

PRESS RELEASE
IHC REFUSES TO ACT AS MEDIA REGULATOR

“Karachi: Thursday June 15, 2017: Today, the Honourable Islamabad High Court, in compliance with the Honourable Supreme Court of Pakistan’s order dated 31st May 2017 passed in the Pakistan Broadcasters Association (PBA) petition, passed final order in Writ Petition No. 4098/2013, after hearing all the parties. The Petitioner had prayed to the Court to issue directions for censoring programmes telecast on channels.

The Pakistan Broadcasters Association (PBA), represented through Barrister Syed Ali Zafar, presented its case before the Honourable Islamabad High Court as to whether or not the High Court has jurisdiction to act as a regulator. Barrister Zafar contended that the Petitioner is trying to impose his own notion of what is decency and asking the Court to censor programmes broadcast on TV channels, particularly dramas, morning shows and advertisements which would amount to a violation of Articles 19 and 19A of the Constitution.

He submitted that entertainment is not only important to expose social evils but is otherwise also necessary and is the most effective tool to develop tolerance, reduce extremism, promote culture and keep the citizens happy and contended. Earlier Justice Siddiqui of the IHC had passed various interim orders constituting committees to monitor the programmes and in compliance, PEMRA had issued Guidelines which, according to Barrister Zafar, were contrary to the law. Zafar argued that the Pakistan Electronic Media Regulatory Authority (PEMRA) is the sole regulator of broadcast media content, and that the High Court cannot act as a regulator in this regard. Further, Barrister Zafar submitted that the matter of what is decent or indecent is not an issue requiring determination by the Court. He argued, in fact, that what is decent or indecent is to be determined on a case-by-case basis by the regulator, i.e. PEMRA. Moreover, Barrister Zafar clarified that even as sole regulator

of broadcast media content, PEMRA is only authorized to function within the parameters of the PEMRA Ordinance 2002, rules made thereunder and the Code of Conduct 2015.

The Honourable Islamabad High Court directed the Petitioner, Advocate Muhammad Waqas Malik, to submit before the Court as to what is the concept of decency. The learned Single Judge stated that what is decent or indecent varies from individual to individual, thereby, rendering it a subjective concept. The Honourable Court further remarked that the Petitioner cannot use the High Court as a means to enforce its own personal standards and interpretations of decency. Further, the Court observed that it does not have the jurisdiction to act as a regulator and that this is solely PEMRA's domain.

Barrister Zafar pointed out that it was only during the time of Zia-ul-Haq, under dictatorial rule, that the state media was controlled, and entertainment could only conform to certain fixed norms and standards of a particular mindset. Such control in a democratic set up, where fundamental rights are in operation, cannot be allowed.

The Honourable Islamabad High Court after hearing the parties directed that all previous interim orders passed in the writ petition, and any directives issued by PEMRA in compliance with such interim orders, are no longer operational. The Honourable Court remarked that notions of decency maintained by individuals must be respected and that it is not possible for the Court to pass orders defining what is or is not obscene in this regard. Therefore, the Honourable Islamabad High Court set aside all interim orders passed in the writ petition, stating that PEMRA must carry out its duties in accordance with the PEMRA Ordinance 2002, rules made thereunder and the Code of Conduct 2015. The Court clarified that PEMRA must function within the four corners of the law and the Code of Conduct 2015, which has been notified by the Federal Government pursuant to proceedings before the Supreme Court.

Recently, the Ministry of Information held a meeting with the PBA in which it has been clearly established that any amendments in and to the Code of Conduct 2015 shall be made solely by consensus among all stakeholders, as mandated by the Honourable Supreme Court of Pakistan".

Sincerely for,
Pakistan Broadcasters Association

Muhammad Ali Butt
Executive Director