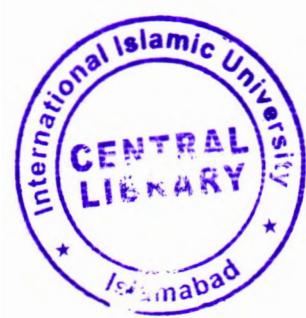


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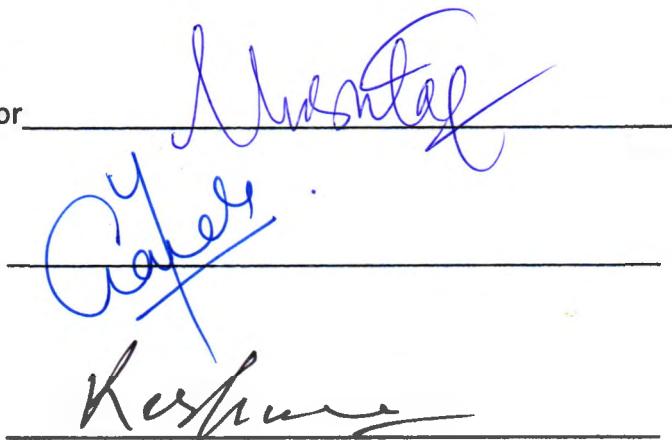
This is to certify that we evaluated the thesis entitled "Controlling the "Unbridled Horse" of Media: Right to Information & Pakistan's Legal System" submitted by Miss Ayesha Mehtab, Reg. No.149-FSL/LLMIL/F11 in partial fulfillment of the award of the degree of Masters of Law (LL.M.) in International Law. The thesis fulfills the requirements in its core and quality for the award of the degree.

Mr. Muhammad Mushtaq Ahmad, Supervisor _____

(Assistant Professor)

Internal Examiner

External Examiner



The image shows two handwritten signatures in blue ink. The top signature, 'Muhammad Mushtaq Ahmad', is above a horizontal line and is written in a cursive style. Below it, another signature, 'Ayesha Mehtab', is also in blue ink and is written in a cursive style, positioned above a second horizontal line. The signatures are placed over the respective names and titles listed in the text above them.

DECLARATION

I, **Ayesha Mehtab**, hereby declare that this dissertation is original and has never been presented in any other institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

Student: **Ayesha Mehtab**

Signature:



Date:

10. 02. 2016

Supervisor: **Assistant Prof. Muhammad Mushtaq Ahmad**

Signature:



Date:



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LIST OF ABBREVIATIONS

BCCC	Broadcasting Content Complaints Council
CMA	Competition and Markets Authority
CPNE	The Council of Pakistan Newspaper Editors
EA	Enterprise Act
ECHR	European Convention on Human Rights
EU	European Union
FCC	The Federal Communications Commission
FIO	Freedom of Information Ordinance, 2002
FOIA	Freedom of Information Act
IPPR	Institute for Public Policy Research
IPSO	Independent Press Standards Organization
NBA	News Broadcasters Association
NBSA	News Broadcasting Standards Authority
OFCOM	The Office of Communications
OFT	Office of Fair Trading
PBA	Pakistan Broadcasters Association
PCC	Press Complaints Commission
PCI	Press Council of India
PCP	Press Council of Pakistan
PEMRA	Pakistan Electronic Media Regulatory Authority
PFUJ	Pakistan Federal Union of Journalists
UN	United Nations
UK	United Kingdom
US	United States

TABLE OF CASES

<i>Abrams versus United States</i>	250 U.S. 616 (1919)
<i>Columbia Broadcasting versus Democratic National Committee</i>	36 L Ed 2d 772
<i>D. G. Khan Cement Co. Ltd. versus Federation of Pakistan</i>	PLD 2013 Lah 693
<i>Dr. ShahidMasood and others versus Federation of Pakistan</i>	2010 SCMR 1849
<i>FCC versus National Citizens Committee for Broadcasting</i>	436 U.S. 775 (1978)
<i>Flt Lt (Dr) ShariqSaeedversusMansoob Ali Khan and 5 others</i>	2010 YLR 1647
<i>Hamid Mir and another versus Federation of Pakistan</i>	PLD 2013 SC 244
<i>Independent Media Corporation versus Federation of Pakistan</i>	PLD 2014 SC 666
<i>Independent Newspapers Corporation (Pvt.) Ltd versus PEMRA</i>	PLD 2014 Isb 7
<i>MasrrorAhsanversusArdeshirCowasjee</i>	PLD 1998 SC 823
<i>Miami Herald Publishing Co. versusTornillo</i>	41 L. Ed. 2d 730
<i>Ms. Benazir Bhutto versus News Publications (Pvt.) Ltd. and 4 others</i>	2000 CLC 904
<i>MstRohaifa and another versus Federation of Pakistan</i>	PLD 2014 SC 174
<i>Muhammad Nawaz Sharif versus Federation of Pakistan</i>	PLD 1993 SC 473
<i>MajidNazami and another versus Sheikh Muhammad Rashid</i>	PLD 1996 Lahore 410
<i>New York Times Co. versus Sullivan</i>	376 U.S. 254
<i>Pakistan Muslim League (N) versus Federation of Pakistan</i>	PLD 2007 SC 642
<i>Red Lion Broadcasting Co., Inc., etc., versus Federal Communications Commission</i>	23 LEd 2d 371.
<i>RomeshThapparversus The State Of Madras</i>	AIR 1950 SC 124
<i>Secretary, Ministry of Information & Broadcasting, Government of India and others versus Cricket Association of Bengal and others</i>	(1995) 2 SCC 161
<i>SuoMotu Action regarding allegation of business deal between Malik RiazHussain and Dr. ArsalanIftikhar attempting to influence the judicial process</i>	PLD 2012 SC 664
<i>Surya PrakashKhatriversusMadhuTrehan</i>	2001 CriLJ 3476 = 2001 (59) DRJ 298 [Delhi]
<i>United States versus Storer Broadcasting Co.</i>	351 U.S. 192 (1956)
<i>Virendraversus The State of Punjab and another</i>	AIR 1957 SC 896
<i>Watan Party versus Federation of Pakistan</i>	PLD 2012 SC 292

DEDICATION

*This work is dedicated to who else but to abu who really was the wind
beneath my wings and to ama whose prayers form safe halo around me.*

ACKNOWLEDGMENTS

Firstly, I want to thank Allah Almighty for enabling me to finish the work I started. During the period of this research, there came a time when I was not sure if I would actually be able to complete my work. But Allah Almighty bestowed upon me courage and I did not give up. Here I am now successfully fulfilling all codal requirements. Alhamdulillah.

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PREFACE

Right to information, a right which is vitally important for democratic set-up to thrive, has been so emphasized in human rights law. Media have been savior of this right to information for the benefit of public. It has been witnessed that whenever, tyrannical powers intend to put curbs on Media, Civil society always backs the freedom movements by Media against aristocratic regimes. And in the return what people want from the Media is nothing but information.

But what if Media start misusing the freedoms and privileges given to them and instead of playing the role of supplier of information start pursuing their own interests in one way or another? Where marriage of sport celebrities receives much coverage, people are compelled to watch information poor news items, news breaks happen several times a day, then what would become of real information lurking behind all these trends.

Media can exercise freedoms to extent that these do not snuff out the rights of citizens to access the information. Media Freedoms can be balanced with other public interests. The moment Media cross the red line, accountability of Media deems necessary. Though accountability does not mean the curbing of liberties. This is a wrong conception but it implies regulation of these liberties. This research attempts to answer if Media regulatory mechanism of Pakistan has been failed to regulate the ‘unbridled’ Media of the Country and if yes then how to fill the gaps within it.

ABSTRACT

CONTROLLING THE “UNBRIDLED HORSE” OF MEDIA: RIGHT TO INFORMATION & PAKISTAN’S LEGAL SYSTEM

By

Ayesha Mehtab

This research work tends to offer an analysis of freedoms of (news) media and corresponding duties of (news) media as purveyor of information which they owe to citizens, hence attempting to combine fields of law and journalism to gain better understanding from both perspectives. It is argued that on the ground that no freedom is absolute, Media need to be regulated in order to make them responsible towards meeting the information needs of citizens.

This research work also gives comparative view on Media Regulation of United Kingdom, United States and India before coming to Pakistan’s regulatory set-up in relation to Media industry. It is asserted that rapid growth of Media over the last decade shows the free Media ever in history of the country but Media in general and news Media in particular are not doing complete justice to satisfy the right to information of citizens.

Though Pakistan has number of laws to set boundaries for Media and Pakistan Electronic Media Regulatory Authority (Pakistan) is also working as watchdog of media to improve the efficiency of media but many examples of ethics violation can be found on daily basis. It has been concluded that keeping in view the significance of Media, as opinion builder in democracy and also as public trustee, the media regulatory system is in need of revamping in the light of Media Commission’s recommendations.

CHAPTER ONE: BALANCING OF RIGHTS VIS-À-VIS RIGHT TO INFORMATION & AGE OF MEDIA

1.1. INTRODUCTION

Human rights have undoubted importance for all by virtue of their being equal, inalienable and inherent in all humans. Broadly speaking, human rights have been classified into two categories - civil & political rights, on one hand, and economic, social and cultural rights, on the other.¹ Universal Declaration of Human Rights, 1948, (herein after 'UDHR, 1948'), International Covenant on Civil and Political Rights, 1966, (herein after 'ICCPR, 1966'), its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights, 1966, (herein after 'ICESCR, 1966') 'form the so - called International Bill of Human Rights'.²

This chapter focuses on freedoms of speech and expression and their offshoot the Right to Information with special reference to News Media exercising freedoms. While, News Media are granted freedoms and they satisfy the right of information of citizens, are they not responsible to employ best possible means so that citizens can have access to information? As there is no concept of absolute freedom, can freedoms of Media be restricted or in other words be harmonized with public interests? This research provides affirmative answers to these questions.

¹The Human Rights Committee. *Human Rights: Civil and Political Rights*. Fact Sheet No. 15 (Rev.1), Geneva: United Nations (2005). Found at <http://www.ohchr.org/Documents/Publications/FactSheet15rev_1en.pdf> (Last accessed November 15, 2013). "Civil rights" include, interalia, the right to equality, right to life, right to freedom from torture and slavery, right to liberty and security, right to fair trial, right to privacy, freedom of thought, conscience and religion, right to freedom of expression, & right to freedom from discrimination. International Covenant on Civil and Political Rights, 1966. Articles 3, 6-9, 14, 17-19, 26. <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> (Last accessed December 19, 2013). For further details see Alex Conte et al., *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee* (England: Ashgate publishing Limited, 2004), 3-85. Found at <http://books.google.com.pk/books?id=10PbalqJs40C&printse=frontcover&source=gbse_summary_r&cad=0#v=onepage&q&f=false> (Last accessed November 15, 2013) "Political rights" entail the power to participate directly or indirectly in the conduct of public affairs and include the right to freedom of association, and right to vote. International Covenant on Civil and Political Rights, 1966. Articles 22 & 25. <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> (Last accessed December 19, 2013).

²"International Human Rights Law," <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>> (Last accessed December 06, 2013).

1.1.1 Freedom of Expression underpinning the Right to Information

Flynn Jeffrey states that there is always an internal relation between fundamental rights and democracy.³ It has also been said that “take human rights out of democracy, and democracy has lost its soul. Human rights are the crown jewels of democracy”.⁴ It signifies that human rights cannot survive without democracy nor can democracy thrive without respecting human rights. In dictatorial regimes, human rights are mostly found in state of being shackled.

Coming back to the Right to Information, UDHR, 1948, provides that it is an integral part of the fundamental right of freedom of expression.⁵ It is ‘central element of citizen’s entitlements in modern societies’.⁶ President James Madison once remarked “A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both”.⁷ What President Madison meant was that secrecy runs counter to democracy and good governance. It is the right to information which ensures ‘people’s participation’ and ‘transparent administration’, the two things necessary for good governance.⁸ If the access to information is not readily available to people, they cannot take meaningful part in the affairs of the state and this negates the spirits of democracy.⁹ The truth is that good governance and

³Flynn Jeffrey, “Habermas on Human Rights: Law, Morality, and Intercultural Dialogue,” *Social Theory & Practice* 29, no. 3 (2003): 432. Found at <https://faculty.fordham.edu/jeflynn/Habermas_Human_Rights.pdf> (Last accessed December 01, 2014).

⁴ Lahore High Court referred to Aharon Barak’s book Proportionality in *D. G. Khan Cement Co. Ltd. versus Federation of Pakistan*, PLD 2013 Lah 693 at page 702.

⁵ Article 19 of Universal Declaration of Human Rights, 1948, provides that, “everyone has the right to freedom of expression: this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. Found at <www.un.org/en/documents/udhr/> (Last accessed November 23, 2013). Also please see, Imran. A. Khan Nyazee, *Media Law in Pakistan* (Rawalpindi: Federal Law House, 2009), 62.

⁶ Mike Feintuck and Mike Varney, *Media Regulation, Public Interest and the Law* (Edinburgh: Edinburgh University Press, 2006), 120.

⁷ Robert W. McChesney, *The problem of the media: U.S. communication politics in the twenty-first century* (New York: Monthly Review Press, 2004), 33. Found at <<https://books.google.com.pk/books?isbn=1583673768>> (Last accessed January 20, 2015).

⁸ SL Goel, *Right to Information and Good Governance* (New Delhi: Deep & Deep Publications Pvt. Ltd, 2007), 2.

⁹ Toby Mendel, *The Public's Right to Know: Principles on Freedom of Information Legislation* (London: ARTICLE 19, 1999), 1. Principles were drafted by Toby Mendel, Head of ARTICLE 19’s Law Program. ARTICLE

democracy both need informed citizenry.¹⁰ David Mitchel Ivester believes citizens can only decide their political future if they have enough knowledge of what their government is doing.¹¹

If there is a lack of information about a particular right, it cannot be said for sure if that right is being respected or not.¹² Ivester has emphasized that other rights and freedoms lose their value if the Right to Information is not appreciated. He illustrates by giving example of freedom of speech/press, the purpose of which is to provide public with a platform where they are free to discuss governmental affairs. While stressing the importance of Right to Information, Ivester asks what people would discuss if they don't have information about the government's performance.¹³

Kay Mathiesen argues that though intellectual freedom (i.e., freedom of free expression, speech or free press) has always been stressed on, it only gives half of the answer.¹⁴ She further supports her claim and states that free speech and freedom of the press are valued from their capacity 'to provide people with information and knowledge'.¹⁵ What if press has right to print, and electronic media has right to express but public do not have the right to receive information? To cut short, right to information is one of the most important of human rights. More light would be shed on the notion in following pages.

19 is a London-based human rights organization for defense and promotion of freedom of expression and freedom of information. Andrew Puddephatt has been an executive director to the said organization. The said statement has been taken from preface to principles published written by Puddephatt from platform of ARTICLE 19. Principles are available at <http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf> (Last accessed November 13, 2012).

¹⁰ Goel, *Right to Information and Good Governance*, 12.

¹¹ David Mitchell Ivester, "The Constitution Right to know," *Hastings Constitutional Law Quarterly* 4 (Winter, 1977): 114. Found at hastingsconlawquarterly.org/archives/V4/I1/Ivester.pdf (Last accessed December 15, 2014).

¹² Kay Mathiesen, "Access to information as a Human Right", (University of Arizona, 2008). Available at papers.ssrn.com/sol3/papers.cfm?abstract_id=1264666 (Last accessed November 15, 2013).

¹³ David Mitchll Ivester, "The Constitution Right to know," *Hastings Constitutional Law Quarterly* 4 (Winter, 1977): 114. Found at hastingsconlawquarterly.org/archives/V4/I1/Ivester.pdf (Last accessed December 15, 2014).

¹⁴ Kay Mathiesen, "Access to information as a Human Right", (University of Arizona, 2008).

¹⁵ *Ibid.*

1.1.2 Relationship of the right to information with Freedom of Expression

Freedom of expression in all its forms and manifestations is a fundamental inalienable right of individuals. The same right could rightly be considered an underpinning of all other rights.¹⁶ Hence, it would be justified to hold that freedom of expression is a touchstone upon which the very existence of a democratic society rests.

Democracy is believed by some to have qualified as a norm of customary international law, while it is beyond any doubt that right to information is one of foundational principles of democracy and democratic society. Once it is established that masses must be informed of every decision and step being taken affecting their lives, freedom of expression attains value. It is essential for the formation of public opinion.

Freedom of expression protects all kinds of information and ideas, not just those that are popular or uncontroversial. Anything that communicates meaning is covered, whether it is right or wrong, irrespective of its purpose, including commercial speech, and even if most people find it offensive. Freedom of expression advances important goals.

Technically, Freedom of Expression includes the right to 'seek, receive and impart information and ideas'. Right to information is an integral part of the fundamental right of freedom of expression.¹⁷ In other words, as explained by Toby Mendel, "Freedom of Expression and the right to seek information are interlinked and fundamental human rights as stated in

¹⁶ Michel Verpeaux, *Freedom of expression in constitutional and international case law* (Council of Europe, 2010), 29. Found at https://books.google.com.pk/books?id=vJptypOd6eUC&pg=PA29&source=gb_s_toc_r&cad=3#v=onepage&q&f=f also> (Last accessed January 01, 2016).

¹⁷ Article 19 of Universal Declaration of Human Rights, 1948, provides that, "Everyone has the right to freedom of expression: this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". Found at www.un.org/en/documents/udhr/ (Last accessed November 23, 2013).

Article 19 of the Universal Declaration of Human Rights, 1948 (hereinafter UDHR)."¹⁸

The Freedom of Expression cannot be effectively exercised without having access to pertinent information and hence, the right to information has also come to be regarded as a fundamental right, essential to full enjoyment of the right to freedom of expression which in turn ensures democracy, accountability, transparency, empowerment of People, a multi-dimensional social and political process that helps people gain control over their own lives.

Freedom of Information, as one aspect of the right to Freedom of Expression, can have many meanings and implications but the most prominent meaning is “the right of individuals to access information and records held by public authorities, both through routine government publication of information and through provision for direct access requests.”¹⁹ Freedom of information is directly linked to public’s right to know.²⁰ When it is said that people have right to know then any action by state to prevent them from ‘knowing’ will trample upon their right.

Art. 19 of UDHR underscores that the right to get to information includes the right to seek information and ideas ‘through any media’. This is important because it makes it clear that newspapers, radio, television and the internet, for example, are all en-compassed within the right. The effect of this is that when a state acts to curb the operations of the media not only is it violating the expressive rights of the media and of the journalists, editors and publishers thereof, but it is also violating the rights of its citizens to receive information and ideas freely. Consequently, the internationally recognized basic contours of the right to freedom of expression clearly and inherently protect the right to freedom of expression of the media, too. The

¹⁸Toby Mandel, Freedom of Information as on Internationally Protected Human Right, Found at <<http://www.article19.org/pdfs/publications/foi-as-an-international-right.pdf>> (Last accessed January 01, 2015).

¹⁹ Imran. A. Khan Nyazee, *Media Law in Pakistan* (Rawalpindi: Federal Law House, 2009), 62.

²⁰*Ibid.*

expressive and information rights of individuals and the media are thus inextricably intertwined here.

This research aims at underlining the importance of Right to Information in Media age. Since the said right is strongly linked to Freedom of Expression, the research would lead towards approach where latter is genesis of the former and hence, would be stressed at several places in this research.

1.1.3 Right to Information (International & Regional instruments)

The idea of seeking information as a right has been recognized by various international and regional covenants.²¹ This attributes the element of universality to it. The most central instrument in this regard is UDHR, 1948. Article 19 of UDHR, 1948, provides that, “everyone has the right to freedom of expression: this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.²²

Article 19 (2) of ICCPR, 1966, has embodied the right to expression and information by stating that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.²³

On the other hand, key regional instruments recognizing the right to information are: The European Convention on Human Rights, 1950 (ECHR) and The African Charter on Human & Peoples’ Rights, 1981 (AfC). Article 10 of ECHR exemplifies fundamental freedom of expression in words similar to UDHR and ICCPR by stating that “everyone has the right to

²¹ Goel, *Right to Information and Good Governance*, 12.

²² Universal Declaration of Human Rights, 1948, Article 19. Found at <http://www.un.org/en/documents/udhr/index.shtml> (Last accessed November 1, 2012).

²³ International Covenant on Civil and Political Rights, 1966, Article 19 (2). Found at <http://www2.ohchr.org/english/law/ccpr.htm> (Last accessed November 1, 2012).

freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers".²⁴

Article 9 of The African Charter on Human & Peoples' Rights, 1981, (AfC) safeguards right to information in more explicit terms. It provides: "every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law".²⁵

1.1.4 Right to information in Islamic Republic of Pakistan

As already elaborated that freedom of information is an effective mean 'to promote transparency, public participation in decision making and accountability in governance'.²⁶ When state denies access to information, repercussions ensue will include blind exercise of discretion by public bodies, and human rights violations which further lead to 'weakening of democratic institutions'.²⁷

Unfortunately, Pakistan is a country where for years people have been struggling against the despicable culture of keeping secrecy in business of Government.²⁸ Pointing towards the culture of secrecy against extension of right to information, Supreme Court of Pakistan in precedent *Watan Party's* case observed that

²⁴ European Convention on Human Rights, 1950, Article 10. Found at <www.echr.coe.int/NR/rdonlyres/.../CONVENTION_ENG_WEB.pdf> (Last accessed November 02, 2012).

²⁵ The African Charter on Human & Peoples' Rights, 1981, Article 9. Found at <www.africanunion.org/official_documents/.../banjul%20charter.pdf> (Last accessed November 02, 2012).

²⁶ Center for Peace and Development Initiatives, Pakistan (CPDI-Pakistan), *State of Transparency and Freedom of Information in Pakistan*. Available at <http://www.cpdi-pakistan.org/?publication=state-of-transparency-and-freedom-of-information-in-pakistan-2&wppa_download=1> (Last accessed December 19, 2013).

²⁷ *Ibid.*

²⁸ Zafarullah Khan, *Right to Know: Access to Information in Pakistan* (Islamabad: Centre for Democratic Governance The Network for Consumer Protection, 2004), 34. Available online at <<http://www.thenetwork.org.pk/Resources/Magazines/PDF/12-8-2011-2-51-6-708-Acess%20to%20information.pdf>> (Last accessed November 14, 2013).

Major events in our history in the past six decades since 1947 have included the dismemberment of the country in 1971 and the murder of one incumbent and one former Prime Minister of Pakistan we have witnessed the extraordinary case of those in the seats of governance in December 1971 informing us that all was going well in East Pakistan even after the surrender of forces in Dhaka. The results of probes into such events have almost invariably been withheld from the people of Pakistan or, at times selectively disclosed...²⁹

Earlier, Right to information in Pakistan was not expressly acknowledged as a separate fundamental right in the Constitution of the Islamic Republic of Pakistan, 1973.³⁰ To fill up the lacuna, Supreme Court of Pakistan in one of its judgments declared that Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973, which provides protection to fundamental freedom of speech/expression, also includes the right of citizens to receive information.³¹ Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973, is reproduced as follows:

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 defense 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.³²

Right to Information became formal part of Constitution in 2010 by insertion of sub- Article 19-A.³³ Sub-article 19-A reads: "every citizen shall have the right to have access to

²⁹ *Watan Party versus Federation of Pakistan*, PLD 2012 SC 292 at page 358. Laws of country in particular Official Secrets Act, 1923 encourage the suffocation. Nyazee, *Media Law in Pakistan*, 194.

³⁰ Thomas I. Emerson, a legal theorist of civil liberties laws, maintains that in the absence of expressed right to know/information, "the right to know is used against direct government interference with the system of freedom of expression." Thomas I. Emerson, "Legal Foundations of the Right to Know", (Faculty Scholarship Series. Paper 2800, Yale Law School, 1976) Found at <http://digitalcommons.law.yale.edu/fss_papers/2800> (Last accessed February 20, 2015).

³¹ *Muhammad Nawaz Sharif versus Federation of Pakistan*, PLD 1993 SC 473 at page 746.

³² The Constitution of the Islamic Republic of Pakistan, 1973, Article 19. Found at <www.mofa.gov.pk/Publications/constitution.pdf> (Last accessed October 3, 2012).

³³ Insertion took place after 18th amendment, 2010. Please see, <<http://www.mofa.gov.pk/Publications/constitution.pdf>> (Last accessed November 10, 2012).

information in all matters of public importance subject to regulation and reasonable restrictions imposed by law".³⁴

Article 19-A of the Constitution has, thus, enabled every citizen to stop depending on powers centers which were before the said Article were in control of information on matters of public importance.³⁵ However, practical significance of the article in its true spirit has yet to come for it is too early to say how far it is effective.³⁶

The noteworthy legislation to facilitate access to information in Pakistan is Freedom of Information Ordinance, 2002, (herein after as 'FIO, 2002') followed by the Freedom of Information Rules in 2004.³⁷

As was exclaimed by Robert McChesney that "Public's right to hear a variety of voices and properly digest their messages is the central platform of a democracy,"³⁸ it is upon Media to do this job, to provide people with information as supplier of information for the satisfaction of people's right to know. Boobli George Verghese, a senior Indian journalist and editor of leading newspapers *The Hindustan Times* and *The Indian Express* states that "Freedom of information - and objective information at that is the modern corollary to freedom of expression. It is in order to perform this essential public and professional function that the media must be

³⁴ The Constitution of the Islamic Republic of Pakistan, 1973, Article 19-A. Found at <<http://www.mofa.gov.pk/Publications/constitution.pdf>> (Last accessed November 10, 2012).

³⁵ *Watan Party versus Federation of Pakistan*, PLD 2012 SC 292 at page 358.

³⁶ Amir Jahangir et al, *Situational Analysis of information in the communication & information sector in Pakistan*, UNESCO, 2011, 7. Available at <http://unesco.org.pk/ci/documents/situationanalysis/Situational_Analysis_of_RTI_in_Pakistan.pdf> (Last accessed November 15, 2013).

³⁷ Section 3 of Freedom of Information, 2002, acknowledges the right of public to know in these terms, "Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Ordinance, no requester shall be denied access to any official record other than exemptions as provided in section 15". Found at <http://infopak.gov.pk/Downloads/Ordensances/Freedom_of_Information_Ordinance2002.pdf> (Last accessed June 20, 2013).

³⁸ McChesney, *The problem of the media: U.S. communication politics in the twenty-first century*, 29.

independent".³⁹ Thus, Verghese associates the availability of freedoms to Media due to their function as purveyor of information.

1.2. NEWS MEDIA AS PURVEYOR OF RIGHT TO INFORMATION

Media of our time is considered to be a fourth pillar of state and have derived the title of 'watchdog' for keeping check and balances on Government. Rights and responsibilities of News media reflect the vital role they play as instrument of reliable information to the people.⁴⁰ Karachi High Court held that Media cannot collect and distribute information unless they enjoy freedoms for themselves which are termed as 'mother of all liberties'.⁴¹ Media's access to information while exercising liberties actually amounts to satisfaction of peoples' right to information.⁴² News Media have used right to information well to awaken the public conscience to critical problems.⁴³ Keeping in view the importance of Media, Amartya Sen writes: "No substantial famine has ever occurred in a country with a democratic form of government and a relatively free press".⁴⁴

1.2.1 Are Media freedoms derivative of individual freedoms?

There is one perception that tends to view media as an institution symbolizing the broader civil rights of the people.⁴⁵ According to this view, Media Freedom is a derivative of the individual's

³⁹ B. G. Verghese, "The Media in a Free Society: Proposals for Restructuring," *Economic and Political Weekly*, 12, No. 18 (Apr. 30, 1977):733. Found at <<http://www.jstor.org/stable/4365545>> (Last accessed April 25, 2015).

⁴⁰ Everette E. Dennis and John C. Merrill, *Media Debates: Great issues for Digital Age* (Belmont, CA: Wodsworth/ Thomson Learning, 2005), 68-78.

⁴¹ *Ms. Benazir Bhutto versus. News Publications (Pvt.) Ltd. and 4 others*, 2000 CLC 904 at page 911.

⁴² Dennis and Merrill, *Media Debates: Great issues for Digital Age*, 68-78.

⁴³ Spiro Agnew, "Speeches in the Media", in *Killing the Messenger: 100 Years of Media Criticism*, ed. Tom Goldstein (New York: Columbia University Press, 2007), 114.

⁴⁴ Michael Schudson, *The Sociology of News* (New York: W. W. Norton & Company, Inc., 2003), 197-198.

⁴⁵ Sukumar Muralidharan, "Broadcast Regulation and Public Right to Know," *Economic and Political Weekly*, 42, No. 9 (Mar. 3-9, 2007): 744. Found at <www.jstor.org/stable/4419303> (Last accessed April 01, 2015).

freedom of expression. It is not therefore so much an exclusive right of media.⁴⁶ Such view is apparently based on narrow approach. It raises the query that if rights of individuals happen to be embedded on Media's liberties making the latter dependent?

Supreme Court of India in precedent case of *Cricket Association of Bengal* defines four aspects of media freedom: "(a) freedom of the broadcaster, (b) freedom of the listeners/viewers to a variety of view and plurality of opinion, (c) right of the citizens and groups of citizens to have access to the broadcasting media, and (d) the right to establish private radio/ Television stations".⁴⁷ It can be seen that second aspect of Media freedom is the 'freedom of public' to variety of views on a present issue. At another place of the same judgment, Supreme Court also observed that Right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. The former is the right of the telecaster and the latter that of the viewers.⁴⁸ What if latter right to be educated and informed is not respected or not satisfied? What would be the impact on right of telecaster then?

Emerson takes the view that it is the 'value of the communication' which is an important reason supporting the 'right of the communicator to communicate'.⁴⁹ Who will decide what amounts to 'communication' and what would be the effect on right of communicator in case communication does not meet the value defined. Emerson is silent. Nevertheless the questions become the subject matter of discussion in following pages.

⁴⁶ B. G. Verghese, "The Media in a Free Society: Proposals for Restructuring," *Economic and Political Weekly*, 12, No. 18 (Apr. 30, 1977):732-733. Found at <<http://www.jstor.org/stable/4365545>> (Last accessed April 25, 2015).

⁴⁷ *Secretary, Ministry of Information & Broadcasting, Government of India and others versus Cricket Association of Bengal and others*, (1995) 2 SCC 161 at page 284.

⁴⁸ *Ibid.*

⁴⁹ Thomas I. Emerson, "Legal Foundations of the Right to Know", (Faculty Scholarship Series. Paper 2800, Yale Law School, 1976) Found at <http://digitalcommons.law.yale.edu/fss_papers/2800> (Last accessed February 20, 2015).

Public has right to know, one that the Media declare whether it is constitutionally guaranteed or not.⁵⁰ Freedoms and privileges of Media are closely associated with this right. Therefore, when freedoms for Media are mentioned, it should not be construed as 'freedom to write and speak for the journalists alone'.⁵¹ Australian Law Commission's report on Media, following the phone hacking scandal of United Kingdom which rang alarming bells for countries with democratic values, is a useful document for the purpose of this research. The report states that "The phrase 'freedom of the press' (read Media here) implies two sets of rights: With the rights of publishers and editors to express themselves, there must be associated a right of public to be served with a substantial and honest basis of fact/ information for its judgment of public affairs".⁵² Hence, free Media entails not only that Media is independent but also that citizens are provided with information relating to public interest.

Muralidharan takes view that Media freedom is derived from the right to free expression, which in turn is related to the public's right to information.⁵³ In other words, there is interlinking of freedoms. He alludes towards a doctrine in this regard. He maintains that there is a legal doctrine that media freedom is justified in "whole or in part- by the public function it performs, of informing citizens and the wider community about the various facets of their lives and the times they live in".⁵⁴

Merill goes a step further and opines that People's right to know is justification for press freedoms and privileges.⁵⁵ He maintains that if there exists no right to information, then there

⁵⁰ Dennis and Merrill, *Media Debates: Great issues for Digital Age*, 69.

⁵¹ Centre for Peace and Development Initiatives Pakistan, *Independent and Responsible Media* (2008).

⁵² Australian Government, *Independent inquiry into the media and media regulation*, February 2012, 43. Found at http://www.abc.net.au/mediawatch/transcripts/1205_finkelstein.pdf (Last accessed May 12, 2013).

⁵³ Sukumar Muralidharan, "Broadcast Regulation and Public Right to Know," *Economic and Political Weekly* 42, No. 9 (Mar. 3-9, 2007): 744. Found at <https://www.jstor.org/stable/4419303> (Last accessed April 01, 2015).

⁵⁴ *Ibid.*

⁵⁵ Dennis and John C. Merrill, *Media Debates: Great issues for Digital Age* (Belmont, CA: Wodsworth/Thomson Learning, 2005), 78.

would be no real reason for a free press (read media here).⁵⁶ Media scholar James Carey even went to the extent of saying that journalism is justified by the fact that it builds a democratic social order.⁵⁷ What if media fail to build such an order? Carey does not answer. Mark Deuze writes that contribution to the wider, democratic market place of ideas justifies existence and power of media.⁵⁸ But what if powers of Media do not contribute so?

1.2.2 Media age

It is commonly assumed that the media are the principal means by which public opinion is shaped.⁵⁹ Media has the power to 'identify name, shape issues because what they show or publish is widely accepted to be reflecting nothing but reality'.⁶⁰ Sources of news and information have immense powers. It has been written that

These men [news people] can create national issues overnight. A raised eyebrow, an inflection of the voice, a caustic remark dropped in the middle of broadcast can raise doubts in million minds about the veracity of a public official or the wisdom of a government policy. Whether what I have said to you tonight will be heard and seen at all by the nation is not my decision; it is not your decision; it is their decision.⁶¹

People trusted Media for information. Even Pakistan has witnessed the 'News channels trend' in recent years. Supreme Court of India sheds light on TV culture and observes that "The

⁵⁶ *Ibid.*

⁵⁷ Mark Deuze, "The Changing Context of News Work: Liquid Journalism and Monitorial Citizenship," *International Journal of Communication* 2 (2008): 855. Found at <<http://ijoc.org/index.php/ijoc/article/viewFile/290/197>> (Last accessed December 20, 2014).

⁵⁸ Mike Feintuck and Mike Varney, *Media Regulation, Public Interest and the Law* (Edinburgh: Edinburgh University Press, 2006), 16.

⁵⁹ David L. Lange, "The Role of the Access Doctrine in the Regulation of the Mass Media: A Critical Review and Assessment," *North Carolina Law Review*, 52 (1973): 16. Found at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2209&context=faculty_scholarship> (Last accessed December 04, 2014).

⁶⁰ Lorie Graham, "A Right to Media?," *Columbia Human Rights Law Review*, 41 (2010): 110. Available at SSRN: <<http://ssrn.com/abstract=1471635>> (Last accessed on November 10, 2012).

⁶¹ Spiro Agnew, "Speeches in the Media", in *Killing the Messenger: 100 Years of Media Criticism*, ed. Tom Goldstein (New York: Columbia University Press, 2007), 115-119.

television is unique in the way in which it intrudes into our homes. The combination of picture and voice makes it an irresistibly attractive medium of presentation. Call it idiot box or by any other pejorative name, it has a tremendous appeal and influence over millions of people. Many of them are glued to it for hours on end each day".⁶² Though, new media has brought revolution but truth is T.V still dominates.⁶³ With this in mind, it is would suffice if focus of this research preeminently zooms on television. Likewise, among various categories of Mass Media, this research has chosen the News broadcast Media.

For democracy, the presence of a fair, vibrant and independent News Media is a blessing. News Media comprise of state funded public service broadcasters and the large private industry which between them produces the nation's daily newspapers, TV & radio news & current affairs programs.⁶⁴ News Media cater to the public's needs of knowing about the surroundings. The information thereby provided is utilized in making individuals and collective decisions.⁶⁵ News media work and hence, plays essential role of 'information broker'.⁶⁶

1.2.3 Power tends to corrupt and absolute power corrupts absolutely

The above given is a quote by Lord Acton.⁶⁷ Lange exclaims that “Media have become vast repositories of privilege and what is worse, power”.⁶⁸ The truth is that freedom of speech by

⁶²Secretary, Ministry of Information & Broadcasting, Government of India and others versus Cricket Association of Bengal and others, (1995) 2 SCC 161 at page 291.

⁶³ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 2.

⁶⁴ New Zealand Law Commission, *The News Media meets 'New Media', Rights, Responsibilities and Regulation in the Digital Age*, 2011, 05. <<http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20IP27.pdf>> (Last accessed April 23, 2013). New Zealand Law Commission's report attempts to establish the main features associated with any entity claims to be a News Medium. These are as follows: i. a significant proportion of their publishing activities involves the generation and/or aggregation of news, information and opinion of current value; ii)they disseminate this information to a public audience. *Ibid.*, 64.

⁶⁵ David P. Baron, "Persistent Media Bias", (Research paper no. 1845, Standford Business School, 2004) <<http://ssrn.com/abstract=516006>> (Last accessed November 10, 2012).

“Right to Information Act and the Role of Media,” RTI Cell ATI. Found at <<http://atingl.nic.in/Downloads/RTI%20and%20Media.pdf>> (Last accessed September 6, 2012).

⁶⁷ Saying of Lord Acton, the 19th-century British historian. Found at <https://en.wikipedia.org/wiki/John_Dalberg-Acton,_1st_Baron_Acton> (Last accessed June 05, 2015).

⁶⁸ David L. Lange, "The Role of the Access Doctrine in the Regulation of the Mass Media: A Critical Review and Assessment," *North Carolina Law Review*, 52 (1973): 8. Found at <

itself cannot ensure a diverse market place of ideas.⁶⁹ Media must show that they contribute to the wider, democratic market place of ideas in order to justify their existence and power.⁷⁰ Phone hacking scandal involving United Kingdom's *The News World*, was biggest in history of Media that led to shutting down of old newspaper.⁷¹ Following the scandal, inquiry commission headed by Justice Leveson was established.⁷² In his report, Justice Leveson writes that

The press, operating freely and in the public interest, is one of the true safeguards of our democracy. As a result, it holds a privileged and powerful place in our society. But this power and influence carries with it responsibilities to the public interest in whose name it exercises these privileges.⁷³

In other words Justice Leevson alludes towards the obligations which Media have towards the citizens.⁷⁴

http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2209&context=faculty_scholarship (Last accessed December 04, 2014).

⁶⁹ Stanley Ingber, "The Marketplace of ideas: A Legitimizing Myth," *Duke Law Journal*, 33 no.1 (1984): 86. <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2867&context=dlj>> (Last accessed December 10, 2014). Also please, read footnotes under heading 4.5. PUBLIC AWARENESS WILL SOLVE HALF OF THE PROBLEM of chapter 4.

⁷⁰ Note the earlier discussion under 1.2.1 Are Media freedoms derivative of individual freedoms?.

⁷¹ Robert Winnett, "News of the World shut down in bid to end phone hacking scandal," *The Telegraph*, July 07, 2011. Found at <<http://www.telegraph.co.uk/news/uknews/phone-hacking/8624421/News-of-the-World-shut-down-in-bid-to-end-phone-hacking-scandal.html>> (Last accessed June 01, 2015).

⁷² For further details please visit <<http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.levesoninquiry.org.uk/>> (Last accessed December 21, 2014).

⁷³ Alan Rusbridger, "Why We Write: Three Magic Words- 'The Public Interest", in *Media Law & Ethics in the 21st century: Protecting free expression and curbing abuses*, ed. James Lewis and Paul Crick (New York: Palgrave MacMillan, 2014), 46. Found at <<https://books.google.com.pk/books?isbn=1137312645>> (Last accessed March, 20, 2015).

⁷⁴ One of the theories of press is theory of social responsibility. It provides that power of the mass media is so pervasive that Media have correspondingly onerous social responsibility to the reader and to community. B. G. Vergheze, "The Media in a Free Society: Proposals for Restructuring," *Economic and Political Weekly*, 12, No. 18 (Apr. 30, 1977): 733. Found at <<http://www.jstor.org/stable/4365545>> (Last accessed April 25, 2015). It has been said that "The media makes money by 'selling' its consumers to its advertisers. The media, therefore, needs to 'pay back' the consumers in responsible, ethical, and public interest content." Adnan Rehmat, *Ethics of Live Media Coverage in Pakistan*. Found at <<http://www.fnpk.org/ethics-of-live-media-coverage-in-pakistan/>> (Last accessed June 19, 2014) Holding the media accountable is justified as a part of social responsibility of the Media. Project Media Act, *Media Accountability and Transparency in Europe (MediaAct): Best Practice Guide*, (Europe: European Union Seventh Framework Programme, 2012) 4. Found at <http://www.mediaact.eu/fileadmin/user_upload/Guidebook/Best_Practice_Guidebook_new.pdf> (Last accessed November 09, 2013).

1.2.4 Factors affecting credibility of News Media

Bertrand laments that these days "Public feels that it is being duped by Media".⁷⁵ This is because of the reason that in the outburst of news channels, function as a purveyor of information is long forgotten now. Keeping in view their opinion building power, News Media should do no harm.⁷⁶ And the inaccurate information by media harms members of the public who are then misled in their choices.⁷⁷ It should not be overlooked into the light of discussion preceded that Media, as a source of right to information have duties towards citizens in order to get them right to information while exercising privileges and freedoms.

Gans argues that the kind of information journalists in fact provide today is not the information that people can use to become politically aware.⁷⁸ Since, news is something which audiences do not know, therefore, a news organization still maintain credibility among masses even after ignoring matters of public interest.⁷⁹

President of United States Thomas Jefferson took view that "if once they [the people] become inattentive to the public affairs, you and I, and Congress and Assemblies, Judges and Governors, shall all become wolves".⁸⁰ Hence, it is vital for the citizens to be informed of state affairs with truth. A campaign of disinformation essentially denies the public its right to information.⁸¹

⁷⁵ Clause Jean Bertrand, "Media ethics and accountability Systems" (New Jersey: Transaction Publishers, 2002); 19. Found at <<https://books.google.com.pk/books?isbn=1412828341>> (Last accessed March 02, 2013).

⁷⁶ Latin phrase *Primum non nocere*, or "first, do no harm" applies to the media as well. This simply means they report with truth. <https://en.wikipedia.org/wiki/Primum_non_nocere> (Last accessed December 20, 2013).

⁷⁷ C. Edwin Baker, "Giving the audience what it wants," *Ohio State Law Journal*, 58, no. 2 (1997): 382. Found at <<http://hdl.handle.net/1811/64899>> (Last accessed September 21, 2014).

⁷⁸ Schudson, *The Sociology of News*, 208-209.

⁷⁹ Gregory P. Magarian, " Substantive Media Regulation in three dimensions ", (working paper no. 2008-05, Villanova University School of Law, Pennsylvania, 2008) Found at <<http://ssrn.com/abstract=1088840>> (Last accessed December 20, 2014).

⁸⁰ Robert W. McChesney, *The problem of the media: U.S. communication politics in the twenty-first century*, 29.

⁸¹ Sukumar Muralidharan, "Broadcast Regulation and Public Right to Know," *Economic and Political Weekly*, 42, No. 9 (Mar. 3-9, 2007): 750. Found at <[jstor.org/stable/4419303](https://www.jstor.org/stable/4419303)> (Last accessed April 01, 2015).

1.2.4.1 Sensationalism

Scholars and critics argue that today the news media are more concerned with performances.⁸² It has been claimed that Media use fear, of real or fancied events, to intimidate and coerce the masses to act; generally to consume and take away people's ability to think for themselves.⁸³

Though, catchy phrases grab the attention of viewers but at the cost of information, it does not seem a good idea at all. If facts are withheld from person or misrepresented to him, his opinion is similar to a judge's decision who has heard incomplete or false evidence.⁸⁴ Lahore High Court reminded Media of its obligations and held that

[T]he media is supposed to take lead in reflecting if anything wrong is taking place... [Media] also play an important role in bringing awareness in the public about their leaders and in building the public opinion with the object of betterment of the society. For this reason the law recognizes the importance of expression of views or making statements as social or moral duty and grants a privilege from action for libel and defamation it made honestly, justly and fairly.⁸⁵

Freedom of information and the peoples' right to know makes media "a public service or utility" in which consideration of public interest is very important.⁸⁶ Various pressures on News Media often encourage Media to focus on matters of trivial nature while matters of public

⁸² Katrin Voltmer, "The Media, Government Accountability and Citizen Engagement" in *Public Sentinel: New Media and Governance Reform*, ed. Pipa Norris (Washington, DC: World Bank, 2010), 5. Available at <<http://www.hks.harvard.edu/fs/pnorris/Acrobat/WorldBankReport/Chapter%206%20Voltmer.pdf>> (Last accessed June 5, 2013).

⁸³ Media Terrorism, <<http://www.mediaterrorism.net/>> (Last accessed January 12, 2013). Also, Media sensationalism is defined as "the style of reporting news to public which involves use of fear, anger, excitement and crude thrill undertaken by the media to increase the viewership, ratings and lastly profits." For further details please see, Robin Andersen and Jonathan Gray, edit., *Battle ground: the media*, (London: Greenwood Press, 2008), 477.

⁸⁴ Frederick Lewis Allen, "Newspapers and the Truth", in *Killing the Messenger: 100 Years of Media Criticism*, ed. Tom Goldstein (New York: Columbia University Press, 2007), 198.

⁸⁵ *Majid Nazami and another versus Sheikh Muhammad Rashid*, PLD 1996 Lahore 410 at pages 422, 426.

⁸⁶ B. G. Verghese, "The Media in a Free Society: Proposals for Restructuring," *Economic and Political Weekly*, 12, No. 18 (Apr. 30, 1977): 737. Found at <<http://www.jstor.org/stable/4365545>> (Last accessed April 25, 2015).

interests go unnoticed.⁸⁷

1.2.4.2 Concentration of power in few hands

The need for diversity and pluralism, a way to achieve the truth, is sometimes associated with fundamental right to freedom of expression, as set out in Article 10 of European Convention on Human Rights (ECHR).⁸⁸ Media Concentration implies that the supply of media is dominated by few owners.⁸⁹ Information is comprised when corporate masters put journalist under pressure for their own interests.⁹⁰ Without an open and pluralistic system of media provision, the right to receive and impart information might well be reduced for benefit of some individuals or rather groups.⁹¹

Florida Supreme Court observed, “The right of the public to know all sides of a controversy and from such information to be able to make an enlightened choice is being jeopardized by the growing concentration of the ownership of the mass media into fewer and fewer hands, resulting ultimately in a form of private censorship”.⁹² Interests of owners will

⁸⁷ Katrin Voltmer, “The Media, Government Accountability and Citizen Engagement” in *Public Sentinel: New Media and Governance Reform*, ed. Pipa Norris (Washington, DC: World Bank, 2010), 138. Available at <<http://www.hks.harvard.edu/fs/pnorris/Acrobat/WorldBankReport/Chapter%206%20Voltmer.pdf>> (Last accessed June 5, 2013).

⁸⁸ Article 10 of European Convention on Human Rights reads: “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. Found at <http://www.echr.coe.int/Documents/Convention_ENG.pdf> (Last accessed June 28, 2014). Also, Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 107.

⁸⁹ Doyle, *Media Ownership*, 13.

⁹⁰ Robert W. McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times* (New York: The New Press, 2000), 274.

⁹¹ Doyle, *Media Ownership*, 12.

⁹² Florida Supreme Court’s observations in famous *Tornillo*’s case. Florida Supreme Court decided in favor of Tornillo and held that a right to reply statute of state was not in breach of freedom of media. Decision of Florida Supreme Court was later on reversed on appeal by US Supreme Court in *Miami Herald Publishing Co. versus Tornillo*, 41 L.Ed. 2d

define the broadcast. Disliked stuff will be discarded. And this way the gatekeepers⁹³ also “run counter to maximizing the provision of ‘information’ upon which the claim is premised”.⁹⁴

Though competition promotes healthy trend, in highly concentrated industries it leads to imitation⁹⁵ which makes people think that concentration in the field of Media is dangerous than any other field because, “They do not manufacture nuts and bolts ‘they manufacture the social and political world’”.⁹⁶ It signifies the unusual nature of business done by Media where they deal with opinion building. Media are supposed to be watchdog of government, but where main threat to free expression has shifted from government to private corporate power who serves as a watchdog of corporate media?⁹⁷ Discourse about factors affecting News Media and indirectly right to information ends here with these self- explanatory lines truly reflecting the dilemma that citizens are information poor even in the age of news media supremacy. It has been said

In most countries, rich and sophisticated people are often mass media poor: they don’t watch much TV. Most of the poor, and certainly the lesser educated... are mass media rich: they usually watch a lot of television. Conversely- a problem at the heart of our modern societies- the people who watch a lot of TV tend to be information poor, and the people who don’t are often information rich.⁹⁸

730. Supreme Court held that the same statute amounts to violation of freedoms of Press. David L. Lange, “The Role of the Access Doctrine in the Regulation of the Mass Media: A Critical Review and Assessment,” *North Carolina Law Review*, 52 (1973): 62-63. Found at http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2209&context=faculty_scholarship (Last accessed December 04, 2014).

⁹³ The term ‘gatekeeper’ has often been used for Media owners. Please see, David L. Lange, “The Role of the Access Doctrine in the Regulation of the Mass Media: A Critical Review and Assessment,” *North Carolina Law Review*, 52 (1973): 1. Found at http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2209&context=faculty_scholarship (Last accessed December 04, 2014).

⁹⁴ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 14.

⁹⁵ Croteau and Hoynes, *The Business of Media Corporate: Corporate Media and the Public Interest*, 70.

⁹⁶ Anthony R. Fellow, *American Media History*, third ed. (Boston : Wadsworth/Cengage Learning, 2013), 416. Found at <<https://books.google.com/books?isbn=111134812X>> (Last accessed June 01, 2015).

⁹⁷ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 16.

⁹⁸ *Ibid.*, 19.

1.2.5 Watching the watchmen

Question is who will watch the watchmen (read Media here).⁹⁹ As they say with great power comes the great responsibility, media have rights but they are also subjected to obligation to inform the public.¹⁰⁰ In case, Media shy away from its obligation, it is equal to harm done to society which is worst for there “being absence of just a single victim”.¹⁰¹

There is a common saying: “The right to swing my fist ends where the other man's nose begins”.¹⁰² As explained earlier, Media often trumpeted public's right to know and it is this right which provides vindication to Media's much coveted freedoms. So where public's right to know is not respected and where minds are crammed with things not important to be called ‘information’, then begins the assumption, can restrictions be placed on Media's right to broadcast “each and everything” they find in the name of information? In the pressroom of police headquarters, Manhattan, a graffiti text draws the attention of visitors. It goes “All the news that fits we print”.¹⁰³ Should it be? Professor Baron maintains that “The media owners and

⁹⁹ Title given by Saroop Ijaz to his article published in *The Express Tribune* on July 21, 2012. Said article can be found at <http://tribune.com.pk/story/411401/watching-the-watchmen/> (Last accessed October 5, 2012).

¹⁰⁰ Gregory P. Magarian, " *Substantive Media Regulation in three dimensions* ", (working paper no. 2008-05, Villanova University School of Law, Pennsylvania, 2008) Found at <http://ssrn.com/abstract= 1088840> (Last accessed December 20, 2014).

¹⁰¹ Denis McQuail, “Publication in a free society: The Problem of Accountability” (Open lecture, University of Minho, March 5, 2004). Found at <http://revistacomsoc.pt/index.php/comsoc/article/viewFile/1220/1163> (Last accessed December 31, 2014). Can viewers be fed against their willingness or in other words why sensationalized, manipulative news are being forced upon them in the name of information. During the course of present research, a very interest concept came up. It is worthy to mention that ‘right not to know’ protects the individuals against communications forced upon him against his will. But on the other hand, Supreme Court of United States has also recognized the first amendment right both to seek out an audience and to be annoying, provocative, and offensive in public places. According to Emerson, “[o]n the whole, the right to know and the right not to know readily exist together.” As the scope of this research is already very vast, therefore, this query is left to be solved at another time. For further details please see, Thomas I. Emerson, " *Legal Foundations of the Right to Know* ", (Faculty Scholarship Series. Paper 2800, Yale Law School, 1976) Found at http://digitalcommons.law.yale.edu/fss_papers/2800 (Last accessed February 20, 2015).

¹⁰² Quotation by Oliver Wendell Holmes, Jr. Found at izquotes.com/quote/87083 (Last accessed June 01, 2015).

¹⁰³ Robert Darnton, “Writing news and telling stories”, in *Killing the Messenger: 100 Years of Media Criticism*, ed. Tom Goldstein (New York: Columbia University Press, 2007), 197.

managers, read freedom of the press as an immunity from accountability and any kind of legal responsibility".¹⁰⁴ Is it so?

1.3. BALANCING THE RIGHTS

There are group of rights classed absolute which cannot be overridden even in a state of emergency or an armed conflict.¹⁰⁵ Then are the rights which can be restricted, classified as qualified rights (right to free expression etc).¹⁰⁶ Çalı mentions that "A considerable range of civil and political rights claims are subject to qualification in relation to the communal aims at stake and therefore, are not considered absolute".¹⁰⁷ There are scholars who do not agree on curtailing the freedoms. Ronald Dworkin deems rights to be "trumps," which prevail over policy relating to the public interest.¹⁰⁸ According to this extreme view, special circumstances are required to justify the limitation of a right.¹⁰⁹

Supreme Court of Pakistan in precedent *Ardeshir Cowasjee*'s case has observed that fundamental rights impose restrictions for ensuring protection of collective benefit and also that any restriction of human rights needs a constitutionally valid reason.¹¹⁰

Barak opines that restricting a constitutional right can be done by sub-constitutional

¹⁰⁴ Gregory P. Magarian, "Substantive Media Regulation in three dimensions", (working paper no. 2008-05, Villanova University School of Law, Pennsylvania, 2008) Found at <http://ssrn.com/abstract=1088840> (Last accessed December 20, 2014).

¹⁰⁵ This class of rights includes freedom from torture, right to due process, and freedom from slavery. Also please see, Başak Çalı, "Balancing Human Rights? Methodological Problems with Weights, Scales and Proportions," *Human Rights Quarterly* 29, No. 1 (Feb., 2007): 258. Found at <http://www.jstor.org/stable/20072795> (Last accessed January 20, 2015).

¹⁰⁶ *Ibid.*, 259. Also, Aharon Barak names such rights 'not eternal'. Please see, Aharon Barak, *Proportionality: Constitutional Rights and their Limitations* (New York: Cambridge University Press, 2010), 466.

¹⁰⁷ *Ibid.*, 252.

¹⁰⁸ Ronald Dworkin, *Taking Rights Seriously* (Massachusetts: Harvard University Press Cambridge, 1977), xi.

¹⁰⁹ Aileen McHarg, "Reconciling Human Rights and the Public Interest: Conceptual Problems and Doctrinal Uncertainty in the Jurisprudence of the European Court of Human Rights," *The Modern Law Review* 62, No. 5 (Sep., 1999): 683. Available at <http://www.jstor.org/stable/1097381> (Last accessed May 20, 2015).

¹¹⁰ *Masrror Ahsan versus Ardeshir Cowasjee*, PLD 1998 SC 823 at page 1078. 'For example, Article 19, The Constitution of Islamic Republic of Pakistan, 1973, while unambiguously recognizing fundamental rights of every citizen with regard to freedom of speech, expression and freedom of press, is also subjected to limitation. Found at www.pakistani.org/pakistan/constitution (Last accessed June 30, 2014).

legislation.¹¹¹ Barak gives the example of right of speech/expression and maintains that “When considered within its entire scope, it is definite and complete. However, due to the need to protect the rights of others or public interest considerations, the right to freedom of expression cannot be realized to its fullest extent (divulging state secrets, for example, is illegal)”.¹¹² So the question is if public interest (read protecting the right to information) sometimes becomes cause whereupon freedoms of speech/expression of Media are regulated? Or if protecting the right to information itself is a public interest keeping in view the importance attached to it?¹¹³

1.3.1 Rule of Proportionality

Supreme Court of Pakistan has observed that “while interpreting Fundamental Rights guaranteed by the Constitution, a cardinal principle has always to be borne in mind that these guarantees to individuals are subject to the overriding necessity or interest of community. A balance has to be struck between these rights of individuals and interests of the community”.¹¹⁴ Therefore, in case when question of public interest is involved, rights of media may also be put under limitation to tone the rights. Defamation and libel laws are based on theory to avoid conflict of rights.

T. Alexander Aleinikoff states that “The metaphor of balancing refers to theories of constitutional interpretation that are based on the identification, valuation and comparison of competing interests however, to some it is a method of resolving conflicts among values”.¹¹⁵

Dworkin has given the notion of competing rights. He observes that “these other grounds invoke the notion of competing rights that would be jeopardized if the right in question were not

¹¹¹ Aharon Barak, *Proportionality: Constitutional Rights and their Limitations*, 147.

¹¹² *Ibid.*, 40.

¹¹³ Discussion will continue in chapter 4.

¹¹⁴ *Pakistan Muslim League (N) versus Federation of Pakistan*, PLD 2007 SC 642 at page 674.

¹¹⁵ T. Alexander Aleinikoff, “Constitutional Law in the Age of Balancing,” *The Yale Law Journal* 96, No. 5 (Apr., 1987): 945. Found at <<http://www.jstor.org/stable/796529>> (Last accessed on April 20, 2015). According to T. Alexander Aleinikoff, balancing could be of two forms: Firstly, the courts talk about one interest outweighing another. Constitutional standards requiring “compelling” or “important” state interests also exemplify this form of the balancing). Second is where the Court employs a different version of balancing by striking a balance between or among competing interest. *Ibid.*

limited".¹¹⁶ It is to limit the rights that Constitutions have limitation clauses. Barak views that principle of proportionality is a rule of balancing which lies "at the heart of limitation clauses".¹¹⁷ Limitation clause provides the justification if a right is subjected to some limitations at sub-constitutional level.¹¹⁸ The Constitution of the Islamic Republic of Pakistan, 1973, contains specific limitation clauses for each right respectively.

Jeremy Brown maintains that there are four basic components of proportionality.¹¹⁹ These are Proper Purpose,¹²⁰ rational connection,¹²¹ necessity test,¹²² and proportionality *strictu sense*.¹²³ Limitation may be achieved through legislation as long as that legislation is proportional.¹²⁴ When the limitation is not valid, it is said that the right has been violated (or breached).¹²⁵

Public interest is one of the factors which may become the cause of the restriction of right. In case, where Media, the source of information for public, have gone astray and instead of spreading democratic values are engaged in other businesses which best suit their own interests,

¹¹⁶ Dworkin, *Taking Rights Seriously*, 193. McHarg contends that though, relationship between rights and the public interest has been inadequately explored either by ECHR scholars or by rights theorists more generally, it is understood that rights may be "outweighed by other important considerations such as the collective good" (the 'interest' model)¹¹⁶. Aileen McHarg, "Reconciling Human Rights and the Public Interest: Conceptual Problems and Doctrinal Uncertainty in the Jurisprudence of the European Court of Human Rights," *The Modern Law Review* 62, No. 5 (Sep., 1999): 672-673. Available at <<http://www.jstor.org/stable/1097381>> (Last accessed May 20, 2015).

¹¹⁷ Barak *Proportionality: Constitutional Rights and their Limitations*, 20.

¹¹⁸ *Ibid.*, 24.

¹¹⁹ Jeremy Brown, "The Doctrine of Proportionality: A Comparative Analysis of the Proportionality Principle applied to free speech cases in Canada, South Africa and the European Convention on Human Rights and Freedoms" (Masters of Law Thesis., Central European University, 2012). Found at <www.etd.ceu.hu/2013/brown_jeremy.pdf> (Last accessed March 14, 2015).

¹²⁰ Barak, *Proportionality: Constitutional Rights and their Limitations*, 305. Proper Purpose, one of the segments of principle of proportionality, includes: the public interest, the continued existence of the state as a democracy, national security, public order. *Ibid.*, 265-277.

¹²¹ The requirement is that the means used by the limiting law fit (or are rationally connected to) the purpose the limiting law was designed to fulfill. *Ibid.*, 303.

¹²² All those means that may advance the purpose of the limiting law – that which would least limit the human right in question. *Ibid.*, 317.

¹²³ This test requires balancing of the benefits gained by the public and the harm caused to the constitutional right through the use of the means selected by law to obtain the proper purpose. *Ibid.*, 340.

¹²⁴ *Ibid.*, 101.

¹²⁵ *Ibid.*, 340.

cannot Media freedoms be harmonized (if not strictly restricted) towards attaining public interest i.e. developing informed citizenry? But since constitutional right cannot easily be superseded, therefore, Barak further contends that public interest must be of “such a high level of social importance that society may see it as crucial enough to justify a limitation on its constitutional rights”.¹²⁶

1.4. MAKING ACCOUNTABLE THE ‘UNBRIDLED’ MEDIA

Media have always offered resistance against any attempt to make them accountable. They have clamored that accountability is a mean to interfere with the freedom but as discussed in preceding pages, when there involves public interest, a compelling reason (like to ensure people their right to information), Media cannot make excuses of having privileges and freedoms so to escape the accountability.

Main aims of Media accountability is “to improve the services of the Media to the public; restore the prestige of Media in the eyes of the population; diversely protect freedom of speech and press; obtain, for the profession, the autonomy that it needs to play its part in the expansion of democracy and the betterment of the fate of mankind”.¹²⁷ Media accountability surely has multiple dimensions.

Stephan Russ-Mohl maintains that press freedom and media accountability are different sides of the same coin.¹²⁸ Freedom of Expression doesn’t mean that media may not be held

¹²⁶ *Ibid.*, 266. Discussion will continue in chapter 4.

¹²⁷ Project Media Act, *Media Accountability and Transparency in Europe (MediaAct): Best Practice Guide*, 4.

¹²⁸ Prof. Dr. Stephan Russ-Mohl, Interview by Michał Głowiński, February, 2012, *Central European Journal of Communication* 5, no. 2 (2012): 288. Found at <http://ptks.pl/cejc/wp-content/uploads/2013/01/CEJC_Vol5_No2_Interview.pdf> (Last accessed November 16, 2013). Professor of Journalism and Media Management at the Faculty of Communication Sciences, Università della Svizzera italiana, Lugano and Director of the European Journalism Observatory.

accountable. McChesney argues that freedom of the press does not mean media people do as they please.¹²⁹ If the power mass media wields in a large- scale society is not controlled by suitable accountability mechanisms, constitutional expectations might be breached.¹³⁰

Media studies do not offer Accountability Systems as prescribed as systems in other established professions.¹³¹ So there has always been a search aiming at finding a system containing principles of “social responsibility” and free expression and which would also ensure media’s credibility, which in turn would create an atmosphere of trust between the “media and their audiences”.¹³²

1.4.1 Regulation of Media

Mike Feintuck and Mike Varney associate access to information, which media assist to get, with participation in society, or citizenship and further argue that “there is no evidence to suggest that an unregulated, truly commercial market in broadcasting would fulfill this promise”.¹³³

The Australian Government’s report defines regulation as the imposition of rules or principles designed to influence behavior.¹³⁴ Such an influence could be both external internal to

¹²⁹ Robert W. McChesney, *The problem of the media: U.S. communication politics in the twenty-first century*, 31.

¹³⁰ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 15.

¹³¹ Jay Black and Chris Roberts, *Doing ethics in media: Theories and Practical Applications* (New York: Routledge, 2011), 402. Found at <https://books.google.com.pk/books/about/Doing_Ethics_in_Media.html?id=LggbIPeliX4C&redir_esc=y> (Last accessed August 13, 2014).

¹³² Epp Lauk and Michal Kus, “Editors’ introduction: Media accountability — between tradition and innovation,” *Central European Journal of Communication*, 5, no. 2 (2012): 169. <http://ptks.pl/cejc/wp-content/uploads/2013/01/CEJC_Vol5_No2_Lauk_Kus.pdf> (Last accessed December 20, 2013).

¹³³ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 86.

¹³⁴ Australian Government, *Independent inquiry into the media and media regulation*, February 2012, 267. There are six different aspects of the media for the purpose of regulation. Denis McQuail, *Media Regulations*, (Department of Media & Communication, University of Leicester, 2010) Found at <<https://www2.le.ac.uk/projects/oer/oers/media-and-communication/oers/ms7501/mod2unit11/mod2unit11cg.pdf>> (Last accessed September 30, 2013). These are i) Structure (Opponents to sanctions may agree to structural

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¹³² Epp Lauk and Michal Kus, “Editors’ introduction: Media accountability — between tradition and innovation,” *Central European Journal of Communication*, 5, no. 2 (2012): 169. <http://ptks.pl/cejc/wp-content/uploads/2013/01/CEJC_Vol5_No2_Lauk_Kus.pdf> (Last accessed December 20, 2013).

¹³³ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 86.

¹³⁴ Australian Government, *Independent inquiry into the media and media regulation*, February 2012, 267. There are six different aspects of the media for the purpose of regulation. Denis McQuail, *Media Regulations*, (Department of Media & Communication, University of Leicester, 2010) Found at <<https://www2.le.ac.uk/projects/oer/oers/media-and-communication/oers/ms7501/mod2unit11/mod2unit11cg.pdf>> (Last accessed September 30, 2013). These are i) Structure (Opponents to sanctions may agree to structural

media industries.¹³⁵ Denis McQuail defines Media Regulation as a “whole process of control or guidance, by established rules and procedures, applied by governments and other political and administrative authorities to all kinds of media activities”.¹³⁶ Thus, not necessarily accountability involves restrictions of rights and freedoms of Media. It may involve mere guidance.

Black offers an account of three descriptions of regulation often propounded in the literature. According to Black's third notion of Media regulation, unless there is change in behavior of subject, regulation proves futile. The first two ideas of Black mainly relate to statutory intervention (explained in following pages). Black rather gives a wider definition of regulation. Black says

In the first, regulation is the promulgation of rules by government accompanied by mechanisms for monitoring and enforcement, usually assumed to be performed through a specialist public agency. In the second, it is any form of direct state intervention in the economy, whatever form that intervention might take. In the third, regulation is all mechanisms of social control or influence affecting all aspects of behavior from whatever source, whether they are intentional or not.¹³⁷

regulation and not otherwise); ii) Infrastructure and technology; iii) Distribution; iv) Access; v) Conduct; vi) Content (Regulations aimed at media content normally deal either with protecting the public from perceived harm, or with elevating the population's knowledge or appreciation for culture). Satya Ranjan Swain, “No Law to Regulatory Regime: The Transition and India's Experience with the Press Council of India” (paper 2011, KIIT School of Law, KIIT University, Bhubaneswar). Found at<<http://ssrn.com/abstract=2181794>> (Last accessed March 23, 2014). Also, Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 127. Also for further details please see, Robert McKenzie, “Comparing Media Regulation Between France, the USA, Mexico and Ghana,” *Comparative Media Law journal* no. 6 (2005). Found at <<http://www.juridicas.unam.mx/publica/rev/comlawj/cont/6/arc/arc5.htm>> (Last accessed September 07, 2013).

¹³⁵ Robert McKenzie, “Comparing Media Regulation Between France, the USA, Mexico and Ghana,” *Comparative Media Law journal* no. 6 (2005). Found at <<http://www.juridicas.unam.mx/publica/rev/comlawj/cont/6/arc/arc5.htm>> (Last accessed September 07, 2013).

¹³⁶ David McQueen, *Free Press? You must be joking: How the British Press is suppressed*. <http://eprints.bournemouth.ac.uk/15248/1/Free_Press_by_David_McQueen.pdf> (Last accessed June 25, 2013).

¹³⁷ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 202. Black then gives a new definition: “Regulation is the sustained and focused attempt to alter the behavior of others according to defined standards or purposes with intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard-setting, information- gathering and behavior-modification.” For further details please see, *Ibid.*, 205.

1.4.1.1 Purpose of Media Regulation

Question is why regulation? Why not let media free without any restriction. Factors affecting News Media have already been discussed. These are mainly because of lapses in regulatory systems.

Denis McQuail, an influential contemporary scholar in communications, favors regulation of media to protect sectional rights and interests that might be harmed by unrestricted use of public means of communication.¹³⁸ A proper regulatory system may serve many purposes like, protecting members of society, to encourage more general access to the Media and in that way further promote the notion of free speech and counter the accusation that 'freedom of the press is guaranteed only to those who own one'.¹³⁹

Benjamin Franklin once observed that "abuses of the freedom of speech ought to be repressed, but to whom do we dare commit the power to do it?"¹⁴⁰ This is rather a debatable question because, when Government takes part in process of rule formation for Media, it is treated to be intervention with Media freedoms while, media industry's self devised codes of conduct lack the authority. So where lies the solution?

According to Barak, the most feared thing in the whole context is the state intervention.¹⁴¹ But the candid picture is that state always exercises control over media. Means could be different. Authors of *Media Regulation, Public Interest and the Law* write "states at all times ensure a degree of control or influence over the media".¹⁴²

¹³⁸ McQuail, *Media Regulations* (Department of Media & Communication, University of Leicester, 2010).

¹³⁹ Carole Fleming et.al, *An introduction to Journalism* (California: Sage Publications, 2006), 211.

¹⁴⁰ John L. Hulteng, "Holding the Media Accountable," in *What's news: The Media in American society*, ed. Elie Abel (New Jersey: Institute for Contemporary Studies, 1981), 213.

¹⁴¹ Barak, *Proportionality: Constitutional Rights and their Limitations*, 422.

¹⁴² Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 5.

Anonymous saying is that “Some problems are so bad, the only thing to do is to look at them and deny them”. Is this the right approach? Doing nothing perpetuates a system which is good for nothing.¹⁴³ According to authors of *Media Regulation, Public interest and Law*, “[But] the identification of a suitable regulatory arrangement is indeed a difficult task and is decided on a case by case basis. It needs to be informed by a clear identification of the issue or problem to be solved, the scale of the problem, and, consideration of possible regulatory and non- regulatory options to address the issue, including self – and co- regulations as possible regulatory responses”.¹⁴⁴ McQuail holds that though there are many overlapping processes of accountability but there is no complete system of Media regulation in this regard.¹⁴⁵

It is the manner in which a society decides how to structure the media system, how it elects to solve the problem of the media becomes of paramount importance.¹⁴⁶ Following are given the three basic categories of Media Regulation. These are:

- 1) Statutory regulation (external form of regulation);
- 2) Self Regulation (internal form of regulation); &
- 3) Co-Regulation.

1.4.2 Statutory Regulation

Journalism scholar Michael Schudson asks is “freedom best served when government stands aside or when government intervenes on behalf of open, diverse expression?”¹⁴⁷ State can come

¹⁴³ Australian Government, *Independent inquiry into the media and media regulation*, February 2012, 285.

¹⁴⁴ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 31.

¹⁴⁵ Denis McQuail, “Publication in a free society: The Problem of Accountability,” *Comunicação e Sociedade* 7 (2005): 247. Found at <<http://revistacomsoc.pt/index.php/comsoc/article/viewFile/1220/1163>> (Last accessed December 31, 2014).

¹⁴⁶ McChesney, *The problem of the media: U.S. communication politics in the twenty-first century*, 16.

¹⁴⁷ Schudson, *The Sociology of News*, 204.

for salvage of interests of the public if the same are found to outweigh interests of the media.¹⁴⁸ Emerson views that the state's action is supported by the people's right to know.¹⁴⁹

The Australian Government's report on media states that "Government Regulation occurs when the state or an agency of the state makes the rules, oversees compliance with the rules and provides enforceable consequences for breach of the rules, and (generally) where participation in the regulatory regime is mandated by law."¹⁵⁰ In other words, state takes on the charge of making regulations. In actuality, law is heavily involved in media regulations: it offers frameworks for resolving disputes; it sets standards what is lawful or unlawful; it may prescribe and impose sanctions where rules have been broken; it also establishes regulatory authorities.¹⁵¹

It is understood that Constitutional rights may be limited by sub-constitutional laws by legislature.¹⁵² Aharon Barak answers this question in positive and adds that such a statute/law should be constitutional "if the limitations it places are proportional".¹⁵³

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Bertrand is not in support of Media Accountability systems backed by statute. According

¹⁴⁸ David L. Lange, "The Role of the Access Doctrine in the Regulation of the Mass Media: A Critical Review and Assessment," *North Carolina Law Review*, 52 (1973): 38. Found at http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2209&context=faculty_scholarship (Last accessed December 04, 2014).

¹⁴⁹ Thomas I. Emerson, "Legal Foundations of the Right to Know", (*Faculty Scholarship Series*. Paper 2800, Yale Law School, 1976) Found at http://digitalcommons.law.yale.edu/fss_papers/2800 (Last accessed February 20, 2015).

¹⁵⁰ Australian Government, *Independent inquiry into the media and media regulation*, February 2012, 272.

¹⁵¹ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 31. And laws include acts of parliament and rules by regulatory organizations. It has been mentioned that "enforcing those obligations belongs to the police, the magistrates and regulating commissions, like the FCC in the US or its French equivalent the CSA". Claude-Jean Bertrand, *Quality Control: Media Ethics and Accountability Systems* (Paris: Presses Universitaires de France, 1997), 11-12. Found at <http://polpred.com/free/qc/book.pdf> (Last accessed June 20, 2013) Detailed regulatory structures of United Kingdom, United States and India have been given in second chapter of this research.

¹⁵² Barak, *Proportionality: Constitutional Rights and their Limitations*, 164-165.

¹⁵³ Proportionality and the limitation clause limit both the powers of the state and the rights of the individual. Barak, *Proportionality: Constitutional Rights and their Limitations*, 163. For further details please read, the discussion under 1.3. Putting restrictions on Media's Rights: Balancing the Context. Also see, *Ibid.*, 81. Whether those limitations were imposed to serve the public interest (such as national security considerations) or whether they were imposed for the protection of the right of others (as in the protection of another person's good reputation, or privacy). In some cases, the constitutional text demands that the limitation of the constitutional right be "necessary" or "reasonable" in a democratic society. These and other, similar terms have often been interpreted as the proportionality requirement. Also please see *Ibid.*, 132-133.

to him, use of laws could be dangerous.¹⁵⁴ Surely, enactment of any legal instrument might be taken as another tool to chill the speech/ expression.

Dr. Alexander Meiklejohn writes in favor of statutory back up “state should have legitimate means to intervene and to protect robust debate from individuals or enterprises that might hijack it”.¹⁵⁵ Croteau and Hoynes even went to extent of holding the view that question is not “whether the Government should intervene, the real issue is how the Government should intervene”.¹⁵⁶

In broadcast world, the concept of public trust restricts and regulates private ownership of the broadcasting spectrum with broadcast licenses owing to airwaves - public property doctrine.¹⁵⁷ However, some critics flout the argument that just because air waves are property of public therefore, regulation is needed.¹⁵⁸

In short, media industry relies on a complex set of laws and regulations that help to define both the playing field and the rules of the game.¹⁵⁹ Every system has flaws therefore, as has been exclaimed “Legal reforms should not be expected to bring about a Madisonian utopia. But they would help”.¹⁶⁰

¹⁵⁴ Bertrand, *Quality Control: Media Ethics and Accountability Systems*, 11- 12.

¹⁵⁵ Schudson, *The Sociology of News*, 206.

¹⁵⁶ Croteau and Hoynes, *The Business of Media Corporate: Corporate Media and the Public Interest*, 66.

¹⁵⁷ *Ibid.* For further details also see, Terry Flew, “Broadcasting and the social contract,” in *Global Media Policy in the New Millennium*, ed. Marc Raboy (Bedfordshire: University of Luton Press, 2002), 113.

¹⁵⁸ Veljanovski dispenses with the frequency scarcity argument for regulation, identifying it as ‘an artificial one created by government and claiming that a viable alternative would be the identification of broadcasting frequencies as private litigation. Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 82. Scarcity issue is just an excuse and secondly, the new technology making the older technology obsolete therefore, no need of licensing on basis of reason that there is scarcity of waves. Gregory P. Magarian, “*Substantive Media Regulation in three dimensions*”, (working paper no. 2008-05, Villanova University School of Law, Pennsylvania, 2008) Found at <<http://ssrn.com/abstract=1088840>> (Last accessed December 20, 2014). Most European Countries adopt a strict system of licensing for broadcasters, combined with strict public service requirements to make sure a degree of pluralism and diversity that would not be provided otherwise by the highly concentrated Media market. Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 91.

¹⁵⁹ Croteau and Hoynes, *The Business of Media Corporate: Corporate Media and the Public Interest*, 66.

¹⁶⁰ Satya Ranjan Swain, “*No Law to Regulatory Regime: The Transition and India's Experience with the Press Council of India*” (paper 2011, KIIT School of Law, KIIT University, Bhubaneswar). Found at <<http://ssrn.com/abstract=2181794>> (Last accessed March 23, 2014).

1.4.3 Self-Regulation

Self -regulation is an effective way of regulating the conduct of Media. McQuail defines self-regulation “as responsibilities assigned to media operators to implement by themselves or that are voluntarily chosen by them”.¹⁶¹ Self-regulation is best method as far as Media is concerned for the statutory or external regulation is considered to be ‘draconian threat for freedom of media’.¹⁶² In the opinion of B.G. Verghese, in order to avoid outside curbs, media must evolve its own codes and standards and have machinery for self-regulation.¹⁶³ Usually, press media has self-regulatory schemes.

However, as self-regulation offers advantages like flexibility and quickness, there are certain disadvantages in particular with self-regulation in the ‘media sphere’.¹⁶⁴ Mike Feintuck and Mike Varney mention that in self-regulatory set-up there is less protection for rights than with the protection offered by law. Sanctions are missing for enforcement.¹⁶⁵ Hence, pure self-regulation with complete exclusion of Government is not enough, therefore, as opined by of Mike Feintuck and Mike Varney, there would always be threat that “self-regulation without fear of ‘benign big gun’ of the state to step in and take enforcement action against any repeated transgressor, will not be effective”.¹⁶⁶

But again this is all about the voluntary obedience. As was observed by Delhi High Court, “Self-regulation therefore is not a simple matter; it places requirements upon every level

¹⁶¹ Denis McQuail, *Media Regulations*, (Department of Media & Communication, University of Leicester, 2010).

¹⁶² Australian Government, *Independent inquiry into the media and media regulation*, February 2012, 189.

¹⁶³ B. G. Verghese, “The Media in a Free Society: Proposals for Restructuring,” *Economic and Political Weekly*, 12, No. 18 (Apr. 30, 1977): 739. Found at <<http://www.jstor.org/stable/4365545>> (Last accessed April 25, 2015).

¹⁶⁴ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 242-243.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

of the media organization, on the journalist themselves, on their editors and managers, on the approach of the media organization to the production of content and the overall behavior of the media company".¹⁶⁷ Since there is difference between obligation and mere requirement, self-regulatory mechanisms are more popular in Media industry than state intervention. One of the common means of self-regulation is establishing independent press council.¹⁶⁸ Other means include appointing ombudsman¹⁶⁹ and formulating ethical codes for desired results.¹⁷⁰

¹⁶⁷ *Indraprastha People & Another. versus Union Of India & Others*, WP(C)No.1200/2011 before Delhi High Court. Judgment Pronounced on : April 09 , 2013. Found at <<http://indiankanoon.org/doc/80393956/>> (Last accessed May 07, 2015).

¹⁶⁸ Press Councils (PCs) normally adjudicate complaints by users against the press media. Clause Jean Bertrand, "Introduction: Media Accountability," *Pacific Journalism Review* 11, 2 (2005): 5. Found at <http://www.pjreview.info/sites/default/files/articles/pdfs/pjr%2311_2_editorial_bertrand_pp5-16.pdf> (Last accessed March 02, 2013) Creation of Councils usually owes to threat of Government Regulation. New Zealand Law Commission, *The News Media meets 'New Media', Rights, Responsibilities and Regulation in the Digital Age*, 2011, 120. <<http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20IP27.pdf>> (Last accessed April 23, 2013) According to an estimate, there are about 87 councils all around the world working efficiently to ensure the accountability of Media. Some PCs are established purely by Media and some are dependent on government as Pakistan Press Council. Australian Government, *Independent inquiry into the media and media regulation*, February 2012, 205. Found at <http://www.abc.net.au/mediawatch/transcripts/1205_finkelstein.pdf> (Last accessed May 12, 2013). Bertrand praises that "a PC is meant to improve the News Media and is potentially the best 'media accountability system'. Clause Jean Bertrand, "Media ethics and accountability Systems" (New Jersey: Transaction Publishers, 2002), 110. Found at <<https://books.google.com.pk/books?isbn=1412828341>> (Last accessed March 02, 2013) Bertrand further maintains that press council provides a platform to gather the stakeholders including Media people who own the power to inform, those who possess the talent to inform, and those who have the right to be informed that is the citizens. Clause Jean Bertrand, "Introduction: Media Accountability," *Pacific Journalism Review* 11, 2 (2005): 6. Found at <http://www.pjreview.info/sites/default/files/articles/pdfs/pjr%2311_2_editorial_bertrand_pp5-16.pdf> (Last accessed March 02, 2013) Decisions of press councils are taken seriously and reply/correction are published on the directions of Council. According to critiques Press Councils do not serve any purpose for they lack the power to penalize. *Ibid.*, 7. Obedience of Media will be voluntary for a responsible medium will follow the decision of Council but an irresponsible one will flout it. Claude Jean Bertrand, *Media Accountability Systems*, Organization for Security and Coordination in Europe (OSCE), 2007, 7. Found at <<http://www.osce.org-serbia/24858?download=true>> (Last accessed May 30, 2015).

¹⁶⁹ Australian Government's Report mentions that "An internal accountability mechanism more advanced than adoption of code is ombudsman or readers representatives." Australian Government, *Independent inquiry into the media and media regulation*, February 2012, 199. Ombudsman plays role as an 'in-house critic' and maintains the check and balance by extending the redressal on complaints . Huub Evers, "The news ombudsman: Lightning rod or watchdog?" *Central European Journal of Communication*, 5 no.2 (2012): 230. Found at <ptks.pl/cejc/wp-content/uploads/2013/01/CEJC_Vol5_No2_Evers1.pdf> (Last accessed December 09, 2013).

¹⁷⁰ Media Ethics are of much importance now as public awareness has increased. In addition to this, journalists are more educated than their predecessors. Bertrand, *Quality Control: Media Ethics and Accountability Systems*, 7. Codes of ethics are formulated by individual journalists or by professional journalistic associations for a particular organization or for media generally. Reason behind forming code of conduct is that if red lines can be drawn for the legal and medical professions in the form of ethical codes etc; why should it be any different for

Putting in nutshell, self-regulation is generally more flexible than statutory regulation, while latter is difficult to modify.¹⁷¹ Financial cost of self-regulation is not borne by state and it ensures the independence without the fear of severe penalties.¹⁷²

1.4.4 Co-Regulation

Co-regulation has been defined as “industry-association self-regulation with some oversight and/or ratification by government”.¹⁷³ Co-regulation occurs when the rules are developed, administered and enforced by a combination of government agencies and regulated entities.¹⁷⁴ It is notable that co-regulation has been somewhat more popular in the media sector than self-regulation itself. Eminent scholars including Barren have supported media “co-regulation” by the state.¹⁷⁵ It has been cherished as a middle way between ‘imperial power or dominium power of the state’ in order to enforce regulation and ‘naiveté of trusting companies to regulate themselves’.¹⁷⁶ However, there is constant threat of state sanction for state does have a particular character setting standards, besides, it should not be overlooked that co-regulatory entities may remain vulnerable to ‘industry capture’.¹⁷⁷

Media? However, critics hold that codes of ethics does not offer much towards accountability because of the lack of enforceability. *Ibid.*, 52.

¹⁷¹ Andrew Puddephatt, *The Importance of Self Regulation of the Media in upholding freedom of expression*, UNESCO, 2011, 12. Found at <<http://unesdoc.unesco.org/images/0019/001916/191624e.pdf>> (Last accessed May 30, 2015).

¹⁷² *Ibid.*

¹⁷³ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 241.

¹⁷⁴ Australian Government, *Independent inquiry into the media and media regulation*, February 2012, 272.

¹⁷⁵ Susanne Fengler, “From media self-regulation to ‘crowd criticism’: Media accountability in the digital age,” *Central European Journal of Communication*, 5, no 2 (2012): 183. Found at <http://ptks.pl/cejc/wp-content/uploads/2013/01/CEJC_Vol5_No2_Fengler.pdf> (Last accessed December 09, 2013).

¹⁷⁶ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 241. Also, Australian Government, *Independent inquiry into the media and media regulation*, February 2012, 276.

¹⁷⁷ Australian Government, *Independent inquiry into the media and media regulation*, February 2012, 276.

1.5. CONCLUSION

While exercising powers, immunity cannot be claimed from accountability. Of course, absolute freedom gives rise to chaos and unrest. Where News Media provide information to people, they should not be allowed to misuse the freedoms in the name of information and then also to claim privileges/liberties. The solution lies in the middle way. Neither absolute freedom nor censorship by Government for the sake of their own benefits should be allowed. But how other democracies cope with growing powers of Media? Does United States of America, champion of human basic rights, favor restricting the freedoms of Media? Next chapter have answers to these questions.

CHAPTER TWO: MEDIA REGULATIONS ACROSS UNITED KINGDOM, UNITED STATES & INDIA

2.1. INTRODUCTION

In order to give insight into international systems of Media regulation, three countries have been chosen. Media systems of United Kingdom and United States, the archetypes employed in virtually all discussions of broadcasting policy in democratic nations,¹⁷⁸ will be discussed along with media set-up of neighboring country India.

Gillian Doyle, a significant figure in field of media economics, writes that high levels of media concentration inside European national markets can bring economic, commercial and other strategic benefits but such concentration endangers “open, diverse and pluralistic systems of media provisions” and to avoid such result, countries of Europe have adopted special rules to restrict ownership of media.¹⁷⁹ In this chapter, a study will be undertaken to explore how big democracies are coping with the emerging ‘rule of giants’ which threatens the right to information of citizens especially in Post Leveson inquiry’s scenario.¹⁸⁰

2.2. UNITED KINGDOM

In the United Kingdom (hereinafter as ‘UK’), there is no codified law dealing with the freedom of expression.¹⁸¹ Media system of UK is a “dual system marked by a significantly deregulated

¹⁷⁸ Robert W. McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times* (New York: The New Press, 2000), 229.

¹⁷⁹ Gillian Doyle, *Media Ownership* (London: Sage Publications Ltd, 2002), 26 & 147.

¹⁸⁰ Robert Winnett, “News of the World shut down in bid to end phone hacking scandal,” *The Telegraph*, July 07, 2011. Found at <http://www.telegraph.co.uk/news/uknews/phone-hacking/8624421/News-of-the-World-shut-down-in-bid-to-end-phone-hacking-scandal.html> (Last accessed June 01, 2015). Western democracies have taken legal measures to protect editorial independence against media owners’ interference. Certain legal measures include enacting competition laws for example, European Union Treaty (Articles 85, 86 & 90) and Merger Control Regulation (1989) as enacted in Europe to regulate the control of Media giants. *Ibid.*, 166-167. Also, Gregory P. Magarian, “*Substantive Media Regulation in three dimensions*”, (working paper no. 2008-05, Villanova University School of Law, Pennsylvania, 2008) Found at <http://ssrn.com/abstract=1088840> (Last accessed December 20, 2014).

¹⁸¹ Human Rights Act, 1998, embodies law of human rights in UK. The impact of Human Rights Act, 1998, particularly in relation to the regulation of media content, has been significant in UK. Mike Feintuck and Mike

commercial television and an equally robust public service broadcasting".¹⁸² In his research paper, Hamid Raza refers to T. Gibbons who in turn mentioned two key features defining the media policy in UK. Firstly, there is the idea of universality of broadcasting services which should be available throughout the country and should supply for all flavors and interests, and secondly, the idea of "cultural responsibility" which means that the media content aims at "informing and educating the public..."¹⁸³

The broadcast media in UK are subjected to a regulatory body, The Office of Communications ('Ofcom') and regulation of broadcast media is mostly based on statutes for example the laws of general application, such as those relating to defamation, obscenity and hate speech also apply to them.¹⁸⁴

2.2.1 THE OFFICE OF COMMUNICATIONS

Communications Act, 2003, established The Office of Communications (herein after 'Ofcom'). Ofcom is 'an independent regulator, licensing and competition authority' for the United Kingdom media industries.¹⁸⁵ Here in Pakistan, Pakistan Electronic Media Regulatory Authority is parallel to Ofcom but the domain of operation of latter is wider because Ofcom has brought various 'legacy' regulators under its realm.¹⁸⁶ To ensure the freedoms of media, Section 3 (3) of

Varney, *Media Regulation, Public Interest and the Law* (Edinburgh: Edinburgh University Press, 2006), 2. Promulgation of Ofcom's 'Content Code', along with a number of other measures, have been impacted upon by the implementation of certain rights in the European Convention on Human Rights into UK law by the Human Rights Act. *Ibid.*, 201.

¹⁸² Hamid Raza, " Policy and PEMRA: Comparisons with UK and USA," *Criterion Quarterly* 7, no. 4 (2015). Found at <<http://www.criterion-quarterly.com/media-policy-and-pemra-comparisons-with-uk-and-usaby/>> (Last accessed June 09, 2015).

¹⁸³ *Ibid.*

¹⁸⁴ Evan Ruth and Toby Mendel, *Media Regulation in United Kingdom*. <<https://www.article19.org/data/files/pdfs/publications/uk-media-regulation.pdf>> (Last accessed December 20, 2014).

¹⁸⁵ <www.ofcom.org.uk/> (Last accessed June 02, 2015).

¹⁸⁶ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 154. Also <www.ofcom.org.uk/> (Last accessed June 02, 2015). Also, "Procedures for the consideration of statutory sanctions in breaches of broadcast licences," ofcom. Found at <<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints->>

the Communications Act, 2003, requires that Ofcom's regulatory activities should be proportionate and target only those cases in which action is needed.¹⁸⁷ By virtue of section 3 (a) and (b) of the Act, Chairperson and other members of the Board of Ofcom are appointed by the Secretary of State.¹⁸⁸

2.2.2 PRESS COMPLAINTS COMMISSION

Print Media in UK is self-regulatory. Press Complaints Commission (hereinafter as 'PCC'), a successor of Press Council of United Kingdom and a voluntary grievance addressing institution established in 1991, has always been subjected to criticism in UK due to lack of control.¹⁸⁹ PCC can be compared with Press Council of Pakistan, a semi-autonomous body also subjected to criticism due to lack of effectiveness. The PCC's code of practice, which was ratified in 2007, states,

All members of the press have a duty to maintain the highest professional standards. The Code, which includes this preamble and the public interest exceptions below, sets the benchmark for those ethical standards, protecting both the rights of the individual and the public's right to know. It is the cornerstone of the system of self-regulation to which the industry has made a binding commitment.¹⁹⁰

sanctions/procedures--sanctions/ Also: Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 203. Ofcom inherits the duties of the five existing regulators it replaces: the Broadcasting Standards Commission (BSC), the Independent Television Commission (ITC), Ofcom, the Radio Authority and the Radio Communications Agency. For further details please see, <<http://www.itc.org.uk>> (Last accessed on June 05, 2015).

¹⁸⁷ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 154. Sanctions available to OFCOM include decision to: i) issue a direction not to repeat a program or advertisement; ii) issue a direction to broadcast a correction or a statement of Ofcom's findings which may be required to be in such form, and to be included in programs at such times, as Ofcom may determine; iii) impose a financial penalty; iv) shorten or suspend a license (only applicable in certain cases); and/or v) revoke a license. "Procedures for the consideration of statutory sanctions in breaches of broadcast licences," ofcom. Found at <<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures--sanctions/>> (Last accessed May 30, 2015).

¹⁸⁸ Found at <www.ofcom.org.uk> (Last accessed June 02, 2015).

¹⁸⁹ "Phone hacking: Cameron and Miliband demand new watchdog," *BBC NEWS*. Found at <<http://www.bbc.com/news/uk-politics-14073718>> (Last accessed December 31, 2014).

¹⁹⁰ Found at <http://www.pcc.org.uk/assets/111/Code_Aug_2007.pdf> (Last accessed June 16, 2015).

Mike Feintuck and Mike Varney, authors of *Media Regulation, Public interest and the Law*, write that

PCC lacks the ‘big sticks’ which Ofcom, as the broadcaster regulator, possess. There is only one formal sanction available with PCC if a breach of the code is upheld- that of the publication of its decision. Many other complaints are resolved informally. Majority of cases result in apologies or corrections being published. There is no power to offer financial compensation, or even to fine repeated transgressors of the PCC Code.¹⁹¹

2.2.2.1 The Leveson Inquiry & Changing trends of regulation

The News of World was one of the oldest newspapers of UK. It was back in year 2005, when a series of investigations began following the disclosure of phone hacking on behalf of The News of World to gain access to information. More than 4,000 people have been identified by police as victims of phone spying by the The News of The World.¹⁹²

The Leveson inquiry was set up by Prime Minister of United Kingdom in July 2011, after the above mentioned phone-hacking by reporters at the (now-non-existent) *News of the World* became public.¹⁹³ Inquiry led to closure of the newspaper. Lord Justice Leveson was asked to look into the “culture, practices and ethics” of the press, its relationship with politicians and the police; why the regulatory regime failed; and whether previous instances of media misconduct were acted upon.¹⁹⁴ Lord Leveson called upon the industry to set up a new press

¹⁹¹ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 192.

¹⁹²“Q&A: News of the World phone-hacking scandal,” BBC NEWS. Found at <<http://www.bbc.com/news/uk-11195407>> (Last accessed June 20, 2015).

¹⁹³ Robert Winnett, “News of the World shut down in bid to end phone hacking scandal,” *The Telegraph*, July 07, 2011. Found at <<http://www.telegraph.co.uk/news/uknews/phone-hacking/8624421/News-of-the-World-shut-down-in-bid-to-end-phone-hacking-scandal.html>> (Last accessed June 01, 2015).

¹⁹⁴ The Leveson Inquiry, *An Inquiry into the Culture, Practices and Ethics of the Press*, vol. 1., 2012, 4. Found at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270939/0780_i.pdf> (Last accessed June 15, 2014).

standards self -body for the Press Complaints Commission “had bungled its response to the phone hacking scandal so badly that its demise became inevitable.”¹⁹⁵

It was in September 2014, following the Leveson inquiry that PCC was replaced with Independent Press Standards Organization (IPSO).¹⁹⁶

2.2.3 COMPETITION AND MARKETS AUTHORITY

UK have recently begun focus more on the need for competition rules and regulations to provide safeguards for all access points to the media by facilitating level playing field.¹⁹⁷

On April 01, 2014, the Competition Commission of UK was replaced by the Competition and Markets Authority (CMA), now the new competition watchdog in UK.¹⁹⁸ United Kingdom merger control is regulated by the Competition Act, 1998, and Enterprise Act, 2002, (herein after referred as EA).¹⁹⁹ The EA, 2002, provides that in certain cases Secretary of State may intervene on merger of two entities on the basis of public interest concerns and may even "trump" the assessments if the same is anti-competitive in nature.²⁰⁰ That surely makes sure prevention of media concentration.

2.3. UNITED STATES OF AMERICA

In United States of America (hereinafter as ‘US’), Freedom of speech/expression is protected by

¹⁹⁵ Raphael Satter, *A guide to Britain's new media regulation regime*, Found at <<http://bigstory.ap.org/article/guide-britains-new-media-regulation-regime>> (Last accessed on June 06, 2015).

¹⁹⁶ Found at <<http://www.pcc.org.uk/about/index.html>> (Last accessed on June 16, 2015).

¹⁹⁷ Doyle, *Media Ownership*, 151.

¹⁹⁸ <<http://www.iclg.co.uk/practice-areas/merger-control/merger-control-2015/united-kingdom>> (Last accessed June 01, 2015).

¹⁹⁹ “UK Merger Control, Quick guides,” Ashurst LLP. Found at <https://www.ashurst.com/doc.aspx?id_Resource=4633> (Last accessed on June 07, 2015).

²⁰⁰ Mandate of Secretary under section 59 of Enterprise Act, 2002, to intervene in mergers where public interest is involved flows from section 58 of the said Act. Secretary of State can make such intervention when a question relates to “national security or defence, media concerns such as media plurality, accuracy and quality” and “the stability of the UK financial system. Found at <http://www.legislation.gov.uk/ukpga/2002/40/pdfs/ukpga_20020040_en.pdf> (Last accessed June 30, 2015).

first and fourteenth amendments.²⁰¹ It is the fourteenth amendment which makes the first amendment applicable to the states.²⁰² First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”.²⁰³

Free speech protections granted to US media are exemplary.²⁰⁴ The first amendment’s language is so absolute that it does not contain explicit limitation clause. Likewise, the Bill of Rights has no general limitation clause.²⁰⁵

²⁰¹ *Corpus Juris Secundum*, Volume 16 (A), para 501 page 596.

²⁰² *New York Times Co. versus Sullivan*, 376 U.S. 254 Found at <<https://www.law.cornell.edu/supremecourt/text/376/254>> (Last accessed June 01, 2015). Fourteenth amendment provides that “Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. Section. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability. Section. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void. Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.” Found at <<http://constitution.findlaw.com/amendments.html#sthash.jMsqOiWX.dpuf>> (Last accessed June 01, 2015).

²⁰³ Found at <<http://constitution.findlaw.com/amendments.html#sthash.jMsqOiWX.dpuf>> (Last accessed June 01, 2015).

²⁰⁴ Author at another point mentions that US law leans heavily “some might say far too heavily” in favor of media. For further detail see, *Developments in the Law: The Law of Media*, *Harvard Law Review*, Vol. 120, No. 4 (Feb., 2007): 1035. Found at <<http://www.jstor.org/stable/40041997>> (Last accessed June 01, 2015).

²⁰⁵ The first 10 amendments to US Constitution form Bill of Rights. Found at <billofrightsinstitute.org/founding-documents/bill-of-rights/> (Last accessed December 16, 2013).

In *Konigsberg versus State Bar of California*²⁰⁶, Justice Hugo Black while referring the First Amendment, goes on to declare that words mentioned are “the First Amendment’s unequivocal command” and insisting that “No law” means no law.²⁰⁷

Meiklejohn contends that the central purpose of the first amendment is to protect the free flow of information.²⁰⁸ In Pakistan, in order to make access to information possible, Freedom of Information Ordinance, 2002 has been enacted. In the United States, on the federal level, Congress has passed three significant statutes that direct the release of government held information. These are: The Freedom of Information Act of 1967; the Privacy Act of 1974; Sunshine Act of 1976.²⁰⁹

2.3.1 FREEDOM OF MEDIA

US boasts that its Media may be the least regulated in the world.²¹⁰ But, liberties for Media in US are not absolute as provided by *Corupus juris secundum*,

“First amendment rights or guaranties are not absolute, unlimited or immune from control; they must yield to more compelling state interests, and their regulation as to time, place, and manner of exercise is proper when reasonably related to a valid public interest... Also, the exercise of such rights may be restricted when the unbridled exercise of right may invade and injure the rights of others....”²¹¹

²⁰⁶ 1 L.Ed.2d 810= 353 U.S. 252. Found at <<https://supreme.justia.com/cases/federal/us/366/36/>> (Last accessed June 01, 2015).

²⁰⁷ Satya Ranjan Swain, “*No Law to Regulatory Regime: The Transition and India’s Experience with the Press Council of India*” (paper 2011, KIIT School of Law, KIIT University, Bhubaneswar). Found at <<http://ssrn.com/abstract=2181794>> (Last accessed March 23, 2014).

²⁰⁸ Michael J. Hayes, “Whatever happened to “the right to know”? Access to Government Controlled information since Richmond Newspapers,” *Virginia Law Review*, 73, No. 6 (Sep., 1987): 1112. <<http://www.jstor.org/stable/1073037>> (Last accessed March 30, 2015).

²⁰⁹ Every state in US has an open records law and a sunshine law. Michael J. Hayes, “Whatever happened to “the right to know”? Access to Government Controlled information since Richmond Newspapers,” *Virginia Law Review*, Vol. 73, No. 6 (Sep., 1987): 1139. <<http://www.jstor.org/stable/1073037>> (Last accessed March 30, 2015).

²¹⁰ McChesney, Rich Media, Poor Democracy: *Communication Politics in Dubious Times*, 261.

²¹¹ *Corpus Juris Secundum*, Volume 16 (A), para 458 pages. 480-481.

The above lines clearly show that media power in US is not absolute. Mass media in US have not only first amendment rights but also first amendment obligations to inform the public and to provide them forum for exchange of diverse ideas.²¹² USA's Media are subjected to number of laws defining the features of most powerful and influential media on planet earth.²¹³

However, newspapers in United States are not licensed or regulated by a central government-related agency and are legally free to publish almost any material that has not been judged by a court to be obscene.²¹⁴ Ruling of U.S. Supreme Court in 1974 in *Miami Herald Publishing Co. versus Tornillo*²¹⁵ is noteworthy to quote here to indicate the importance United States give to freedom of press. Speaking for a unanimous Court, Chief Justice Warner Burger ruled, "A responsible press is an undoubtedly desirable goal, but press responsibility is not mandated by the Constitution and like many other virtues it cannot be legislated."²¹⁶ On the other hand Justice Byron White remarked,

A newspaper or magazine is not a public utility subject to 'reasonable' governmental regulation in matters affecting the exercise of journalistic judgment... government may not force a newspaper to print copy which, in its journalistic discretion, it chooses to leave on the newsroom floor".... None can "dictate to the press the contents of its news columns or the slant of its editorials" — whether by Congressional laws or judicial "guidelines".²¹⁷

²¹² Satya Ranjan Swain, "No Law to Regulatory Regime: The Transition and India's Experience with the Press Council of India" (paper 2011, KIIT School of Law, KIIT University, Bhubaneswar). Found at <http://ssrn.com/abstract=2181794> (Last accessed March 23, 2014).

²¹³ Bureau of international Information programs United States Department of State, *Media Law: Handbook series*, 2010. Found at <<http://iipdigital.usembassy.gov/media/pdf/books/media-law-handbook.pdf>> (Last accessed June 02, 2015).

²¹⁴ "Media," Legal Information Institute [LII], Cornell University Law School. <<http://www.law.cornell.edu/wex/media>> (Last accessed September 20, 2013). Also see, Kenneth V. Creech, *Electronic Media Law and Regulation*, sixth ed. (New York: Routledge, 2014), 46.

²¹⁵ 41 L. Ed. 2d 730.

²¹⁶ *Miami Herald Publishing Co. versus Tornillo*, 41 L. Ed. 2d 730 at page 740.

²¹⁷ *Ibid.*, 742.

Broadcast media of US do not enjoy the same First Amendment protection.²¹⁸ State may interfere on the basis of view that staying off of Government may actually weaken, rather than safeguard the basic freedoms.²¹⁹ This is because of the reason that first amendment's aim, is to protect media that afford "broad and deep attention to public issued" and provide "public exposure to an appropriate diversity of view" and hence it is vital for government sometimes to interfere but within bounds. But Government cannot define the specific content of broadcasts because such decision would be in violation of the first amendment.²²⁰ In US, regulation of media is limited to structural and economical matters rather than the control of content.²²¹ This is because of the reason that there is one common understanding of first amendment doctrine that it does not treat structural media regulations as limiting speech.²²²

2.3.2 FEDERAL COMMUNICATIONS COMMISSION

The Federal Communication Commission (hereinafter as 'FCC') is an independent U.S. government agency which regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories.²²³ The Communications Act, 1934, established FCC back in the year 1934. Unlike Pakistan Electronic Media Regulatory Authority which comes under control of executive, FCC is under the supervision of Congress (detail will be provided in chapters to come).²²⁴ FCC's

²¹⁸ David Croteau and William Hoynes, *The Business of Media Corporate: Corporate Media and the Public Interest* (California: Pine Forge Press, Sage Publications, 2006), 31.

²¹⁹ Michael Schudson, *The Sociology of News* (New York: W. W. Norton & Company, Inc., 2003), 202-203.

²²⁰ David Croteau and William Hoynes, *The Business of Media Corporate: Corporate Media and the Public Interest*, 31.

²²¹ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 11.

²²² Gregory P. Magarian, "Substantive Media Regulation in three dimensions", (working paper no. 2008-05, Villanova University School of Law, Pennsylvania, 2008) Found at <http://ssrn.com/abstract=1088840> (Last accessed December 20, 2014).

²²³ Section 152 of the Communications Act, 1934, enables FCC with stake to regulate all interstate communication by wire or radio. For details please visit the official website of the commission <<https://www.fcc.gov/>> (Last accessed September 20, 2013).

²²⁴ Found at <<https://www.fcc.gov/guides/about-fcc>> (Last accessed June 15, 2014).

commissioners are appointed by the president and confirmed by the Senate.²²⁵ While here in Pakistan, PEMRA's chairman is appointed by President.²²⁶ FCC has bureaus for various specified tasks.²²⁷

Under section 312 of the Communications Act, 1934, FCC can revoke a license or fail to renew a license. Latter penalty is reserved only for cases where a broadcaster demonstrates willful and repeated disregard for the law. The second and main power of enforcement is the fine, which the Enforcement Bureau of the FCC can levy on broadcasters that violate rules and regulations.²²⁸

2.3.3 RIGHT OF VIEWERS IS PARAMOUNT AND NOT OF BROADCASTERS

McChesney laments the growing concentration of Media in US. He maintains that "the corporate media lobbies are notorious for their abilities to get their way with politicians, especially if their adversary is not another powerful corporate sector, but that amorphous entity called the 'public interest'.²²⁹ Due to lack of government intervention, Media in US is victim to concentration.²³⁰ Gravity of situation can be measured by fact that "...virtually no new daily newspapers have been successfully launched in existing markets in the United States since World War I, despite their immense profitability and growth".²³¹

Media Concentration has rung alarming bells in the United States. As desperate times

²²⁵ *Ibid.*

²²⁶ Read section 6 of PEMRA Ordinance, 2002. Found at <http://www.pemra.gov.pk/pemra/images/docs/legislation/Ordinance_2002.pdf> (Last accessed July 01, 2013).

²²⁷ Media Bureau, Wireline Competition Bureau, Wireless Telecommunications Bureau and International Bureau. To see how different bureaus function, please visit, <<https://www.fcc.gov/>> (Last accessed September 20, 2013).

²²⁸ "Obscene, Indecent and Profane Broadcasts," Federal Communications Commission <<https://consumercare.fcc.gov/hc/en-us/articles/202731600-Obscene-Indecent-and-Profane-Broadcasts>> (Last accessed September 20, 2013).

²²⁹ Robert McChesney, "The Global Restructuring of media ownership," in *Global Media Policy in the New Millennium*, ed. Marc Raboy (Bedfordshire: University of Luton Press, 2002), 156.

²³⁰ Schudson, *The Sociology of News*, 200.

²³¹ McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times*, 271.

call for desperate measures, Ingber states that it cannot be denied that this is an emergency situation and is exempted from first amendment coverage.²³² As has been mentioned in *Red Lion's* case²³³ & later in *Columbia Broadcasting versus Democratic National Committee*²³⁴ that it is the right of viewers that is paramount and not of broadcasters.

The agency involved in reducing the monopoly includes Federal Trade Commission²³⁵ while legislations include Sherman Antitrust Act, 1890,²³⁶ Clayton Antitrust Act, 1914, and Celler-Kefauver Act, 1950.²³⁷ FCC formulated multiple-ownership rules, National and Local Radio Ownership duopoly rules²³⁸ and cross ownership rules²³⁹ to prevent concentration of media.²⁴⁰ Then no sooner Telecommunications Act, 1996, was enacted than it was perceived that new Act served the media companies well by relaxing cross ownership restriction so that a single firm could now own up to eight stations in a single market.²⁴¹ Discussion about Media regulation in United States will be incomplete without mentioning once crown of Media regulation in US i.e., Fairness Doctrine.

²³² Stanley Ingber, "The Marketplace of Ideas: A Legitimizing Myth," *Duke Law Journal*, 33 no 1 (1984): 18. Found at <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2867&context=dlj>> (Last accessed December 10, 2014).

²³³ *Red Lion Broadcasting Co., Inc., etc., versus Federal Communications Commission*, 23 L.Ed. 2d 371 at page 389.

²³⁴ 36 L.Ed. 2d 772 at page 783.

²³⁵ It regulates unfair competition in business practices. Found at <<https://www.ftc.gov/about-ftc>> (Last accessed June 01, 2015).

²³⁶ The Sherman Antitrust Act, 1890, encourages competition while discouraging monopoly of ownership if it is unlawful. Found at <<http://www.ourdocuments.gov/doc.php?flash=true&doc=51>> (Last accessed July 01, 2015).

²³⁷ These laws show the concerns towards the trends of media monopolization in United States.

²³⁸ Prohibit the ownership of more than one TV station in same market. For radio the policy kept on changing. Kenneth V. Creech, *Electronic Media Law and Regulation*, sixth ed. (New York: Routledge, 2014), 151.

²³⁹ Prohibition of common ownership of broadcast stations and daily newspapers. Policy was upheld in *FCC versus National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978). Creech, *Electronic Media Law and Regulation*, 151. For text of the *FCC versus National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978) please visit: <<https://supreme.justia.com/cases/federal/us/436/775/>> (Last accessed December 30, 2014).

²⁴⁰ Creech, *Electronic Media Law and Regulation*, 10. Also see, *United States versus Storer Broadcasting Co.*, 351 U.S. 192 (1956) Found at <<https://supreme.justia.com/cases/federal/us/351/192/>> (Last accessed June 20, 2015).

²⁴¹ McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times* , 75.

2.3.4 EVOLUTION & DECLINE OF FAIRNESS DOCTRINE

The fairness doctrine, imposed by the FCC on radio and television broadcasters, was laid down in precedent *Red Lion's* case.²⁴² The doctrine required that broadcasters should provide sufficient coverage to public issues and to broadcast dissenting views to promote diversity.²⁴³

Opponents of the fairness doctrine considered it as a threat to open dialogue and often contended that fairness doctrine had chilled discussion of controversial issues. It was called "predictable deterrence" of reporting on political controversies.²⁴⁴

It was in the year 1987, when fairness doctrine was abolished.²⁴⁵ Many of failings of US media are declared to be result of this abolishment.²⁴⁶ Even today, attempts are being made in US to revive the doctrine in view of fast growing concentration in media. According to supporters of the doctrine, renewal of doctrine would simply supplement journalistic standards.²⁴⁷

2.4. INDIA

India boasts its secular traditions/liberties she bestows upon citizens. Part-III of the constitution of India, 1949, deals with fundamental rights.²⁴⁸ Article 19 of the constitution relates to protection of certain rights including freedom of speech, etc while sub-Articles 19 (2) to 19 (6) contain the limitations and conditions associated with freedoms.²⁴⁹

²⁴² The matter related to validity, under Federal Communications Act and the constitutional guarantee of freedom of speech and press, of rules and regulations of Federal Communications Commission which require, as part of the commission's general fairness doctrine, broadcasters to offer to an individual personally attacked in broadcasts, and to political opponents of those candidates who were indorsed by a station, a reasonable opportunity to respond over the licensee's facilities. *Red Lion Broadcasting Co., Inc., etc., versus Federal Communications Commission* 23 L. Ed. 2d 371.

²⁴³ Reported as *Columbia Broadcasting versus Democratic National Committee*, 36 L. Ed. 2d 772.

²⁴⁴ Gregory P. Magarian, *Substantive Media Regulation in three dimensions*.

²⁴⁵ Dan Fletcher, "The Fairness Doctrine," *Time*, February 20, 2009 <<http://content.time.com/time/nation/article/0,8599,1880786,00.html>> (Last accessed May 21, 2014).

²⁴⁶ Gregory P. Magarian, *Substantive Media Regulation in three dimensions*.

²⁴⁷ *Ibid.*

²⁴⁸ The Constitution of India, 1949. Found at: <<http://indiacode.nic.in/coiweb/welcome.html>> (Last accessed March 01, 2015).

²⁴⁹ The Constitution of India, 1949, Article-19. Found at: <<http://indiacode.nic.in/coiweb/welcome.html>> (Last accessed March 01, 2015).

It is a settled proposition that the Right to Freedom of Speech and Expression enshrined under Article 19(1) (a) of the Constitution of India, 1949, encompasses the right to impart and receive information.²⁵⁰ India has enacted Right to information Act, 2005, to facilitate the access to information.²⁵¹ However, unlike Pakistan, such right has not yet been made constitutional.

2.4.1 FREEDOMS OF MEDIA IN INDIA

Since independence, Indian Courts upheld the Media's Freedoms of speech/ expression. As was held by Supreme Court of India in rather old *Romesh Thappar*'s case which dates back to year 1950, "Freedom of speech and expression includes freedom propagation of ideas and that freedom is ensured by the freedom of circulation".²⁵² But freedom carries with it the limitations in sub Articles 19 (2) to 19 (6) of the Constitution of India, 1949, already mentioned. On basis of constitutional restriction, Indian state can regulate the Media industry just like here in Pakistan.

India has implemented a number of laws over time to tame the 'unbridled' horse of Indian Media.²⁵³ Likewise, Pakistan has also enacted media laws affecting media either directly or indirectly (detail will be found in following chapters).

2.4.2 REGULATORY MEDIA AGENCIES IN INDIA

Indian Telegraph Act, 1885, provides for the government hold of broadcast media in India while Telecom Regulatory Authority of India Act, 1997, tasks Telecom Regulatory Authority to regulate broadcasting and cable services in India.²⁵⁴

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

²⁵² *Romesh Thappar versus The State Of Madras*, AIR 1950 SC 124 at page 127.

²⁵³ Aparimita Basu, *Media Laws - An Overview*. Found at <<http://www.legalserviceindia.com/articles/media.htm>> (Last accessed July 01, 2015).

²⁵⁴ Siddharth Narrain, "A Broad Overview of Broadcasting Legislation in India" (Alternative Law Forum, Bangalore) Found at <<http://indiatogether.org/uploads/document/documentupload/2139/blawbackgrounder.pdf>> (Last accessed May 01, 2015). Broadcasting company in India must obtain two types of licenses i) A grant of permission by Ministry of Information & Broadcasting under the telegraph Act ii) A wireless operating license from (Wireless Planning & Coordination Authority), Wing of the Ministry of Communication and Information Technology under the Wireless Telegraphy Act. *Ibid.* Wireless Planning & Coordination Wing of the Ministry of

Self-regulation mechanism of India has been devolved in within the three tiers self-regulatory bodies: the Press Council of India (PCI) for print, the Broadcasting Content Complaints Council (BCCC) for channels other than news and current affairs,²⁵⁵ and the News Broadcasters Association (NBA) for news and current affairs channels.²⁵⁶

Press Council of India (hereinafter as 'Council') was established in 1966, through enactment of Press Council Act, 1978.²⁵⁷ Council enjoys complete autonomy and independence in the performance of its functions. Complaints are registered under Press Council (Procedure for Inquiry) Regulations, 1979.²⁵⁸ Council can levy a graded fee on newspapers and news agencies to meet its expenditure and to reduce its dependence on government's financial support.²⁵⁹ Though critics still term it as a Toothless Tiger, however as a self-regulatory body for press in India, its role cannot be disregarded.²⁶⁰

News Broadcasters Association (NBA), a self-regulatory body in India, has devised a Code of Ethics to regulate television content and has constituted the establishment of the "News

Communications, India was created in 1952. WPC is the National Radio Regulatory Authority responsible for Frequency Spectrum Management, including licensing and caters for the needs of all wireless users (Government and Private) in India. Found at: <<http://wpc.dot.gov.in/>> (Last accessed June 01, 2015).

²⁵⁵BCCC, is the independent self-regulatory body for non-news channels. It was set up in June 2011 by Indian Broadcasting Foundation (IBF) in consultation with the Ministry of Information and broadcasting, India. Council has been tasked to implement the 'self regulatory guidelines and complaints redressal mechanism for non news channels. Found at: <<http://www.ibfindia.com/sites/default/files/BCCC%20Annual%20Report%202011-12.pdf>> (Last accessed March 30, 2015).

²⁵⁶“The News Broadcasters Association (NBA) represents the private television news & current affairs broadcasters. It is the collective voice of the news & current affairs broadcasters in India .It is an organization funded entirely by its members.” Found at: <<http://www.nbanewdelhi.com/>> (Last accessed June 20, 2015).

²⁵⁷ For further details, <http://presscouncil.nic.in/Content/12_1_PCAct1978.aspx> (Last accessed December 21, 2014).

²⁵⁸ Found at <http://presscouncil.nic.in/Content/59_1_ComplaintsProcedure.aspx> (Last accessed May 08, 2015).

²⁵⁹ Press Council Act, 1978. Section 16. Found at <http://presscouncil.nic.in/Content/48_3_LevyofFeesRatesinforce.aspx> (Last accessed May 08, 2015). To find Press Council Act, 1978, visit <<http://presscouncil.nic.in/OldWebsite/act.htm>> (Last accessed June 01, 2015).

²⁶⁰Satya Ranjan Swain, “*No Law to Regulatory Regime: The Transition and India's Experience with the Press Council of India*” (paper 2011, KIIT School of Law, KIIT University, Bhubaneswar). Found at<<http://ssrn.com/abstract=2181794>> (Last accessed March 23, 2014).

Broadcasting Standards (Disputes Redressal) Authority" to enforce NBA's Code of Ethics & Broadcasting Standards.²⁶¹

The complaints regarding content carried on TV Channels are being addressed by Ministry of Information and Broadcasting, as per the extant provisions under the Cable Television Networks (Regulation) Act, 1995.²⁶²

2.4.3 MEDIA CONCENTRATION & INDIA'S CALL

India's largest media houses own multiple media platforms and some media houses are so big, that it can be unclear "who really owns the company".²⁶³ Where media concentration has come forward as a challenge prompting serious regulatory overhauls all around the globe, India goes on relying on The Monopoly and Restrictive Trade Practices Act, 1969.²⁶⁴

2.4.4 MOVEMENT AGAINST SELF REGULATION & MOUNTING PRESSURE IN INDIA

In Post Leveson Inquiry scenario, democracies around the world have concerns about functioning of Media in their respective countries.²⁶⁵ Delhi High Court highlighted the dilemma of new age afflicting the Media in India and observed:

²⁶¹ It is an organization funded entirely by its members. Association has presently 25 leading news and current affairs broadcasters (comprising 56 news and current affairs channels) as its members. Association presents a unified and credible voice before the Government, on matters that affect the growing industry. For further detail please visit: <<http://www.nbanewdelhi.com/>> (Last accessed January 20, 2015). The News Broadcasting Standards Authority (NBSA), of the NBA, is expected to watch over news broadcasts that violate the NBA's code of ethics and broadcasting standards is empowered to warn, admonish, censure, express disapproval and fine the broadcaster a sum upto Rs. 1 lakh for violation of the Code. Found at <<http://www.nbanewdelhi.com/How-to-Make-a-Complaint.asp#viewers>> (Last accessed January 20, 2015).

²⁶² Indian Broadcasting Foundation, *Self-Regulatory Content Guidelines for Non-News & Current Affairs Television Channels*, 8. <<http://www.ibfindia.com/sites/default/files/pdf/Self%20Regulatory%20Guidelines%20for%20nonnews%20%26%20current%20affairs%20programmes.pdf>> (Last accessed July 01, 2015).

²⁶³ Mahima Kaul, *India moves toward media regulation* <<https://www.indexoncensorship.org/2013/07/india-moves-toward-media-regulation/>> (Last accessed June 30, 2015).

²⁶⁴ Found at <http://www.mca.gov.in/Ministry/actsbills/pdf/The_Monopolies_and_Restrictive_Trade_Practices_Act_1969.pdf> (Last accessed on June 01, 2015).

²⁶⁵ Please read discussion under 2.2.2.1 The Leveson Inquiry & Changing trends of regulation.

Questionable methods and tactics are deployed in the hope of easy gains and quick popularity. Many believe that in the desperate rush to 'grab eye balls' truth becomes a casualty. Facts are either used selectively or out of context or are sensationalized to add 'colour' and 'spice' to events. Worse still, transgression of individual privacy, lying, cheating and deceiving are some of the epitaphs earned with discredit by the media sometimes.²⁶⁶

There have been calls from various circles of India that broadcast Media should also be subjected to statutory regulation rather than self-regulation. Former Judge at Supreme Court of India and former chairman of Press Council of India Justice Markandey Katju states that if the broadcast media in India can claim self-regulation, then on the same rationale everyone should be allowed self-regulation. He maintains that "Why then have laws at all, why have a law against theft, rape or murder? Why not abolish the Indian Penal Code and ask everyone to practise self-regulation?" Katju concludes that there must also be some kind of external regulation and fear of punishment.²⁶⁷

2.5. CONCLUSION

It can be concluded that even the most liberal democracies do not favor letting media un-bridled lest they start misusing the freedoms. State nations have established regulatory authorities to keep checks on Media. In US & UK, as has been discussed, it is only the broadcast media bearing the brunt of the regulation but in India, they have self-regulatory mechanisms. What is the performance of News Media in Pakistan? When these lines are written, most of the news channels are busy breaking the news of release on bail of a fashion model. Voices have been raised that something has went wrong with News Media of the country.

²⁶⁶ *Indraprastha People & Another versus Union Of India & Others*, W.P.(C) 1200/2011; CM APPL. 2535/2011 before Delhi High Court, Judgment Pronounced on : April 09 , 2013. Found at <<http://indiankanoon.org/doc/80393956/>> (Last accessed May 07, 2015).

²⁶⁷ "Media cannot reject regulation," *The Hindu*. Found at <<http://www.thehindu.com/opinion/lead/media-cannot-reject-regulation/article3374529.ece>> (Last accessed December 30, 2014).

CHAPTER THREE: REGULATION OF ‘UN BRIDLED’ MEDIA IN VIEW OF PAKISTAN’S REGULATORY SYSTEM & CURRENT PREDICAMENTS

3.1. INTRODUCTION

Pakistan’s News Media have never been free and independent as they are today. Free, fair and independent media ensures the easy access of information to citizens. But is the Media regulatory system also delivering effectively? This chapter makes analysis and reaches a conclusion that there is a need to fill the gaps to improve the Media regulatory system of the country.

When it comes to media regulation, Pakistan has a ‘patchwork’ approach in this regard. In addition to an array of laws, there are regulatory authorities as well. For electronic media, there is Pakistan Electronic Media Regulatory Authority while Pakistan Press Council monitors Press Media. In the following pages, framework pertaining to Media regulation in Pakistan is given in detail. Its effectiveness will be measured keeping in view certain dilemmas undermining the performance of purveyor of information, the News Media.

3.2. STATE REGULATING MEDIA

It has already been discussed in chapter 2, that all democracies put limits on fundamental freedoms even Courts in the United States, the great champion of human rights, sometimes have to limit rights according to public interest. Karachi High Court observed “Right of freedom of speech and expression is not unfettered and unbridled. Absolute and unrestricted such individual rights do not exist in any modern State and there is no such thing as absolute and uncontrolled liberty”.²⁶⁸ In other words, Court endorsed the long developed concept that there exists no power which is absolute.

²⁶⁸ *Flt Lt (Dr) Shariq Saeed versus Mansoob Ali Khan and 5 others*, 2010 YLR 1647 at page 1656.

While guaranteeing fundamental freedom of speech/ expression, Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973, also places certain limitations on free exercise of these freedoms. The said Article is re-produced as follows:

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 defense 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.²⁶⁹

Nyazee holds that “[Media law in Pakistan] is not a term for a uniform and integrated body of law; it is a mix of a variety of laws”.²⁷⁰ Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973, provides basis for the enactment of Media related sub-constitutional laws. Media are not absolutely free in their choice of selection of publications/ programs because the content of media is regulated on basis of yardstick provided in said Article. Right to freedom of speech and expression shall not be exercised if such an exercise violates i) glory of Islam ii) integrity, security or defense of the country iii) public order iv) standards of decency/morality.²⁷¹ These concerns provide the grounds for prior restraints on Media.²⁷²

²⁶⁹The Constitution of Islamic Republic of Pakistan, 1973, Article 19. Found at <www.pakistani.org/pakistan/constitution/> (Last accessed June 30, 2014). Imran Ahsan Khan Niyazee in his book *Media Law in Pakistan* evaluates limitations provided by Article 19, The Constitution of Islamic Republic of Pakistan, 1973, and views that said article employs words ‘the reasonable restrictions’ when the international standards and the rest of the world advocate ‘necessary’ or ‘legitimate aim’ as well as ‘clear and present threat’. Found at Imran. A. Khan Nyazee, *Media Law in Pakistan* (Rawalpindi: Federal Law House, 2009), 45. In addition to this, restrictions given by the said are vague and can be subjected to a very broad interpretation. *Ibid*. Please also see, “ANNEX: International freedom of expression standards relating to The Guardian newspaper’s reporting of the Snowden disclosures,” Article 19. Found at <<http://www.article19.org/resources.php/resource/37377/en/annex:-international-freedom-of-expression-standards-relating-to-the-guardian-newspaper%20%99s-reporting-of-the-snowden-disclosures>> (Last accessed March 09, 2014).

²⁷⁰Nyazee, *Media Law in Pakistan*, 45. Also, for manual on Media laws please see, Muhammad Abdul Basit, *Media Laws* (Lahore: Federal Law House, 2011).

²⁷¹Nyazee, *Media Law in Pakistan*, 182.

²⁷²*Ibid*, 204.

3.3. PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY (PEMRA)

Back in the year 2002, the process of loosening of monopoly of state on broadcast media began. With the blistering growth of the Electronic Media in country, necessity of establishing an effective watchdog for electronic broadcast media was felt. Pakistan Electronic Media Regulatory Ordinance, 2002, established Pakistan Electronic Media Regulatory Authority (hereinafter 'PEMRA'), the first ever media regulatory authority of the country.²⁷³ In fact, PEMRA is the first electronic broadcast media regulator in the entire South Asian Region.²⁷⁴ PEMRA comes under the supervision of Ministry of Information, Broadcasting & National Heritage.²⁷⁵

3.3.1 Functions of Pakistan Electronic Media Regulatory Authority

Section 4 of PEMRA Ordinance, as amended by PEMRA Amendment Act, 2007 (hereinafter 'PEMRA Ordinance') lays down the functions of the authority. According to section 4 (1), PEMRA essentially has three main functions that are i) To regulate the 'establishment' and subsequent 'operation' of all broadcast media and also the distribution services; ii) To regulate

²⁷³ PEMRA (Amendment) Act, 2007 (Act No. II of 2007) has made necessary amendments in PEMRA Ordinance 2002. One of the most significant developments made possible by Amendment Act, 2007, is the establishment of Council of complaints. Section 26 of PEMRA Ordinance, 2002, established Council of complaints with branches at Federal and Provincial Capital. Section 26 of PEMRA Ordinance, 2002 as amended by PEMRA (Amendment) Act, 2007. Found at <http://www.pemra.gov.pk/pemra/images/docs/legislation/Ordinance_2002.pdf> (Last accessed July 01, 2013). Besides, PEMRA laws also include: Pakistan Broadcasting Corporation Act, 1973 and even the Motion Pictures Ordinance, 1979. Nyazee, *Media Law in Pakistan*, 222-223.

²⁷⁴ Hamid Raza, "Policy and PEMRA: Comparisons with UK and USA," Criterion Quarterly 7, no. 4 (2015). Found at <<http://www.criterion-quarterly.com/media-policy-and-pemra-comparisons-with-uk-and-usa/>> (Last accessed June 09, 2015).

²⁷⁵ PEMRA legislations include a bouquet of rules and regulations including: PEMRA Rules, 2002; PEMRA Rules, 2009 and annexed PEMRA Code of Conduct made under Rules 2 and 15 of the PEMRA Rules, 2009 (Schedule A) read with Section 20 of the PEMRA Ordinance, 2002; PEMRA Rules, 2010; PEMRA (Appeal and Review) Regulation 2008; PEMRA (Council of Complaints, Organization and Functions) Rules, 2010; PEMRA (TV Broadcast Operations) Regulations 2012; PEMRA (Radio Broadcast Station Operations) Regulations, 2012; PEMRA (Distribution Service Operations) Regulations, 2011; PEMRA Employees Service Regulations, 2011. For further details please visit, <www.pemra.gov.pk/> (Last accessed January 01, 2013). Pakistan Electronic Media Regulatory Authority (Content) Regulations of 2012 were held to be void in a Supreme Court of Pakistan's judgment in *Hamid Mir versus Federation of Pakistan*, PLD 2013 SC 244. Jawad Hassan, *Examination of the Media Ethics and Regulations in Pakistan*. Found at <<http://www.pakistanlawsite.com/LawOnline/law/contents.asp?CaseId=2013J3>> (Last accessed April 07, 2015).

the 'distribution' of foreign and local TV and radio channels and; iii) To make regulations and determinations.²⁷⁶

PEMRA exercises power prior restraints on broadcast media by virtue of section 27 of PEMRA Ordinance.²⁷⁷ The section is reproduced below:

"27. Prohibition of broadcast media or distribute service operation.- The Authority shall by order in writing, giving reasons therefore, prohibit any broadcast media or distribution service operator from-

- a) Broadcasting or re-broadcasting or distributing any programme or advertisement if it is of the opinion that such particular programme or advertisement is against the ideology of Pakistan or is likely to create hatred among the people or is prejudicial to the maintenance of law and order or is likely to disturb public peace and tranquility or endangers national security or is pornographic, obscene or vulgar or is offensive to the commonly accepted standards of decency; or
- b) Engaging in any practice of act which amounts to abuse of media power by way of harming the legitimate interests of another licensee or willfully causing damage to any other person."

But how far PEMRA has been able to control the content in terms of prior restraints, answer will follow shortly.

3.3.2 Licensing authority

According to section 18 of PEMRA Ordinance, PEMRA is the licensing authority for broadcast media in Pakistan.²⁷⁸ It is only after obtaining license that a person can get engaged in

²⁷⁶PEMRA Ordinance, 2002, Section 4. Found at <http://www.pemra.gov.pk/pemra/images/docs/legislation/Ordinance_2002.pdf> (Last accessed June 12, 2015).

²⁷⁷ Nyazee, *Media Law in Pakistan*, 232.

²⁷⁸ Section 18 of PEMRA Ordinance, articulates licensing system by authority. Section 18 (1) reads "The Authority shall issue licenses for broadcast media and distribution service in the following categories, namely:- i. International and National scale stations; ii. Provincial scale broadcast; iii. Local Area or Community based Radio and TV Broadcast; iv. Specific and specialized subjects; v. Distribution services; vi. Uplinking facilities including teleporting and DSNG." Found at <http://www.pemra.gov.pk/pemra/images/docs/legislation/Ordinance_2002.pdf> (Last accessed June 12, 2015).

broadcasting services.²⁷⁹ In Annual Report- 2010, PEMRA boosts its achievement in introducing a sophisticated licensing regime.²⁸⁰ Though in pages to come, light will be shed on how licensing requirement is being used to concentrate media power in few hands.

Here is the opportunity to ask why there is a licensing requirement by regulatory authorities when such requirement also comes within the ambit of prior restraint? Broadcast licenses have been called “soft property”, implying that state agencies have the competence to determine the ‘legal and institutional arrangements’ as well as conditions attached to such ‘property rights’ which makes broadcasters open to a requirement to be responsive to the “public interest”.²⁸¹ In case, they do not respond to the public interest they might get the licenses cancelled or suspended, for example, between years 2010-14, PEMRA suspended/ revoked 07 licenses while in the category of satellite TV/FM Radios, 01 license was suspended, while 06 were cancelled during the same period.²⁸²

Section 20 of PEMRA Ordinance, defines the terms and conditions of license granted by PEMRA to regulate content of media by making licensees bound to meet those conditions. Section 20 reads as follows:

“20. Terms and conditions of license.- A person who is issued a license under this Ordinance shall-

- a) ensure preservation of sovereignty, security and integrity of the Islamic Republic of Pakistan;
- c) ensure that all programmes and advertisements do not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism,

²⁷⁹PEMRA Ordinance, 2002, Section 19. Found at <http://www.pemra.gov.pk/pemra/images/docs/legislation/Ordinance_2002.pdf> (Last accessed June 12, 2015).

²⁸⁰PEMRA, *To Facilitate the growth of free and fair Media, 2010*, 45. <http://www.pemra.gov.pk/pemra/images/docs/pub-rep/annual_report_2010/FLASH/index.html> (Last accessed December 20, 2013).

²⁸¹ Terry Flew, “Broadcasting and the social contract,” in *Global Media Policy in the New Millennium*, ed. Marc Raboy (Bedfordshire: University of Luton Press, 2002), 113.

²⁸²PEMRA, *To Facilitate the growth of free and fair Media, 2014*, 7-6. Found at <http://www.pemra.gov.pk/pemra/images/docs/pub-rep/PEMRA_REPORT_2014/index.html> (Last accessed June 05, 2015).

extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency;

- d)
- e)
- f) Comply with codes of programmes and advertisements approved by the Authority...
- g)
- h)
- i),²⁸³

3.3.3 Council of Complaints

Council of complaints has been established under section 26 of PEMRA Ordinance as amended by Amendment Act, 2007, to address complaints by citizens and organizations against objectionable broadcast content.²⁸⁴

3.3.4 Code of Conduct

With the promulgation of PEMRA Rules, 2009, a code of conduct has also been devised containing certain mandatory requirements for media broadcasters or cable TV operators. The said code has been placed at Appendix-A.

3.3.5 Penalties

Section 30 of PEMRA Ordinance provides that license granted may be suspended or revoked in case of contravention of provisions of PEMRA Ordinance. Other grounds for such revocation or suspension include violating the terms or conditions of license and non-payment of license fee.²⁸⁵

Section 33 mentions offences and penalties in general. On the violation of PEMRA

²⁸³PEMRA Ordinance, Section 20. Found at http://www.pemra.gov.pk/pemra/images/docs/legislation/Ordinance_2002.pdf (Last accessed June 12, 2015).

²⁸⁴PEMRA Ordinance, 2002, Section 26. "26. Council of Complaints.- (1) The Federal Government shall, by notification in the Official Gazette, establish Councils of Complaints at Islamabad, the Provincial capitals and also at such other places as the Federal Government may determine. (2) Each Council shall receive and review complaints made by persons or organizations from the general public against any aspects of programmes broadcast or distributed by a station established through a licence issued by the Authority and render opinions on such complaints. (3) ... (3-A) ... (4) ... (5) ...". Found at http://www.pemra.gov.pk/pemra/images/docs/legislation/Ordinance_2002.pdf (Last accessed June 12, 2015).

²⁸⁵PEMRA Ordinance, Section 30. Found at http://www.pemra.gov.pk/pemra/images/docs/legislation/Ordinance_2002.pdf (Last accessed June 12, 2015).

Ordinance, there is punishment of fine which may extend to 10 million rupees and on repeating the same offence, imprisonment for a term of 3 years or more is awarded along with fine or only the punishment of fine is awarded.²⁸⁶

Though, the focus of this research is on broadcast media in general and on the News broadcast media in particular, the discourse would be incomplete by not mentioning salient features of regulatory authority for press media of the country, the Press Council of Pakistan.

3.4. PRESS COUNCIL OF PAKISTAN (PCP)

As can be seen from chapter 2, most established countries entrust the work of envisioning standards for Press to some independent council.²⁸⁷ Here in Pakistan, Press Council of Pakistan (hereinafter 'PCP') operates as a semi-autonomous, regulatory authority to keep check on Pakistan's printed newspapers.²⁸⁸

An inquiry commission constituted under section 9 of PCP Ordinance, 2002, addresses all the complaints.²⁸⁹ Very recently they have promulgated the Press Council of Pakistan Regulations, 2015.²⁹⁰ Press Council does have a code of ethics with 17 articles.²⁹¹

Council boosts that it has successfully projected itself as a watchdog over the Press

²⁸⁶ PEMRA Ordinance, section 33. Found at <http://www.pemra.gov.pk/pemra/images/docs/legislation/Ordinance_2002.pdf> (Last accessed June 12, 2015).

²⁸⁷ "International standards: Regulation of the print media," Article 19 <[#sthash.9jYrrn1C.dpuf">http://www.article19.org/resources.php/resource/3023/en/international-standards:-regulation-of-the-print-media">#sthash.9jYrrn1C.dpuf](http://www.article19.org/resources.php/resource/3023/en/international-standards:-regulation-of-the-print-media)> (Last accessed September 20, 2013).

²⁸⁸ Established under Press Council of Pakistan Ordinance in October 2002. Found at <<http://www.presscouncil.org.pk/>> (Last accessed June 30, 2014). Press Council of Pakistan Rules, 2013, assist the smooth functioning of the council. Found at <<http://presscouncil.org.pk/wp-content/uploads/2015/05/PCP-Rules.pdf>> (Last accessed December 21, 2014).

²⁸⁹ PCP Ordinance, 2002, Section 10 (10). Found at <http://presscouncil.org.pk/media/ordinance/pcp_ordinance.pdf> (Last accessed July 01, 2014). To the date, PCP has received just 38 complaints out of which 02 complaints were pended on the request of the complainant himself due to litigation in Supreme Court. 24 complaints were disposed of and 12 complaints are under process.

²⁹⁰ Found at <<http://presscouncil.org.pk/wp-content/uploads/2015/04/PCP-Regulations.pdf>> (Last accessed June 30, 2015).

²⁹¹ Found at <<http://presscouncil.org.pk/ethical-code-of-practice/>> (Last accessed June 20, 2013). Ethical code never escaped criticism for its ineffectiveness. One mostly raised objection is that this statutory code violates freedom of expression. Nyazee, *Media Law in Pakistan*, 215.

industry of Pakistan.²⁹² However, Media Commission report revealed that operational effectiveness of PCP is questionable and so does the performance of PEMRA (detail will be included in following pages).²⁹³

3.5. PAKISTAN'S ONCE 'BRIDLED' MEDIA IN GOOD OLD DAYS

Pakistan has a vibrant media landscape. In Pakistan, currently there are 85 private channels licensed by PEMRA. Among these, 25 are associated with News and Current Affairs Media.²⁹⁴ Pakistan's media enjoy independence to a larger extent. But walk to freedom has never been easy for Media in Pakistan. Passing through vestibules of censorships, threats and incarcerations, undaunted journalists of Pakistan never gave up and ultimately reached to the point where they stand today. In the hour of need, media always played the role of torch bearer, always raised voice for supremacy of fundamental rights of speech/ expression and information. It would not be wrong to say that Pakistan media have a history that it can be proud of. From creating awareness among masses to unearthing of corruption, from facilitating the country's democratic transition to underscore human rights violations, Media have always been on forefront to highlight social issues.²⁹⁵

3.5.1 Boom in media industry & new trends

It was in the year 2000, when process of deregulation of Media began in Pakistan and state's

²⁹²Press Council Of Pakistan, *Annual Report 2014*, 68. Found at <<http://presscouncil.org.pk/media/docs/Annual%20Report.pdf>> (Last accessed June 20, 2014).

²⁹³ Media Commission, *Part- Two of the Report by the Media Commission appointed by The Supreme Court of Pakistan on 15th January, 2013*, 41-42. Found at <http://www.supremecourt.gov.pk/web/user_files/File/MediaCommissionReportFinal.pdf> (Last accessed June 05, 2015). Report will be discussed in detail in chapter 4.

²⁹⁴PEMRA, *To Facilitate the growth of free and fair Media*, Annual Report 2010, 16.

²⁹⁵Open Society, *Mapping Digital Media: Pakistan*, 2013, 10-11. Found at <<http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130902.pdf>> (Last accessed June 20, 2014).

monopoly on broadcast Media came to an end.²⁹⁶ Since then, there has been a mushroom growth of new television and radio channels in the country.²⁹⁷ The boom in media industry can be indicated by a rough estimate according to which, between years 2003-10, 85 television channels were granted licenses while 26 foreign channels were granted broadcast rights.²⁹⁸

Within the passage of a few years, Media gained enormous power and became actors themselves. At various turns of recent past, wielding of increasing powers by Media has been witnessed. A striking example in this regard was Lawyers' Movement in 2007.²⁹⁹ A number of events can be quoted here but the truth has already been spoken that the "power of Media if not constrained by adequate accountability mechanisms, is considered to be in breach of fundamental constitutional expectations associated with Media as source of information".³⁰⁰ Any institution completely out of bounds begins acting contrary to the expected behavior.

3.6. MISUSING THE FREEDOMS & INFORMATION POOR CITIZENS

As quoted earlier in preceding pages, a famous old adage goes "with freedom comes the great

²⁹⁶ Pakistan entered into Television Broadcasting age with PTV at Lahore from where transmission was first beamed in Black & White with effect from 26 November 1964. Found at Pakistan Television Network, <http://www.ptv.com.pk/Introduction.asp> (Last accessed May 01, 2015) Until 2000, PTV was the only one state-owned TV channel, with some semi-government and privately owned entertainment contents like STN and NTM. "Media boom: 90 channels, 106 FM stations in 10 years," *Viewonline* <http://www.viewpointonline.net/2014/05/media-boom-90-channels-106-fm-stations-in-10-years> (Last accessed January 21, 2015).

²⁹⁷ Riaz ul Hasan, *Media Boom: 90 channels, 106 FM stations in 10 years*. Found at <http://www.viewpointonline.net/media-boom-90-channels-106-fm-stations-in-10-years.html> (Last accessed August 15, 2014).

²⁹⁸ PEMRA, *To Facilitate the growth of free and fair Media*, Annual Report- 2010, 16.

²⁹⁹ Yasmeen Aftab Ali, *A Comparative Analysis of Media & Media Laws in Pakistan* (Lahore: Sang-e-Meel Publications, 2012), 225. Media played significant role in mobilizing civil society during the movement. Emergence of powerful civil society was never seen before. Chief Justice's reinstatement movement as it is often called, with millions of Pakistanis taking to the street in name of an independent judiciary and democratic rule, left the then military ruler Pervez Musharraf with little support from civil society and the army. Had Media not played the part of torch bearer, the movement would have suffered from lack of support from laymen. For further details please see, Dr. Saqib Riaz, *Coverage of the Issue of Judiciary Crisis in National Newspapers of Pakistan*. Found at <http://pu.edu.pk/images/journal/pols/Currentissue-pdf/Judiciary-Crisis%207%20xvi%202009.pdf> (Last accessed July 01, 2015).

³⁰⁰ Mike Feintuck and Mike Varney, *Media Regulation, Public Interest and the Law* (Edinburgh: Edinburgh University Press, 2006), 15.

responsibility". In order to save much cherished freedoms, Media were supposed to stride carefully. Freedom of speech and expression from the perspective of the media calls for duty to speak what is necessary and not otherwise that is "what is essential is not that everyone shall speak, but that everything worth saying shall be said".³⁰¹

Over the period of time feeling has been developed across the country that News Media have gone astray and instead of contributing towards the public interest of informing people, on behalf of whom they exercise freedoms, they are leading us towards 'no-where' destination. Khaled Ahmad, in his article for *The Express Tribune*, gives reference to an important survey which has been conducted by the Pakistan Institute of Peace Studies (PIPS) on the radicalization of the media in Pakistan.³⁰² Muhammad Amir Rana and Safdar Sial co-authored Radicalization of Pakistan and one chapter in it has been devoted to the Media studies. The study has been based on in interviews with journalists. A total of 68 journalists were asked set questions. A majority of the respondents (60 per cent) said important issues were not covered properly in the Pakistani media because too much space was occupied by radicalism and related issues and incidents.

What is seen today on TV screens most of the time if not all the time are "Breaking News", a mentality which turned into a stigma for News Media here in Pakistan.³⁰³ Farrukh Tanveer Malik, Senior Assignment Editor at Geo TV in Islamabad, states "Few journalists care about the quality of the news and have little knowledge of issues. Owners insist on a focus on

³⁰¹ In *Columbia Broadcasting versus Democratic National Committee*, 36 L. Ed. 2d 795 from paras 13-16. United States Supreme Court re-quoted Professor Alexander Meiklejohn. Text of the case can also be found at <<https://supreme.justia.com/cases/federal/us/412/94/case.html>> (Last accessed June 01, 2015).

³⁰² Khaled Ahmad, "Media and Terror," *The Express Tribune*, August 18, 2012. Found at <<http://tribune.com.pk/story/423843/media-and-terror/>> (Last accessed December 17, 2013).

³⁰³ "Role of media: Right to information should be exercised responsibly warn experts," *The Express Tribune*, July 16, 2012. <<http://tribune.com.pk/story/408961/role-of-media-right-to-information-should-be-exercised-responsibly-warn-experts/>> (Last accessed May 21, 2014).

breaking news".³⁰⁴ "Now the Chief Justice comes out of his house, now he sits in his car ..." adds Malik, "This is not breaking news. We are forced to practice it".³⁰⁵ In recent years, PEMRA came under fire for failing to devise Standard Operational Procedures (SOPs) for regulating the breaking news culture of instant updates and information in crisis situations.³⁰⁶

Apex Court in one of its judgments has called PEMRA, the custodian of the rights of the subscribers.³⁰⁷ PEMRA was established for improving the standards of information and also to ensure the free flow of information. Islamabad High Court observed that it was the fundamental responsibility of PEMRA to achieve the goals enumerated in its preamble.³⁰⁸ But the cancers debilitating our once endeared Media tell a sorry figure where PEMRA seems helpless to control now the 'unbridled horse' of media.

Macaulay says "I know but two ways by which society can be governed: the one is by Public Opinion, the other by the Sword"³⁰⁹ and it is the Media which shapes the former. According to critics, instead of providing masses a neutral base for building their opinion, current affairs talk shows have transformed into platforms for propaganda. Sub-judice issues are discussed vehemently yet code of conduct of PEMRA prohibits such discussion.³¹⁰ Anchors spice up the situation. As the chief executive officer of one of the top-ranking news channel says, "News reports have to be spiced up with a musical soundtrack, animations, clever montages... I

³⁰⁴ International Media Support, *Between Radicalization and democratization in an un-folding conflict: Media in Pakistan*, 2009, 34. <<http://www.i-m-s.dk/wp-content/uploads/2012/11/ims-media-pakistan-radicalisation-2009.pdf>> (Last accessed September 07, 2013).

³⁰⁵ *Ibid.* Also, Yasmeen Aftab Ali, *A Comparative Analysis of Media & Media Laws in Pakistan* (Lahore: Sang-e-Meel Publications, 2012), 243.

³⁰⁶ Hamid Raza, "Policy and PEMRA: Comparisons with UK and USA," *Criterion Quarterly* 7, no. 4 (2015). Found at <<http://www.criterion-quarterly.com/media-policy-and-pemra-comparisons-with-uk-and-usaby/>> (Last accessed June 09, 2015).

³⁰⁷ *Dr. Shahid Masood and others versus Federation of Pakistan*, 2010 SCMR 1849 at page 1858.

³⁰⁸ *Independent Newspapers Corporation (Pvt.) Ltd versus PEMRA*, PLD 2014 Isb 7 at page 28.

³⁰⁹ Joseph Pulitzer, "Selection from the College of Journalism", in *Killing the Messenger: 100 Years of Media Criticism*, ed. Tom Goldstein (New York: Columbia University Press, 2007), 241.

³¹⁰ Please see, Code of Conduct of PEMRA annexed to PEMRA rules 2009 (placed at Appendix- A).

often think I should be hiring musicians, not journalists".³¹¹ But where is PEMRA, the watchdog of media to ensure right to information through news media?

3.6.1 Current Predicament

Supreme Court of Pakistan observed that freedom of journalism does not mean that such a freedom is used irresponsibly.³¹² But what News Media are doing is antithesis of this observation. It might be of public interest to inform that a certain building made by a certain contractor collapsed but it is certainly not in the public interest to add a zoomed close up of a weeping mother, a bleeding child.³¹³ Whether it is lynching incident of Sialkot³¹⁴ or tragic incident of Bhoja air plane crash,³¹⁵ News Media, though are given credit of highlighting the issue that would have side-lined otherwise, acted in a most un-professional way of defeating standards of journalism.

Very recently, full live coverage was given to gun-totted man Sikandar. In his article, 'Paying to be Punished?' published in *The News*, Masood Hasan mentions Sikandar Saga. Hasan writes "Most channels placed the 'action' in the Red Zone. What did he want and what was it all about got lost in all the nonsense. The scant footage available was beamed again and again at

³¹¹Open Society, *Mapping Digital Media: Pakistan*, 2013, 49.

³¹²Independent Media Corporation versus Federation of Pakistan, PLD 2014 SC 666 at page 667.

³¹³Clashing views on media ethics in Pakistan," *Triple Bottom Line* <<http://www.tbl.com.pk/clashing-views-on-media-ethics-in-pakistan/>> (Last accessed December 17, 2013).

³¹⁴Scenes of two brothers in the hands of angry mob were shown over and over by TV channels. Views and comments were offered. Prior to formal investigations, boys were declared robbers by few anchors. Abidbeli, "Why we forgot everything, Are we all sick minded or irresponsible?" *Iownpakistan*, October 20, 2010. Found at <<http://iownpakistan.com/why-we-forgot-everything-are-we-all-sick-minded-or-irresponsible/>> (Last accessed June 30, 2015).

³¹⁵On 20 April 2012, the Boeing 737-236 aircraft of Bhoja Air International Airlines Pakistan crashed enroute Islamabad leaving 127 people dead. The news of this tragic air crash saddened and depressed the whole nation, but once again our electronic media disappointed us by telecasting the news of the tragedy in such a manner as if reporting some recreational event. Body parts were shown along with the belongings of the passengers. Even the bangles of a lady who lost her life were shown with close ups as if it was a fashion parade or a fashion show. Did the reporters ever think of the relatives of that lady whose bangles they were showing? Is this called journalism? Is this what independence of media is? Can this by any definition be called impartial reporting? See, Bhoja air crash: Media's role, *Dawn*, April 26, 2012. <<http://www.dawn.com/news/713511/bhoja-air-crash-medias-role>> (Last accessed December 17, 2013).

viewers and the man's idiocy became first 'breaking news' and then later the subject of debate and discussion".³¹⁶ Media became character of the story rather than story teller. When live coverage starts influencing the event, it must be stopped.³¹⁷ The incidence was captured through live transmissions though PEMRA claims that its monitoring wing keeps check on 70 channels simultaneously on 24/7.³¹⁸

Section 153- A of Pakistan Penal Code, 1860, defines what is meant by promoting hatred and enmity between groups and also prescribes punishment for the same offences.³¹⁹ Do channels not broadcast violence inciting speeches not only contrary to said provisions of law and also of PEMRA's Code of Conduct (placed at Appendix-A)?³²⁰ Have they stopped airing

³¹⁶Masood Hasan, "Paying to be punished," *The News*. Found at <<https://masoodhasan.wordpress.com/2013/09/03/paying-to-be-punished/>> (Last accessed January 09, 2015) .

³¹⁷Adnan Rehmat, "Media in the dock," *The News*, September 01, 2013.

³¹⁸PEMRA, *To Facilitate the growth of free and fair Media*, 2014, 42.

³¹⁹ Pakistan Penal Code, 1860, "Section 153-A. Promoting enmity between different groups, etc.: Whoever(a) by words, either spoken or written, or by signs, or by visible representations or otherwise, promotes or incites, or attempts to promote or incite, on grounds of religion, race, place of both, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or (b) commits, or incites any other person to commit, any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities or any group of persons identifiable as such on any ground whatsoever and which disturbs or is likely to disturb public tranquillity; or (c) organizes, or incites any other person to organize, and exercise, movement, drill or other similar activity intending that the participants in any such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in any such activity will use or be trained to use criminal force or violence or participates, or incites any other person to participate, in any such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in any such activity will use or be trained, to use criminal force or violence, against any religious, racial, language or regional group or caste of community or any group of persons identifiable as such on any ground whatsoever and any such activity for any reason whatsoever cause or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community. shall be punished with imprisonment for a term which may extend to five years and with fine. Explanation: It does not amount to an offence within the meaning of this section to point but, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different religious, racial, language or regional groups or castes or communities." Found at <<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>> (Last accessed June 01, 2015). Also Nyazee, *Media Law in Pakistan*, 189-190.

³²⁰The Pakistan Penal Code, 1860, enumerates offense against State of Pakistan. Chapter 6 of the Code states the offences, including sedition (section 124- A) along with prescribed punishments. On the other hand chapter 7 of the Code states offences relating to Pakistan forces. Nyazee, *Media Law in Pakistan*, 192. Pakistan Penal Code, 1860, found at <<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>> (Last accessed June 01, 2015).

defamatory remarks before proper inquiring into the matter while following the code?³²¹ Does contempt of court not take place during live current affairs programs?³²² If answers to all these questions are in negative, then remarks by veteran journalists against the performance of PEMRA hold water. Flouting rules and regulations by Media while incapability on part of PEMRA to get those enforced, both led to undesired situation. And bad news on top of worse is irresponsible attitude goes punishment free.³²³

Though Code of Conduct, 2009, (placed at Annexure-A) devised by PEMRA was a good attempt but well known journalist of the country and host of a popular TV talk show, Capital Talk, Hamid Mir says that the code of conduct prepared by PEMRA is not an ideal document, adding that the journalists, named in the preparation of the document, were not part of the consultations.³²⁴ This shows that Media industry has reservations over the Code and therefore, the said Code is not widely respected.

3.7. FAILURES OF PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY

Discourse will begin by forwarding a question: can law be enforced without law enforcement force playing its part? Individuals take law in their hands if the law enforcement force fails. The same is with Media Laws and related rules and regulations. There will always be a need of an

³²¹ Though individual/ private grievance is beyond the ambit of this research, it has been witnessed that News Media do not hesitate targeting persons and airing of stories based on rumours without bothering about possible repercussions for a person's reputation if he is innocent and has been framed. Supreme Court in suo-moto action against allegations of business deal between Malik Riaz and Dr. Arsalan has already pinpointed towards this trend. Defamation Ordinance, 2002, and sections 499 and 502 of Pakistan Penal Code, 1860, laid down what amounted to defamation respectively.

³²² Please note that Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973, restricts expression if the same makes any contempt against the judiciary. The Constitution of the Islamic Republic of Pakistan, 1973, Article 19. Found at <www.mofa.gov.pk/Publications/constitution.pdf> (Last accessed October 3, 2012).

³²³ Yasmeen, *A Comparative Analysis of Media & Media Laws in Pakistan*, 245.

³²⁴ "PEMRA doesn't issue notice on criticising courts: Mir," Geo.tv <<http://www.geo.tv/article-79164-PEMRA-doesnt-issue-notice-on-criticising-courts-Mir>> (Last accessed July 26, 2013) Code can be found at <http://infopak.gov.pk/Downloads/Ordinances/Code_of_Conduct.pdf> (Last accessed December 30, 2014).

authority or a commission or a council perhaps for implementation of those laws, rules and regulations because Law of land will be of no use when there is no effective implementation.

PEMRA report 2014 discloses that from January 2003 till date, third prominent ratio of registered complaints at Council of complaints highlighted public wrath against programs content of TV channels included mix of public reaction against unethical / immoral programs, insensible breaking news, dramatization of tragedies and crimes, depiction of blood & gore and dead bodies in quest to take edge on other channel's etc.³²⁵ That shows people do understand what they are watching is in-appropriate in one way or another.

PEMRA in report 2010-2014 admits that issues, for-example, unauthentic reporting; picturing of dead bodies, injured people; projecting crime, criminal elements, terrorists and banned organizations; airing of indecent language during live transmissions; and the absence of editorial board remains the source of differences between the PEMRA & license holders.³²⁶ But who is paying the price between non-settlement of issues between parties? Positively, public whose right to information is at stake and whose interest is compromised. The truth is that there has been a very weak enforcement of electronic media laws, regulations, codes, policies and ethics by the Government of Pakistan and PEMRA.³²⁷ PEMRA has strived to improve its performance but current trend in news media proves otherwise. The question is what are the factors affecting the functioning of authority? Besides holding Media responsible for its non-serious attitude, why PEMRA itself has failed apparently to maintain its hold on 'unbridled media'?

³²⁵ PEMRA, *To Facilitate the growth of free and fair Media*, 2014, 38.

³²⁶ *Ibid.*, 19.

³²⁷ Jawad Hassan, *Examination of the Media Ethics and Regulations in Pakistan*. Found at <<http://www.pakistanlawsite.com/LawOnline/law/contents.asp?CaseId=2013J3>> (Last accessed March 07, 2015).

Mohd. Aftab Alam explores the factors affecting the capacity of PEMRA. According to him these factors include, “but are not limited to, autonomy and independence of the regulatory authority; structure of the legal and regulatory framework; regulatory deficit – particularly with regards to media ownership and technological convergence; weaker and traditional enforcement mechanism; trust deficit between the licensees and PEMRA; ambiguity in government policies towards the regulator; and a lack of comprehensive research to develop a proactive approach in regulating the sector”.³²⁸

3.7.1 PEMRA and the growing trend of media concentration

Whenever Media study is conducted with reference to Pakistan’s Media, one single matter is always overlooked and that is increasing media concentration in the country which further endangers the available options of information. The reason for ignoring the problem may be because of the reason that according to many, the issue is not big enough to attract the attention for now, as Media Market of Pakistan is still in phase of developing. But the ground reality needs attention. In recent past, not only the cross-media ownership (ownership of altogether different mediums for example owning newspaper and a channel at the same time) did go unnoticed but PEMRA has also failed to act upon the objective of enlarging the choice available for news enshrined in preamble of PEMRA Ordinance, 2002.³²⁹

Competition is a key to quality but high number of private news channels has not ‘directly translated’ into a greater diversity of news content.³³⁰ Media corporations have started

³²⁸ Muhammad Aftab Alam, *Broadcast Regulation in Pakistan: The Need for an Enabling Regulatory Regime*, 5. Found at <http://eastbound.eu/site_media/pdf/EB2010_Alam.pdf> (Last accessed August 15, 2014).

³²⁹ Preamble to PEMRA Ordinance, 2002. Found at <http://www.infopak.gov.pk/Downloads/Ordenances/Ordinance_2002.pdf> (Last accessed December 18, 2013).

³³⁰ Open Society, *Mapping Digital Media: Pakistan*, 2013, 68. Found at <<http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130902.pdf>> (Last accessed June 20, 2014).

serving the commercial interests of investors rather than the public interest.³³¹ The problem has also been explored in chapter 1. It is of vital importance to reproduce section 19 of PEMRA Ordinance here:

“Section. 19.- License to broadcast or operate.- (1)The Authority shall have exclusive right to issue licenses for the establishment and operation of all broadcast media and distribution services, provided that this exclusive right shall be used by the Authority in conformity with the principles of fairness and equity applied to all potential applicants for licenses whose eligibility shall be based on prescribed criteria notified in advance and that this shall done through an open, transparent bidding process: Provided that the bidding shall be held if the number of applications exceeds the number of licenses to be issued by the Authority.

(2)

(3)

(4) The authority shall have the power to determine number of licenses to be issued in each category or sub category and charge fees at such rates as the Authority may fix from time to time for the grant of a license and for its annual renewal.

(5)³³²

Above given section 19 never contained restrictions (cross media restrictions) on Media monopolies. Therefore, the ultimate result was fuelling of media expansion.³³³ Section 23 of

³³¹ Azmat Rasul and Stephen D. McDowell, "Regulation and media monopoly: A case study of broadcast regulation in Pakistan" (8th International Telecommunications Society (ITS) Asia-Pacific Regional Conference, Taiwan, June 26 – 28, 2011) Found at <http://www.researchgate.net/publication/241769742_Regulation_and_media_monopoly_A_case_study_of_broadcast_regression_in_Pakistan> (Last accessed December 25, 2013).

³³² PEMRA Ordinance, 2002, Section 19. Found at <http://www.pemra.gov.pk/pemra/images/docs/legislation/Ordinance_2002.pdf> (Last accessed June 12, 2015) Media critics believe that the four major media groups (Independent Media Corporation, Waqt Media Group, Pakistan Herald Publications and Century Publications) control mainstream media in Pakistan. Azmat Rasul and Stephen D. McDowell, "Regulation and media monopoly: A case study of broadcast regulation in Pakistan" (8th International Telecommunications Society (ITS) Asia-Pacific Regional Conference, Taiwan, June 26 – 28, 2011) Found at <http://www.researchgate.net/publication/241769742_Regulation_and_media_monopoly_A_case_study_of_broadcast_regression_in_Pakistan> (Last accessed December 25, 2013).

³³³ Huma Yusuf and Emrys Schoemaker refer to PEMRA report for the year 2010 to show that 30 new television channels were licensed in back in year 2008. The number was 17 in 2007 and three in 2006 showing the increase in industry due to de-regulation of ownership. Huma Yusuf and Emrys Schoemaker, "The media of Pakistan: Fostering inclusion in a fragile democracy?" (Policy Briefing no. 9, September 2012), 9. Found at <http://downloads.bbc.co.uk/mediaaction/pdf/bbc_media_action_pakistan_policy_briefing.pdf> (Last accessed December 30, 2014) According to a research, "approximately 60 digital satellite channels (that remain operational in 2012) have gone on air since January 2008. Eight of these are exclusively news and current affairs channels, including Express News, Royal News, City, Capital TV, Din News, Business Plus, and the Punjabi-language Awaz

PEMRA Ordinance also contained provisions to discourage Media Monopoly but never mentioned any way to get to that outcome.³³⁴ Big media groups engulfed smaller entities which could not survive the onslaught of big fish. Yasmeen Aftab Ali refers to an article wherein it has been remarked that "... media groups in the country have grown into big mafias; they won print as well as electronic media- a situation that is almost unprecedented anywhere in the world".³³⁵

PEMRA Rules, 2009, Rule 13 aimed at improving the situation and provided that

maximum number of licences that may be issued to a person or any of its directors or partners where such person is a company or firm, who is directly or indirectly, controlling, owning or operating more than one media enterprise, shall not exceed a total of four satellite TV, four FM Radio licences and two landing rights permissions.³³⁶

News TV. Many infotainment channels such as Metro One, Kohinoor TV, and Aruj TV intersperse entertainment programming with news bulletins. In several cases, 24/7 news channels were launched when existing media groups decided to take advantage of relaxed cross-media ownership laws and diversified their media offerings; for example, ARY TV launched ARY News, ARY Zauq (a food channel), ARY Musik (a music channel), QTV (a religious channel), and Fashion TV (an international channel for which ARY TV has the broadcast rights in Pakistan)." Open Society, *Mapping Digital Media: Pakistan*, 2013, 80. Found at <http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130902.pdf> (Last accessed June 20, 2014).

³³⁴PEMRA Ordinance, Section 23. "Exclusion of monopolies.- (1) No person shall be entitled to the benefit of any monopoly or exclusivity in the matter of broadcasting or the establishment and operation of broadcast media or distribution service or in the supply to or purchase from, a national broadcaster of air time, programmes or advertising material and all existing agreements and contracts to the extent of conferring a monopoly or containing an exclusivity clause are, to the extent of exclusivity, hereby declared to be inoperative and of no legal effect. (2) In granting a license, the Authority shall ensure that open and fair competition is facilitated in the operation of more than one media enterprise in any given unit of area or subject and that undue concentration of media ownership is not created in any city, town or area and the country as a whole: Provided that if a licensee owns, controls or operates more than media enterprise, he shall not indulge in any practice which may impeded fair competition and provision of level playing field. ". Found at http://www.pemra.gov.pk/pemra/images/docs/legislation/Ordinance_2002.pdf (Last accessed June 01, 2015).

³³⁵Yasmeen, *A Comparative Analysis of Media & Media Laws in Pakistan*, 227.

³³⁶PEMRA Rules, 2009, Rule 13 sub -rule 1. "Media ownership concentration and exclusion of monopolies.- (1) To ensure that fair competition is facilitated, media diversity and plurality are promoted in the society and undue concentration of media ownership is not created. Maximum number of licences that may be issued to a person or any of its directors or partners where such person is a company of firm, who is directors or partners where such person is a company or firm, who is directly or indirectly, controlling, owning or operating more than one media enterprise, shall not exceed a total of four satellite TV, four FM Radio licenses and two landing rights permissions". Found at http://www.pemra.gov.pk/pemra/images/docs/legislation/PEMRA_Rules_2009.pdf (Last accessed December 20, 2014).

But there has not been change in situation even after promulgation of PEMRA Rules, 2009. Big media groups still continue to flourish, as a result of investor friendly regulatory regime introduced by PEMRA. Hence, common perception is that PEMRA is unlikely to check Media concentration due to granting of license to highest bidder as has been enshrined in section 19 (1) of PEMRA Ordinance, which means an easy win for already established Media house.³³⁷ An aspect of the media industry which also weakens its independence is the “prohibitive cost of entry into the sector.”³³⁸ And country’s Electronic Broadcast Media continue to take advantage of a weak regulator and indulge in practices threatening for healthy competition, and promotion of plurality and public interest.³³⁹

3.7.2 HOLDING PEMRA RESPONSIBLE

The truth is that media regulation endangers free speech but so does the concern that deregulation fosters ‘media cynicism and selfishness’.³⁴⁰ Policy making in the field of media has always been considered as an intervention by the government, therefore, big media groups are not in favor of Media regulations especially of those passed by present governments.³⁴¹ In their

³³⁷ Also PEMRA Rules, 2009, Rule 9, sub-rule 6. “(6) The Authority shall prescribe procedures for an open and transparent bidding in such cases where number of the applicants is likely to exceed the number of licences which the Authority has fixed for that category or sub-category”. Found at <http://www.pemra.gov.pk/pemra/images/docs/legislation/PEMRA_Rules_2009.pdf> (Last accessed December 18, 2013).

³³⁸ Huma Yusuf and Emrys Schoemaker, “The media of Pakistan: Fostering inclusion in a fragile democracy?” (Policy Briefing no. 9, September 2012), 24. Found at <http://downloads.bbc.co.uk/mediaaction/pdf/bbc_media_action_pakistan_policy_briefing.pdf> (Last accessed December 30, 2014).

³³⁹ Hamid Raza, “Policy and PEMRA: Comparisons with UK and USA,” *Criterion Quarterly* 7, no. 4 (2015). Found at <<http://www.criterion-quarterly.com/media-policy-and-pemra-comparisons-with-uk-and-usab/>> (Last accessed June 09, 2015).

³⁴⁰ Gregory P. Magarian, “*Substantive Media Regulation in three dimensions*”, (working paper no. 2008-05, Villanova University School of Law, Pennsylvania, 2008) Found at <<http://ssrn.com/abstract=1088840>> (Last accessed December 20, 2014).

³⁴¹ Azmat Rasul and Stephen D. McDowell, “Regulation and media monopoly: A case study of broadcast regulation in Pakistan” (8th International Telecommunications Society (ITS) Asia-Pacific Regional Conference, Taiwan, June 26 – 28, 2011) Found at

opinion, Governments always try to squeeze the freedom of media by introducing several pieces of legislations. Media monitoring authorities are not trusted among journalists organizations. Yasmeen Aftab Ali refers to a news item wherein it has been stated that any action on the part of PEMRA is always misconstrued as unnecessary interference in media freedom.³⁴² To some extent fears are not very much beyond imagination as on many occasions, Government has used PEMRA to put ban on 'despised' channels or for suspending licenses or by simply threatening to do so.³⁴³

3.7.3 IS SELF REGULATION A BETTER OPTION?

Journalists associations do not appreciate state-supervised regulations.³⁴⁴ They believe in self-regulation by which Media can not only justify the freedoms they exercise but also people will get information they are meant to get in order to develop informed opinions which will further assist in democratic system.

The presence of regulatory authorities does not serve the purpose as Supreme Court advocate Zahid Ebrahim exclaimed that the only thing that can work right now is 'self-regulation' of the media.³⁴⁵

But again the culture of media self-regulation remains extremely underdeveloped in Pakistan.³⁴⁶ The main issue regarding the formation and initiation of uniform process of devising code of ethics, agreed by all seems to be the lack of coordination and collaboration between the

<http://www.researchgate.net/publication/241769742_Regulation_and_media_monopoly_A_case_study_of_broadcast_regulation_in_Pakistan> (Last accessed December 25, 2013).

³⁴² Yasmeen, *A Comparative Analysis of Media & Media Laws in Pakistan*, 230.

³⁴³ "Recommendations for Industry Body in *Geo Asool: Vision for better media for better Pakistan*." Geo TV. Found at <http://www.geo.tv/asool/pdfs/E_Recommendations-Industry-Body.pdf> (Last accessed June 30, 2014).

³⁴⁴ Marcho Mezzera and Saifdar Sial, *Media and Governance in Pakistan: A controversial yet essential relationship* (European Union: Initiative for Peace Building, 2010), 29. <<http://www.initiativeforpeacebuilding.eu/pdf/pakistanOct.pdf>> (Last accessed May 08, 2014).

³⁴⁵ "Pemra codes don't work, TV has to stop showing bodies on its own," *The Express Tribune*, May 06, 2012. Found at <<http://tribune.com.pk/story/374690/why-self-regulation-works-pemra-codes-dont-work-tv-has-to-stop-showing-bodies-on-its-own/>> Last accessed October 13, 2012.

³⁴⁶ Open Society, *Mapping Digital Media: Pakistan*, 2013, 96.

major organizations representing stakeholders of the industry.³⁴⁷ Pointers on Coverage of Terrorism Related Events, 2009, agreed unanimously by Media industry is a good example to quote here when all stakeholders were on board.³⁴⁸ Then in January 2011, the Pakistan Broadcasters Association (PBA) produced a draft code of conduct for television channels, but that has not been respected by broadcasters.³⁴⁹

In the absence of industry-wide self-regulation, individual media groups are starting to develop 'in-house' codes of conduct. For example, the Geo Television Network in 2012, launched Geo Asool (or Geo Laws), which it describes as a "social contract with [its] viewers".³⁵⁰ But it does not seem to be a good notion in absence of strict implementation.

In his article, *Policing the Press*, senior advocate of supreme court Ali Zafar writes Media can constitute a code of conduct enshrining at least the five basic principles that journalists should 1) be "honest, fair and courageous in gathering, reporting and interpreting information"; 2) treat everyone as "human beings deserving of respect"; 3) act "independently"; 4) be "accountable"; and 5) in the context of Pakistan, not "play the political actor".³⁵¹

³⁴⁷ Code of Ethics, Young Journalists Association of Pakistan<<http://yjap.com.pk/advocacy-action/code-of-ethics/>> (Last accessed June 30, 2014).

³⁴⁸ In 2009, 16 news channels endorsed a voluntary code of conduct regarding the live coverage of terrorist attacks (addressing issues such as utilizing a time-delay mechanism; carefully monitoring live coverage during hostage situations; censoring graphic images, including footage of corpses or people injured in attacks; and interviewing eyewitnesses and the family members of victims). Although the voluntary code helped establish industry protocol for the coverage of terrorist attacks, it has not been further developed to promote responsible and ethical media coverage across the board. Open Society, *Mapping Digital Media: Pakistan*, 2013, 96. Also please see, Marcho Mezzera and Safdar Sial, *Media and Governance in Pakistan: A controversial yet essential relationship* (European Union: Initiative for Peace Building, 2010), 26-29. Found at <<http://www.initiativeforpeacebuilding.eu/pdf/pakistanOct.pdf>> (Last accessed May 08, 2014).

³⁴⁹ Open Society, *Mapping Digital Media: Pakistan*, 2013, 96. Even today Pakistan Broadcasters Association has uploaded draft of Proposed Voluntary Self Regulated Code of Conduct on its website. For details please visit <<http://pba.org.pk/psr.asp>> (Last accessed December 30, 2014).

³⁵⁰ "Preamble to Geo Asool: Vision for a better Media for a better Pakistan," Geo TV, 2012. <<http://www.geo.tv/asool/pdfs/GeoAsool-All-Documents.pdf>> (Last accessed July 12, 2014).

³⁵¹ Ali Zafar, "Policing the press", *The Express Tribune*, September 6, 2012, Available at <<http://tribune.com.pk/story/432461/policing-the-press/>> (Last accessed October 1, 2012).

In the year 2012, firstly, an anchor's show episode³⁵² and then alleged planted interview of business tycoon³⁵³ fanned the demand for devising an unanimously agreed code for electronic media when public started questioning the credibility of media who exercise freedoms on their behalf.

3.7.4 Hamid Mir's case

The rapid growth of the media industry has given rise to corruption among journalists. As acknowledged by Express News' Talat Hussain "The folklore of the media being corrupt is spreading fast".³⁵⁴

Media have always been in spotlight over accusations but after alleged planted interview of Bahria Town's Malik Riaz, the need for media accountability was felt like never before.³⁵⁵ Soon after, appeared the names of journalists/anchorpersons who were reportedly charged of receiving residing plots and also those who received secret funds by Government.³⁵⁶ That was the time when Pakistan's news media came under fire from all sides for its questionable ethics, not from its usual critics in the government, but also from public and within its own lines.³⁵⁷ Supreme Court of Pakistan adjudicated various important cases on media regulations in

³⁵² Taha Siddiqui, "Morning show host Maya Khan fired from Samaa TV", *The Express Tribune*, January 28, 2012. Available at <<http://tribune.com.pk/story/328465/morning-show-host-maya-khan-fired-from-samaa-tv/>> (Last accessed November 01, 2014).

³⁵³ Umer Nangiana, 'Anchorgate': Criminal case lodged against Dunya TV whistleblowers, *The Express Tribune*, June 16, 2012, Available at <<http://tribune.com.pk/story/394490/anchorgate-criminal-case-lodged-against-dunya-tv-whistleblowers/>> (Last accessed January 20, 2013).

³⁵⁴ Huma Yusuf and Emrys Schoemaker, "The media of Pakistan: Fostering inclusion in a fragile democracy?" (Policy Briefing no. 9, September 2012), 24.

³⁵⁵ In June 2012, a leaked behind-the-scenes video showed popular Dunya TV political talk show hosts taking instructions from politicians and the channel's management on how to pose questions during an interview with a real estate tycoon who advertises extensively on television. For further details, Umer Nangiana, 'Anchorgate': Criminal case lodged against Dunya TV whistleblowers, *The Express Tribune*, June 16, 2012, Available at <<http://tribune.com.pk/story/394490/anchorgate-criminal-case-lodged-against-dunya-tv-whistleblowers/>> (Last accessed January 20, 2013).

³⁵⁶ "Secret funds case: List of 282 journalists made public," *The Express Tribune*, April 22, 2013. <<http://tribune.com.pk/story/538900/secret-funds-case-list-of-282-journalists-to-be-made-public-today/>> (Last accessed June 20, 2014).

³⁵⁷ Tom Hussain, "Pakistani Media face a crisis of ethics," *Corruption-Reporter*, June 16, 2009. <<http://corruption-reporter.blogspot.com/>> (Last accessed July 27, 2013).

the context of fundamental rights guaranteed by Articles 19 and 19-A of the Constitution of the Islamic Republic of Pakistan, 1973. One such case was *Hamid Mir's* case.³⁵⁸ In the year 2012, senior journalists, Hamid Mir and Absar Alam, filed a petition in Supreme Court of Pakistan against allegations of corruption on journalists and sought formation of a national media accountability commission to devise a code of conduct for the Media industry. A Commission's need on mass communications was felt to review and report on the condition of the media and to develop a philosophy for mass communications in nation building. While hearing the petition, Supreme Court formed a two-member Media Accountability Commission. The said commission was headed by (retd) Nasir Alam Zahid and also comprised of Mr. Javed Jabbar, a well known intellectual, writer and former information minister of the country. ToR's of the commission and report submitted by the commission has been detailed in chapter 4.

3.8. CONCLUSION

Against the above given discussion, it can be concluded that overstepping the limits by any media industry should never be overlooked as Media exercises right to information on part of people of country. Pakistani people have the right to know but that does not mean that they have right to 'all the information'. Feeding them with everything in the name of information is not vindicated at any cost. There is certain regulatory deficit in Pakistan. But what to do when Media are not ready to come to terms with state on question of regulation and consider every step by state as an intervention in freedoms of Media. On the other hand, state has also overlooked its functions to prevent exploitation of powers in hands of few. Next chapter tenders some useful suggestions with objective of making improvements in this regard.

³⁵⁸ Constitutional Petition no. 105/2012 before Supreme Court. Later reported as *Hamid Mir and another versus Federation of Pakistan*, PLD 2013 SC 244.

CHAPTER FOUR: PROPOSALS & SUGGESTIONS

4.1. INTRODUCTION

Instead of demolishing the entire regulatory set-up for media, this research concludes that solution to problem lies in making improvements in present Media regulatory framework of Pakistan for example by building of long term Media Policies, enhancing the efficiency of PERMA, giving boost to legal framework and also by generating public awareness. This chapter mainly focuses on recommendations forwarded by Media Commission formed following the directions of Supreme Court. But firstly, effort will be made to underline suggestions made from other miscellaneous platforms.

4.2. Need of a concrete policy

Hamid Raza laments that where western democracies make media policies to govern their future recourses towards media, unfortunately, media policy has never received much attention in Pakistan.³⁵⁹ What Pakistan needs is a “profound national commitment” towards developing a firm media policy.³⁶⁰ Feintuck and Vamey maintain that the “pursuit of a developed concept of public interest which emphasizes citizenship values appears to offer a constant and meaningful objective in itself, and a standard against which policies could be judged.”³⁶¹

³⁵⁹ Hamid Raza, “Policy and PEMRA: Comparisons with UK and USA,” *Criterion Quarterly* 7, no. 4 (2015). Found at <<http://www.criterion-quarterly.com/media-policy-and-pemra-comparisons-with-uk-and-usaby/>> (Last accessed June 09, 2015).

³⁶⁰ Stanley Ingber, “The Marketplace of ideas: A Legitimizing Myth,” *Duke Law Journal*, Vol. 33 no 1 (1984): 9. Found at <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2867&context=dlj>> (Last accessed December 10, 2014).

³⁶¹ Mike Feintuck and Mike Varney, *Media Regulation, Public Interest and the Law* (Edinburgh: Edinburgh University Press, 2006), 125. In the backdrop of discussion already preceded, the need of hour is to define public interest and to decide is protecting the right to information of citizens, indeed promoting some public interest? Critics can define what is not in public interest but cannot define what actually is the public interest? Croteau and Hoynes, *The Business of Media Corporate: Corporate Media and the Public Interest*, 33. One belief is that public

Media Policies of the government should be influenced by output of some ‘think-tank’ like in UK there is Institute for Public Policy Research (IPPR).³⁶² This research proposes that it is high time that such think tank specifically for the purpose of News Media should function with evaluators who are best at reviewing already existing regulatory structure and the subsequent filling of gaps with objective to ensure diversity of opinions.

While constituting Media Policy, PEMRA usually needs no public representation which negates the true spirits of democracy. Even, FCC in United States engages notice and comment process whereby public input is sought.³⁶³ Whatever structural changes are sought, public participation in whole episode is highly desired. United Kingdom’s select committee on culture media and sport in its third report stressed boosting the efficiency of Ofcom and categorically emphasized on engaging public in process of rules making. Committee mentioned:

interest becomes what the public is interested in. A part of discussion has been given in chapter 1. For details please see, *Ibid.*, 33-34. From this perspective, those media that are popular serve the public interest. Croteau and Hoynes maintain that “Narcotics and prostitution have proven to be enduringly popular among some segments of public, but simply because the public is interested in such things, can we really say they are in the public interest?” *Ibid.* Aileen McHarg maintains that “public interests necessarily imply a collective or universal, though not necessarily uniform benefit for all members of society rather than one which attaches only to particular individuals or groups”. She further maintains that “there must be a plausible clause that everyone will benefit from the policies identified as being in the public interest, although they may not personally share the goals in question”. Aileen McHarg, “Reconciling Human Rights and the Public Interest: Conceptual Problems and Doctrinal Uncertainty in the Jurisprudence of the European Court of Human Rights,” *The Modern Law Review* 62, No. 5 (Sep., 1999):677- 679. Available at <<http://www.jstor.org/stable/1097381>> (Last accessed May 20, 2015) So the benefit to masses is what makes an interest ‘public interest’, a concept higher above mere private or individualistic interest. Barak defines public interest or public good as any consideration justifying a limitation of a constitutional right. Aharon Barak, Proportionality: Constitutional Rights and their Limitations (New York: Cambridge University Press, 2010), 265. Considerations of public interest, according to Barak, include the continued existence of the state national security, public order, tolerance, protection of a person’s feelings, and other interests that do not constitute constitutional rights. *Ibid.*, 254. Question of public interest is of utmost importance as in the view of Ronald Dworkin, Government may override a right “when necessary to protect the rights of others, or to prevent a catastrophe, or even to obtain a clear and major public benefit” or even “some compelling reason is presented”. Ronald Dworkin, *Taking Rights Seriously* (Massachusetts: Harvard University Press Cambridge, 1977), 191-199.

³⁶² Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 11.. The purpose behind IPPR is “to conduct and publish research into, and promote public education in, the economic, social and political sciences, and in science and technology; including the effect of moral, social, political and scientific factors on public policy and on the living standards of all sections of the community.” For further details see, <<http://www.ippr.org/about>> (Last accessed December 20, 2015).

³⁶³“Rule making Process at the FCC,” *Federal Communications Commission*. <<https://www.fcc.gov/encyclopedia/rulemaking-process-fcc#q8>> (Last accessed June 25, 2015).

To ensure maximum transparency in regulatory decisions, and to provide a further safeguard against regulatory capture, Ofcom should hold hearings and meetings, including board meetings, in public with minutes published promptly. Publicly funded, and theoretically publicly accountable, bodies should not operate secrecy.³⁶⁴

4.3. GETTING RID OF ETHICAL/MORAL DILEMMA

In Pakistan, journalism ethics are often overlooked due to 'poorly regulated media market'.³⁶⁵ Supreme Court highlighted the ethical dilemma of media in suo-moto case of allegations of business deal between a businessman and son of the serving Chief Justice of Pakistan attempting to influence the judicial process.³⁶⁶ Notice was taken to end media frenzy and to ensure the right of the citizens to correct information on a matter of the national importance. Honorable Supreme Court observed:

...ethical and legal framework of the media required fairness and objectivity and it also required that the journalists conducted due diligence before reporting any news so that rumours and insinuations were filtered out, particularly in matters of grave significance such as ones arising in the present case; that even when the media and journalists came across a particular information, fair conduct required that it was checked and rechecked.³⁶⁷

The Power of media must be used with sobriety and objectivity.³⁶⁸ The most common unethical practice is the re-publishing or re-broadcast of information without re-checking or cross-

³⁶⁴UK Parliament, *Select Committee on Culture, Media and Sport Third Report*. Found at <<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmcumeds/380/38008.htm>> (Last accessed December 13, 2014).

³⁶⁵Open Society, *Mapping Digital Media: Pakistan*, 2013, 50. Found at <<http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130902.pdf>> (Last accessed June 20, 2014).

³⁶⁶ Reported as PLD 2012 SC 664.

³⁶⁷ *Suo Motu Action regarding allegation of business deal between Malik Riaz Hussain and Dr. Arsalan Iftikhar attempting to influence the judicial process*, PLD 2012 SC 664 pages 675, 676.

³⁶⁸ B. G. Verghese, "The Media in a Free Society: Proposals for Restructuring," *Economic and Political Weekly*, 12, No. 18 (Apr. 30, 1977): 739. Found at <<http://www.jstor.org/stable/4365545>> (Last accessed April 25, 2015).

checking as was indicated by Supreme Court above.³⁶⁹

4.3.1 Media studies

Lack of trained journalists is a major area of concern and affects the quality of information produced.³⁷⁰ Media literacy has never been given serious thought. There has been proposal of a Media University at Islamabad.³⁷¹ The notion seems good because that way not only vital research will be produced in Media studies but also journalists could be offered refreshment courses in media ethics to deal with day to day problems they confront.

4.4. DECREASE IN CONCENTRATION DIRECTLY PROPORTIONAL TO INCREASE IN PLURALISM

As already discussed, greater the levels of media concentration higher will be the risk of media power to run counter provision of information because as remarked by David Croteau and William Hoynes, conglomerate structure of media industry provides the sameness in media content contrary to diverse sources.³⁷² If effective communications is to be realized, then a competitive market in speech or ideas must be regulated.³⁷³ Media concentration in Pakistan is the outcome of the high license fee/bidding amount by PEMRA.³⁷⁴ Changes may be brought in

³⁶⁹ Open Society, *Mapping Digital Media: Pakistan*, 2013, 50. Found at <<http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130902.pdf>> (Last accessed June 20, 2014).

³⁷⁰ Amir Jahangir et al, *Situational Analysis of information in the communication & information sector in Pakistan*, UNESCO, 2011, 16. Available at <http://unesco.org.pk/ci/documents/situationanalysis/Situational_Analysis_of RTI_in_Pakistan.pdf> (Last accessed November 15, 2013).

³⁷¹ "US university to help develop IMU faculty," *interface*. Found at <<http://www.interface.edu.pk/students/July/Colorado-University.asp>> (Last accessed January 01, 2014).

³⁷² Gillian Doyle, *Media Ownership* (London: Sage Publications Ltd, 2002), 20. The problem has been discussed in great detail in preceding chapters. Also Croteau and Hoynes, *The Business of Media Corporate: Corporate Media and the Public Interest*, 245.

³⁷³ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 12.

³⁷⁴ Open Society, *Mapping Digital Media: Pakistan*, 2013, 80. Also please see, the discussion in chapter 3 under heading of 3.7.1 PEMRA and the growing trend of media concentration.

licensing regime of PEMRA to make it more effective.

Anti-trust laws must be actively used to stem the concentration of media ownership.³⁷⁵

Pakistan has enacted Competition Act in 2010, to discourage anti-competition practices.³⁷⁶ A more pro-active antitrust policy can be important in development of effective media policy.³⁷⁷ Like in United Kingdom Enterprise Act, 2002, empowers secretary to veto any merger if the same relates to public interest, certain provisions can be inserted in Competition Act, 2010 to treat Media related mergers so to prevent media concentration in few hands.

Owners of a holding may influence the decisions of that holding either by direct or indirect means.³⁷⁸ McChesney suggests that there should be a' line between ownership authority and editorial authority'.³⁷⁹ By separating the boundaries, editorial authority may not be compromised in hands of owners. Yasmeen Aftab Ali's book, *A comparative analysis of media and Media Laws in Pakistan*, is one of its own much awaited kind of comprehension amalgamating the concepts of Media, responsibilities of journalists and current ground realities of country. In her book, she proposes that "each media house should chalk out" individual editorial policy and such policy is to be soon after submitted and approved by PEMRA.³⁸⁰

What if media corporations start claiming that they have freedom of trade, business or profession according to Article 18 of the Constitution of the Islamic Republic of Pakistan, 1973,

³⁷⁵ Croteau and Hoynes, *The Business of Media Corporate: Corporate Media and the Public Interest* , 244.

³⁷⁶ http://www.cc.gov.pk/index.php?option=com_content&view=article&id=60&Itemid=104 (Last accessed June 01, 2015).

³⁷⁷ Croteau and Hoynes, *The Business of Media Corporate: Corporate Media and the Public Interest*, 246.

³⁷⁸ Whatever regulatory measures are in place, the opportunities for media owners to assert an indirect influence over the content and the agenda of products they own seem so comprehensive as to defy any absolute guarantees of separation. An owner's influence may manifest itself in the choice of key personnel, or in strategic decisions about which resources to reduce or invest more in, or in arrangements for sourcing or distributing content. Editorial interference by owners can be through the selection of key personnel for certain rhetoric or thorough self-censorship and also by literally rewriting editorial leaders. Doyle, *Media Ownership*, 18-20.

³⁷⁹ Robert W. McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times* (New York: The New Press, 2000), 304.

³⁸⁰ Yasmeen Aftab Ali, *A Comparative Analysis of Media & Media Laws in Pakistan* (Lahore: Sang-e-Meel Publications, 2012), 247.

and that any rule/regulation relating to free trade or business will violate the right of free working. McChesney goes on referring to one wall street journal columnist who has exclaimed that “Man’s natural instinct is to choose free enterprise and free markets,” so government regulation certainly violates nature and, quite possibly, the intent of God.³⁸¹ Gain to many will outweigh the inconvenience to the few.³⁸² They should be reminded that the said Article also contains certain restrictions which might be placed on all kinds of activities of trade/business/profession.³⁸³

4.5. PUBLIC AWARENESS WILL SOLVE HALF OF THE PROBLEM

In marketplace of ideas theory, it is the aware citizens who must be capable of separating truth from falsehood.³⁸⁴ Delhi High Court observed that “media revolves around society because

³⁸¹ Robert W. McChesney, *The problem of the media: U.S. communication politics in the twenty-first century* (New York: Monthly Review Press, 2004), 18. Found at <<https://books.google.com.pk/books?isbn=1583673768>> (Last accessed January 20, 2015).

³⁸² Dworkin, *Taking Rights Seriously*, 191.

³⁸³ The Constitution of the Islamic Republic of Pakistan, 1973, Article 18. “Freedom of trade, business or profession. Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business: Provided that nothing in this Article shall prevent:- (a) the regulation of any trade or profession by a licensing system; or (b) the regulation of trade, commerce or industry in the interest of free competition therein; or (c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.” Found at <<http://www.pakistani.org/pakistan/constitution/part2.ch1.html>> (Last accessed July 01, 2015).

³⁸⁴ Stanley Ingber, “The Marketplace of ideas: A Legitimizing Myth,” *Duke Law Journal*, Vol. 33 no 1 (1984): 7. Found at <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2867&context=dlj>> (Last accessed December 10, 2014). Also, Amir Jahangir et al, *Situational Analysis of information in the communication & information sector in Pakistan*, UNESCO, 2011, 27. Available at <<http://unesco.org.pk/ci/documents/situationanalysis/Situational%20Analysis%20of%20RTI%20in%20Pakistan.pdf>> (Last accessed November 15, 2013). Libertarians take the view that nothing should be done in the name of accountability of media that leads to curtailing the freedom of Media in one way or another. Katrin Voltmer, “The Media, Government Accountability and Citizen Engagement” in *Public Sentinel: New Media and Governance Reform*, ed. Pipa Norris (Washington, DC: World Bank, 2010), 140. Available at <<http://www.hks.harvard.edu/fs/pnorris/Acrobat/WorldBankReport/Chapter%206%20Voltmer.pdf>> (Last accessed June 5, 2013) According to pioneers of Libertarian theory, while ethics and law are important, the only real accountability in media should be in the marketplace of ideas. Black and Roberts, *Doing ethics in media: Theories and Practical Applications*, 394. The idea of marketplace was introduced as a concept of American jurisprudence in *Abrams versus United States*, 250 U.S. 616 (1919). Found at <<https://supreme.justia.com/cases/federal/us/250/616/case.html>> (Last accessed January 05, 2015). In the words of dissenting judge: the best test of truth in the power of thought to get itself accepted in the competition of the market.

people provide the news and are the recipients of the news".³⁸⁵

McChesney laments the poor choice people make in selecting the source of information and observes that "The fault is not the press system but the moronic citizens who demand such fare and reward those who provide it. [Then] government can't do a damned thing about it except indirectly, through improving education so that the next generation will not be composed of idiots".³⁸⁶

The truth is Media portray the society and public actually blame the media for 'mirroring their true picture'.³⁸⁷ It has been remarked that "... People enjoy negativity alike a dense crowd

Also please see, Stanley Ingber, "The Marketplace of ideas: A Legitimizing Myth," *Duke Law Journal*, 33, No 1 (1984): 3. Found at <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2867&context=dlj>> (Last accessed December 10, 2014) Based on John Mills work on Marketplace of ideas doctrine, it can be presumed that in open market place of ideas what people accept and support will survive and thrive; media that people dislike or reject will suffer and die". Jill Gordon, "John Stuart Mill and the "Marketplace of Ideas," *Social Theory and Practice* 23, No. 2 (Summer 1997): 235-236. Found at <<http://www.jstor.org/stable/23559183>> (Last accessed May 12, 2015). So in other words, there is no need of rules and regulation to govern the conduct of News Media. Their opponents argue that the market cannot be expected to provide the audience what it wants. C. Edwin Baker, "Giving the audience what it wants," *Ohio State Law Journal*, 58, no. 2 (1997): 411. <<http://hdl.handle.net/1811/64899>> (Last accessed December 20, 2014) This fact also holds water because of the increased level of concentration in Media. It is "romantic nonsense" now to suggest that there is an adequate market-place in the privately owned mass media. David L. Lange, "The Role of the Access Doctrine in the Regulation of the Mass Media: A Critical Review and Assessment," *North Carolina Law Review*, 52 (1973): 8. Found at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2209&context=faculty_scholarship> (Last accessed December 04, 2014) In the realm of ideas market based idea poses deep problems for 'traditional liberal democratic notions'. In the words of McChesney, "The market can prove to be a quiet, but ruthless, commissar". Robert W. McChesney, *The problem of the media: U.S. communication politics in the twenty-first century* (New York: Monthly Review Press, 2004), 190. Found at <<https://books.google.com.pk/books?isbn=1583673768>> (Last accessed January 20, 2015). "This political marketplace of ideas looks a lot more like a junkyard than flowerbed. To paraphrase a line from Woody Allen's Hannah and her Sister, if John mill were around today, he would never stop throwing up." Robert W. McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times* (New York: The New Press, 2000), 260. Against the market model, public sphere model is an alternative. The public sphere model suggests that society's needs cannot be met entirely through the market system and government plays a useful and necessary role in ensuring that the media meet the needs of citizens, not just consumers of media market. David Croteau and William Hoynes, *The Business of Media Corporate: Corporate Media and the Public Interest* (California: Pine Forge Press, Sage Publications, 2006), 22. In this model, audience is perceived as a public, who should be "reformed, educated, informed as well as entertained –in short, served –presumably to enable them to better perform their democratic rights and duties". *Ibid.*, 38.

³⁸⁵ *Indraprastha People & Another. versus Union Of India & Others*, WP(C)No.1200/2011 before Delhi High Court. Judgment Pronounced on : April 09 , 2013. Found at <<http://indiankanoon.org/doc/80393956/>> (Last accessed May 07, 2015).

³⁸⁶ McChesney, *The problem of the media: U.S. communication politics in the twenty-first century*, 29.

³⁸⁷ "Clashing views on media ethics in Pakistan," Triple Bottom Line <<http://www.tbl.com.pk/clashing-views-on-media-ethics-in-pakistan/>> (Last accessed December 17, 2013).

of onlookers at an accident site. This is reality and rarely do we see it, so let's gather around and watch it... media after all is a business venture and caters to what its consumers want, and if they want spice, then spice is what they get".³⁸⁸ It is time when citizens have to make wise choices.

It has been said that people should not be given what they want but what they need.³⁸⁹ And who will decide what is needed? It's the people themselves. If people themselves take firm stand that they would not tolerate anything but information from news media, they will be given information. Public should also be made part of policy making process relating to regulation of media.³⁹⁰

4.6. AN IDEAL SYSTEM OF REGULATION

An ideal system of Media Regulation should contain three fundamental principles: The promotion of a diverse news landscape and high quality journalism in the public interest; The protection of the public from unethical and unlawful newsroom practices; The regaining public trust through transparent mechanisms of accountability.³⁹¹ A media system must be fair and accurate examining the activities of state. It will be a system that keeps into view the information need of citizens in diverse opinion.³⁹²

Robert W. McChesney offers four general proposals for media reforms:³⁹³ 1) Building non-profit and non-commercial media 2) Public Broadcasting 3) Regulation 4) Anti Trust: Breaking up the largest firms and establish more competitive markets thus shifting some control from corporate suppliers to citizen consumers.³⁹⁴

³⁸⁸ *Ibid.*

³⁸⁹ Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 82.

³⁹⁰ McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times*, 64.

³⁹¹ Co-ordinating Committee for Media Reform, "The Media and the Public interest" (Preliminary briefing paper, November 4, 2011). Found at <<http://www.mediareform.org.uk/wp-content/uploads/2013/04/The-media-and-the-public-interest.pdf>> (Last accessed February 07, 2015).

³⁹² McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times*, 314.

³⁹³ *Ibid.*

³⁹⁴ *Ibid.*, 307- 312.

Mr. Mazhar Abbas, a senior veteran in journalism, suggests that the Ministry of Information should be abolished and if it is not possible, then the Supreme Court should abolish its secret fund, allegedly used for spreading corruption. He further maintains that a powerful media complaints commission should be appointed immediately. The advertisement control of the Ministry should be handed over to an independent body of professionals. Press clubs and unions should work off their own resources instead of depending on government grants.³⁹⁵ Putting it simple, Mr. Abbas seems in favor of minus PEMRA formula where a media complaints commission will take charge under the supervision of Media industry itself.

The regulatory regime in Pakistan must be vibrant to intervene in the market to ensure best possible media outcome in the benefit of general public.³⁹⁶

4.7. MEDIA COMMISSION (RECOMMENDATIONS)

In chapter 3 of this research, circumstances which led to formulation of much awaited and much needed Media Commission were described. It was on January 15th, 2013, that Supreme Court appointed a commission to conduct a study of issues raised in *Hamid Mir and another versus Federation of Pakistan*.³⁹⁷ This Commission was first of its kind as never before much attention was paid to issues related to Media. There were 9 terms of reference (hereinafter 'ToRs') of the commission.³⁹⁸ The commission submitted two reports before the Supreme Court of Pakistan on the said ToRs. First part of the report, submitted on March 21, 2013, deals exclusively with

³⁹⁵ Mazhar Abbas, " Clean the dirt and the dirty will go away," *The Express Tribune*, April 26, 2013 Available at <<http://tribune.com.pk/story/540445/clean-the-dirt-and-the-dirty-will-go-away/>> (Last accessed April 26, 2013).

³⁹⁶ Hamid Raza, " Policy and PEMRA: Comparisons with UK and USA," Criterion Quarterly 7, no. 4 (2015). Found at <<http://www.criterion-quarterly.com/media-policy-and-pemra-comparisons-with-uk-and-usaby/>> (Last accessed June 09, 2015).

³⁹⁷ Reported as PLD 2013 SC 244.

³⁹⁸ For further details please see, "Terms of Reference (TORS) of the Media Commission," Pakistan Media Commission Review. Found at <<http://mediacommissionreview.org/terms-of-reference/>> (Last accessed March 05, 2014).

‘Term of Reference F’ of the Commission. Second report on the rest of 8 ToRs, submitted afterwards, is relevant to discuss here.

4.7.1 ASSESSING THE ROLE OF MINISTRY OF INFORMATION

Terms of Reference No. A was to assess the role of the Ministry of Information to ensure Media Freedoms.³⁹⁹ The Media Commission accepted that the State plays role in media regulation.⁴⁰⁰ The Commission has stated that state has legitimacy to protect rights of citizens including the right to information. Role of Ministry of Information and Broadcast has been recognized. However, the stress has been placed that said Ministry and Provincial departments are in need of revamp. Another suggestion is that Ministry of information and broadcasting should be merged with Ministry of Information Technology and Telecommunication.⁴⁰¹ The latter suggestion comes up in backdrop of fast merging of Media technologies (new and old Media). Such a proposed merger will help dealing with Media under one umbrella for at present telecom sector does not come within the purview of PEMRA.

Feintuck and Varney view that to some extent, success or failure of regulatory activities

³⁹⁹ “To consider the role of the Ministry of Information and Broadcasting and other Government agencies in ensuring freedom of print and electronic media and whether or not there is information and material brought before the Commission to justify the continued functioning of the Ministry, consistent with Article 19 of the Constitution.” “Terms of Reference (TORS) of the Media Commission,” Pakistan Media Commission Review. Found at <<http://mediacommissionreview.org/terms-of-reference/>> (Last accessed March 05, 2014).

⁴⁰⁰ Media Commission, *Part- Two of the Report by the Media Commission appointed by The Supreme Court of Pakistan on 15th January, 2013*, 68-69. Found at <http://www.supremecourt.gov.pk/web/user_files/File/MediaCommissionReportFinal.pdf> (Last accessed June 05, 2015). Terms of Reference No. C of Media Commission deals with role of state in relation to Article 19 of the Constitution. It provides “To determine if it advances or is consistent with the fundamental right under Article 19 to allow the Government or its instrumentalities to be major players in the media through State Television and Radio Broadcasters.” “Terms of Reference (TORS) of the Media Commission,” Pakistan Media Commission Review. Found at <<http://mediacommissionreview.org/terms-of-reference/>> (Last accessed March 05, 2014) There has been rising concerns of state’s involvement in PTV and radio Pakistan. It has been recommended by the Commission that Government and related departments should be major players in Media through state TV& radio broadcasting entities and such state presence in Media is not inconsistent with Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973. Media Commission, 133.

⁴⁰¹ *Ibid.*, 79-81.

is checked by reference to the degree to which the regulatory regime achieves identified objectives/ outcomes. Where clear objectives have not been set, success or failure becomes difficult to measure.⁴⁰²

4.7.2 GAUGING THE PERFORMANCE OF PEMRA

Term of Reference. B of the Media Commission was to analyze the performance of PEMRA.⁴⁰³ Black considers regulation to take place only if the behavior of the regulated party changes in some way.⁴⁰⁴ Applying the aspect of definition to Pakistan's Electronic Media regulatory authority (PEMRA), has the authority been successful in modifying the behavior of the News Media of country towards a better change?⁴⁰⁵

There has been apprehension that PEMRA has grown more into administrative and revenue generating institution rather than setting some ethic standard. According to PEMRA annual report for the year 2010, PEMRA realized all time high revenue of Rs. 591.665 million during Financial Year 2009-10.⁴⁰⁶ Media law activist and journalist Matiullah Jan notes that "It is a Bhatta (means money extortion in Urdu) body that collects money from broadcasting operators in a legal way".⁴⁰⁷

Media Commission also stated that common perception is that PEMRA has become a 'profiteering' organization and also lacks independence. The commission recommends that there

⁴⁰² Feintuck and Varney, *Media Regulation, Public Interest and the Law*, 5.

⁴⁰³ Terms of Reference. B reads as "To analyze whether and to what extent PEMRA has been able to fulfill its developmental mandate and regulatory functions independently under the PEMRA Ordinance." "Terms of Reference (TORS) of the Media Commission," Pakistan Media Commission Review. Found at <http://mediacommissionreview.org/terms-of-reference/> (Last accessed March 05, 2014).

⁴⁰⁴ Mike Feintuck and Mike Varney, *Media Regulation, Public Interest and the Law*, 204.

⁴⁰⁵ Please read the relevant discussion in chapter 3.

⁴⁰⁶ PEMRA, *To Facilitate the growth of free and fair Media*, 2010, 51. http://www.pemra.gov.pk/pemra/images/docs/pub-rep/annual_report_2010/FLASH/index.html (Last accessed December 20, 2013).

⁴⁰⁷ International Media Support, *Between Radicalization and democratization in an un-folding conflict: Media in Pakistan*, 2009, 18. <http://www.i-m-s.dk/wp-content/uploads/2012/11/ims-media-pakistan-radicalisation-2009.pdf> (Last accessed January 01, 2015).

is an urgent need to “revisit and reconstruct laws, regulations and rules by which PEMRA works”.⁴⁰⁸ In order to make the authority more independent, there is need for making it responsible to Parliament other than Executive.⁴⁰⁹

Licensing regime of PEMRA has never escaped criticism that PEMRA favors the Media concentration by issuance of license on auction basis. Commission suggests that PEMRA’s licensing system must be improved.⁴¹⁰ Before granting or renewing licenses, PEMRA should evaluate media groups on the basis of their public service provision and capacity to produce localized content, before granting new licenses.⁴¹¹ Commission took to task this issue and recommended that issuance of licenses by the authority should be on non-auction basis.⁴¹²

To put in nutshell, Media Commission favors maintaining of status quo but with conditions that improvements must be made in system. PEMRA will continue to exist but changes will be introduced to help boost its functioning.

4.7.3 PLUS GOVERNMENT FORMULA

Whatever method of regulation is employed for accountability of media, the goal must be ‘to

⁴⁰⁸ Media Commission, *Part- Two of the Report by the Media Commission appointed by The Supreme Court of Pakistan on 15th January, 2013*, 121. Found at <http://www.supremecourt.gov.pk/web/user_files/File/MediaCommissionReportFinal.pdf> (Last accessed June 05, 2015).

⁴⁰⁹ Commission favors the change in appointment of Chairman and members of PEMRA while stating forums to make such appointment: - i) A six person Committee comprising; Speaker of the national Assembly, Chairman of the Senate, leaders of the House and the opposition in the Senate and the National Assembly. ii) The Prime Minister of Pakistan to select one out of three names proposed by a Committee comprising the Leader of the opposition in the National Assembly, Leader of the House and Leader of Opposition in the Senate and three other eminent citizens each representing civil society, media, non-Muslims to be selected by the Leaders of the House and the Opposition in both houses of the Parliament. *Ibid.*, 122-123.

⁴¹⁰ Media Commission, *Part- Two of the Report by the Media Commission appointed by The Supreme Court of Pakistan on 15th January, 2013*, 126. Found at <http://www.supremecourt.gov.pk/web/user_files/File/MediaCommissionReportFinal.pdf> (Last accessed June 05, 2015).

⁴¹¹ Open Society, *Mapping Digital Media: Pakistan*, 2013, 105. Found at <<http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-pakistan-20130902.pdf>> (Last accessed June 20, 2014).

⁴¹² Media Commission, 126. Also please see, the discussion in chapter 3 under heading of 3.7.1 PEMRA and the growing trend of media concentration.

restore credibility by ensuring its freedom and independence,⁴¹³ and credibility ‘implies independence, which dictates viability, professional and technical competence, and social relevance’.⁴¹⁴

Leaving everything on part of Government may be problematic. As was exclaimed by Judge Gibbons of United States:

[T]here is something fundamentally disturbing about a model of government in which elected executive or legislative branch officials are deemed to have been delegated the power to decide for us what we need to know. This big brother approach carries with it the seeks of destruction of participatory democracy, for it places in hands of those chosen for positions of authority the power to withhold form those to whom they should be accountable the very information upon which informed voting should be based...⁴¹⁵

However, the proponents of Media regulation by state always argue that it is mostly unlikely that all the key stake holders would agree on nature of self-evolved code of conduct and that leaves us with supervision of Government as a possible solution. They also fear that the implementation of a self-regulatory mechanism will be too fragile for a powerful media to abide by.⁴¹⁶ Media Commission holds that concept of self-regulatory code of conduct for Media is an ideal forever worth striving for but commission also admits that no aspect of individual or collective conduct is subject only to self regulation. Here, Commission reiterates the view that

⁴¹³ B. G. Verghese, “The Media in a Free Society: Proposals for Restructuring,” *Economic and Political Weekly*, 12, No. 18 (Apr. 30, 1977):734. Found at <<http://www.jstor.org/stable/4365545>> (Last accessed April 25, 2015).

⁴¹⁴ *Ibid.*

⁴¹⁵ Michael J. Hayes, Whatever happened to “the right to know”? Access to Government Controlled information since Richmond Newspapers, *Virginia Law Review*, 73, No. 6 (Sep., 1987): 1140-1141. <<http://www.jstor.org/stable/1073037>> (Last accessed March 30, 2015).

⁴¹⁶ Marcho Mezzera and Safdar Sial, *Media and Governance in Pakistan: A controversial yet essential relationship* (European Union: Initiative for Peace Building, 2010), 29. <<http://www.initiativeforpeacebuilding.eu/pdf/pakistanOct.pdf>> (Last accessed May 08, 2014).

there has to be some 'minimal' external regulation to ensure order and observance.⁴¹⁷

Expressly mentioning the state of News Media and solution to improve the predicament, Media Commission observes that given the objective conditions in Pakistan, with content of news media content, self regulation emerges as one of the ways to facilitate the content regulation but does not appear to have capacity to be sole form of such regulation.⁴¹⁸ Media system of our country, based on authoritarian theory, allows the state to interfere.⁴¹⁹ Media Commission also seems in favor of seeking state to play the role of savior by observing that there always will be need for state to provide a legislative framework of guiding principles with check and balances that don't have tendency to curb freedom of expression.⁴²⁰

4.7.3.1 Duty of the State

Wealth of case law indicates the Article 3 of the Constitution of the Islamic Republic of Pakistan, 1973, casts duty on the State to eliminate all forms of exploitation.⁴²¹ Along with the Article 19, Article 3 of the Constitution of the Islamic Republic of Pakistan, 1973, also provides State with the authority to impose regulatory strategy by law in relation to Media. Apex Court had once observed that "State being guardian of its citizens was bound to implement the

⁴¹⁷ Media Commission, *Part- Two of the Report by the Media Commission appointed by The Supreme Court of Pakistan on 15th January, 2013*, 147. Found at http://www.supremecourt.gov.pk/web/user_files/File/MediaCommissionReportFinal.pdf (Last accessed June 05, 2015).

⁴¹⁸ *Ibid.*, 150.

⁴¹⁹ Hamid Raza, "Policy and PEMRA: Comparisons with UK and USA," Criterion Quarterly 7, no. 4 (2015). Found at <http://www.criterion-quarterly.com/media-policy-and-pemra-comparisons-with-uk-and-usaby/> (Last accessed June 09, 2015). Authoritarian theory encourages the involvement of the authorities to control the media. Communication Theory. "Authoritarian Theory" Found at <http://communicationtheory.org/authoritarian-theory/> (Last accessed December 05, 2014). Also, Jay Black and Chris Roberts, *Doing ethics in media: Theories and Practical Applications* (New York: Routledge, 2011), 72. Found at https://books.google.com.pk/books/about/Doing_Ethics_in_Media.html?id=LggbIPeliX4C&redir_esc=y (Last accessed August 13, 2014).

⁴²⁰ Media Commission, 154.

⁴²¹ Article 3 of The Constitution of Islamic Republic of Pakistan, 1973, reads "State shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability, to each according to his work". The Constitution of the Islamic Republic of Pakistan, 1973, Article 3. Found at www.pakistani.org/pakistan/constitution/ (Last accessed June 30, 2014).

constitutional provisions in letter and spirit particularly the fundamental rights, which were guaranteed by the constitution".⁴²²

In other words, when there is exploitation of citizens on wider scale then state can come into action. As was held by Indian Supreme Court in precedent case of *The Secretary, Ministry of Information & Broadcasting versus Cricket Association of Bengal & Another*:

...The State is, under the Constitution, not only under an obligation to respect this fundamental right of [speech/expression of] the citizens, but equally under an obligation to ensure conditions under which this right can be meaningfully and effectively be enjoyed by one and all... One man's right to speak ends where the other man's right to speak begins. Indeed, it may be the duty of the State to ensure that this right is available to all in equal measure and that it is not hijacked by a few to the detriment of the rest...⁴²³

Barak defined a group of rights known as "positive rights" entails the duty on state to protect those rights.⁴²⁴ According to Barak, it implies that "a state must exercise duty under the existing framework of constitutional rights; [i.e.,] the duty to adopt reasonable legal measures, within the existing means, to advance the fulfillment of several social and economic rights".⁴²⁵ Barak further illustrates his view by giving an example of freedom of expression. He maintains that objective value of freedom of expression imposes on the state not only the duty not to limit that freedom but also the duty to actively protect it.⁴²⁶ In the same way Government of Pakistan by taking necessary steps can come forward to prevent the exploitation of right of information by News Media.

⁴²² *Mst Rohaifa and another versus Federation of Pakistan*, PLD 2014 SC 174 at page 178.

⁴²³ *Secretary, Ministry of Information & Broadcasting, Government of India and others versus Cricket Association of Bengal and others*, (1995) 2 SCC 161 at page 270.

⁴²⁴ Aharon Barak, *Proportionality: Constitutional Rights and their Limitations*, 422-423.

⁴²⁵ *Ibid.*

⁴²⁶ *Ibid.*, 427.

4.7.4 LEGISLATIVE SET UP IN NEED OF OVERHAUL

Media studies have shown changes in Media industry owing to advent of web and also the interlinking of various forms of Media. Media Commission recommends that media related laws are in an urgent need of update. 'Media Laws Review Task Force' has been suggested to accomplish the task of updating present legislative framework existing for Media regulation. Force would comprise of Media specialists and would conduct a comprehensive review of all media laws, rules, regulations and codes in new changing scenarios.⁴²⁷

4.7.5 IMPERATIVENESS OF CODE OF CONDUCT/ ETHICS

Supreme Court of Pakistan had stressed on the need for a code of conduct for media. Apex court while forming the commission had observed that there should be a code of ethics to prohibit irresponsible/reckless reporting neither in newspapers nor on Television.⁴²⁸ Devising a unanimous code of conduct has been farfetched dream. To date, the mainstream media have not yet developed a self-regulation code and the government's media regulatory authority is primarily concerned with licensing.

Adnan Rehmat has remarked that Codes of ethics for media already exist.⁴²⁹ The matter confronted is that each house has its own code of conduct but house fails to compulsorily implement it.⁴³⁰ Author opines that Journalists Unions should have a single, common, comprehensive national code of ethics instead of several owned by each house. This code itself

⁴²⁷ Media Commission, *Part- Two of the Report by the Media Commission appointed by The Supreme Court of Pakistan on 15th January, 2013, 25-26.* Found at <http://www.supremecourt.gov.pk/web/user_files/File/MediaCommissionReportFinal.pdf> (Last accessed June 05, 2015).

⁴²⁸ *Hamid Mir and another versus Federation of Pakistan*, PLD 2013 SC 244.

⁴²⁹ Adnan Rehmat, *Ethics of Live Media Coverage in Pakistan*. Found at <<http://www.fnpk.org/ethics-of-live-media-coverage-in-pakistan>> (Last accessed June 19, 2014).

⁴³⁰ *Ibid.*

should have mechanisms for enforcement and accountability preferable a self-regulatory body.⁴³¹

On question of devising a code of conduct, Media Commission stresses on need of consultation for the purpose within Media sector and civil society and with the relevant administrative departments.⁴³² Commission suggests that even where Codes of ethics have been drafted or circulated in the past three years as in the cases of PEMRA Code of Ethics, 2009, (placed at Appendix-A) etc. a fresh start on each aspect of content self-regulation would help reaching at effective mechanisms.⁴³³ All stake holders should be on board. Media Commission has opined that if there has to be self-regulatory scheme then the funding for self-regulatory mechanisms should be from within the print media and the electronic media rather than the state.⁴³⁴ This will ensure the independence of any media regulatory set-up.

Syed Kamran Hashmi in his column, *The Rise of Tele-evangelism*,⁴³⁵ writes that 'independence' from any moral code, ethical values or professional is the major reason of irregularities in Media. A code of conduct by government is in pipeline. These days Supreme Court is hearing famous case of *Hamid Mir and another versus Federation of Pakistan and others*⁴³⁶ relating to evolve a code of conduct for media in light of recommendations of Media Commission discussed in great detail in preceding pages.

In the light of Media Commission's recommendations, National Assembly's Standing Committee on Information, Broadcasting and National Heritage is in process of bringing changes to existing laws and regulations on broadcast media. Committee holds meetings on and off and also came up with certain necessary recommendations in relation to reinvigorating the Media of

⁴³¹ *Ibid.*

⁴³² Terms of Reference No. E related to devising code of ethics for media. Media Commission, 26.

⁴³³ *Ibid.*

⁴³⁴ *Ibid.*

⁴³⁵ Syed Kamran Hashmi, "The Rise of Tele-evangelism", Pakistan Link, September 7, 2012. Available at <<http://pakistanlink.org/Opinion/2012/Sep12/07/05.HTM>> (Last accessed November 11, 2012).

⁴³⁶ Reported as PLD 2013 SC 244.

the Country in particular the broadcast media.⁴³⁷ However, the representatives shared a number of reservations and concerns about some of the recommendations.⁴³⁸

4.8. CONCLUSION

All it takes for News Media to regain the trust of public is to present themselves for on the board accountability. In the observations of Indian Court, it is the right of people to be kept informed which is important.⁴³⁹ It is high time that News Media must reject sensation, respect privacy, correct error and live up to its social responsibility of informing people. To quote Verghese,

Media has a role halfway between university and government. It must be watchdog and critic, criticism being positive and constructive. It could be a catalyst in the process of social and economic transformation, but only if it goes down to the people and to the grassroots of social and economic action through development journalism. News does not lurk so much in the corridors of power as in factory and field, school and laboratory. Poverty and social injustice also constitute news and need to get on page one, not because somebody or other makes a speech but because people matter.⁴⁴⁰

⁴³⁷ Recommendations of the committee are as follows: i. restrict the broadcast of any “direct and quoted statements, confessions, threats of violence from members of proscribed organizations”; ii. restrict the broadcast of any “information about any threat of violence issued by any person suspected of being involved in any of the Scheduled Offences”; iii. restrict broadcasts “that includes scenes of blood, body parts or dead bodies or scenes which show lack of respect to the victims and their families”; iv. limiting the sensationalism of violence and brutalities and a range of other ideas about how to restrict and constrain the room for violent extremism. “NA body proposes changes in broadcast, social media laws,” *The News*, December 31, 2014. <<http://www.thenews.com.pk/Todays-News-13-34996-NA-body-proposes-changes-in-broadcast-social-media-laws>> (Last accessed January 30, 2015).

⁴³⁸ *Ibid.*

⁴³⁹ *Surya Prakash Khatri versus Madhu Trehan*, 2001 CriLJ 3476 = 2001 (59) DRJ 298 before Delhi High Court. Found at <<http://indiankanoon.org/doc/734756/>> (Last accessed April 06, 2015).

⁴⁴⁰ B. G. Verghese, “The Media in a Free Society: Proposals for Restructuring,” *Economic and Political Weekly*, 12, No. 18 (Apr. 30, 1977): 739. Found at <<http://www.jstor.org/stable/4365545>> (Last accessed April 25, 2015).

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Appendix-A

Schedule-A [see rules 2(l)(f) and 15(1)]

CODE OF CONDUCT FOR MEDIA BROADCASTERS OR CABLE TV OPERATORS

Programmes:-

- (1) No programme shall be aired which-
 - (a) passes derogatory remarks about any religion or sect or community or uses visuals or words contemptuous of religious sects and ethnic groups or which promotes communal and sectarian attitudes or disharmony;
 - (b) contains anything pornographic, obscene or indecent or is likely to deprave, corrupt or injure the public morality;
 - (c) contains an abusive comment that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race or caste, national, ethnic or linguistic origin, colour or religion or sect, sex, sexual orientation, age or mental or physical disability;
 - (d) contains anything defamatory or knowingly false;
 - (e) is likely to encourage and incite violence or contains anything against maintenance of law and order or which promotes anti-national or anti-state attitudes;
 - (f) contains anything amounting to contempt of court;
 - (g) contains aspersions against the Judiciary and integrity of the Armed Forces of Pakistan;
 - (h) maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country;
 - (i) is against basic cultural values, morality and good manners;

- (j) brings into contempt Pakistan or its people or tends to undermine its integrity or solidarity as an independent and sovereign country;
- (k) promotes, aids or abets any offence which is cognizable under the applicable laws;
- (l) denigrates men or women through the depiction in any manner of the figure, in such a way as to have the effect of being indecent or derogatory;
- (m) denigrates children;
- (n) anything which tends to glorify crime or criminals;
- (o) contains material which may be detrimental to relations of Pakistan with other countries; or
- (p) contains material which is against ideology of Pakistan or Islamic values.

(2) Particular care should be taken to ensure that programmes meant for children do not contain objectionable language or are disrespectful to their parents or elders.

(3) Programmes must not be directed against the sanctity of home, family and marital harmony.

(4) While reporting the proceedings of the Parliament or the Provincial Assemblies, such portion of the proceedings as the Chairman or the Speaker may have ordered to be expunged, shall not be broadcast or distributed and every effort shall be made to release a fair account of the proceedings of the Parliament or the Provincial Assemblies.

Advertisements:-

- (1) Advertisements aired or distributed by a broadcast or cable TV station shall be designed in such a manner that it conforms to the laws of the country and is not offensive to morality, decency and religious sects of the people of Pakistan.
- (2) No advertisement shall be permitted which-
 - (a) promotes or supports sedition, anarchy or violence in country;

(b) is against any provisions of the Constitution of Pakistan or any other law for the time being in force;

(c) tends to incite people to crime, cause disorder or violence or breach of law or glorifies violence or obscenity in any way;

(d) glorifies adultery, lustful passions or alcoholic drinks or the non-Islamic values;

(e) distorts historical facts, traditions of Pakistan or the person or personality of a national leader or a state dignitary;

(f) fans racial, sectarian, parochial, regional or class hatred;

(g) promotes social inequality, militates against concepts of human dignity and dignity of labour.

(h) is directed against sanctity or home, family and marriage;

(i) is wholly or mainly of a religious or political nature; contains references that are likely to lead the public to infer that the product advertised or any of its ingredients has some special property or quality which is incapable of being established;

(k) contains indecent, vulgar, or offensive themes or treatment; or

(l) contains material which is repugnant to ideology of Pakistan or Islamic values.

(3) The goods or services advertised shall not suffer from any defects which are harmful to human health. Misleading claims about the goods shall not be made.

(4) No advertisement which is likely to be seen by children in large numbers should urge children directly to purchase goods of a particular brand or ask their parents to do so.

(5) All advertisements must be clearly distinguishable as such and be separate from the programmes and should not in any manner take the form of news or documentary.