His last assignment was as secretary in the ministry of communications.

It would have been better if the authority had been invested with powers to regulate broadcasters and cable operators with reference to the quality of their service rather than the content of their programming. If something is bad or of mediocre quality and has scenes that many would find vulgar, then it will die out itself and viewers will just switch over to other channels. That is precisely what is happening in the case of Pakistan's film industry.

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