

The need for free and fair treatment by media during elections

Elections have the power to shape the country's political future. If on a normal day, one of the media's key roles is to provide information that is accurate, sufficient and timely to enable people to make good decisions about their lives, the need for media to play this role effectively is more acute during the (intense) campaign period leading to the General Elections.

It is vital that elections not only be fair and equitable, but that they be seen to be fair and equitable. They are the basis for the ruling parties' legitimacy, without which their ability to govern is severely weakened. As Professor Shad Salim Faruqi remarked on the importance of appearing representative "What is at stake is democracy's credibility itself."

The media's ability to influence the electorate is well-established. The ability of the media to set the agenda, to hold candidates to scrutiny and to ensure a mature, issues-based debate is uncontroversial. If Malaysia aims to have a credible democracy, able to withstand both internal and external scrutiny, media reform is essential.

For elections to be not only genuinely democratic but also be seen to be a genuinely democratic process, free and fair media coverage is essential for these reasons and more:

1. It enhances confidence in the electoral results, indicating that election outcomes capture the aspirations of the electorate;
2. It recognizes the right of voters to receive accurate and sufficient information upon which to make a choice among electoral contestants;
3. It addresses the right of electoral competitors to express their messages in a campaign to win the support of the electorate and for their views to be represented accurately; and
4. It recognizes the right of the media to seek and impart information.

The Legal Framework

Despite the crucial nature of fair coverage during the General Elections, Malaysian electoral laws are silent when it comes to recognizing that. In order to ensure free and fair media coverage of elections in an ongoing and systematic fashion, substantial legislative change is needed, including an overhaul of regulations governing political party ownership of the media. The changes are essential to address the high stakes that are involved – both in terms of influence and impact on the election outcome, as well as the shaping of the country's political future.

The role and powers of the Election Commission (EC) of Malaysia are outlined in the Federal Constitution under Articles 113 and 114. Of particular interest here is Art. 113 (5):

"So far as may be necessary for the purposes of its functions under this Article the Election Commission may make rules, but any such rules shall have effect subject to the provisions of federal law."

General areas of reform

In order to ensure free and fair elections, the EC could promulgate rules that apply during an election period, binding the media to provide fair coverage to all political parties and independent candidates. The rules should be observed by media not only in terms of content (eg news, editorial, features, etc), but also advertising material.

Fair access in **editorial content** addresses the need for candidates and political parties equal, or at least, fair access to media coverage to their campaign to enable candidates to explain their election manifesto and share with voters their hopes for Malaysia's future. Most relevant to Malaysian media is to ensure the right of reply for all candidates, an issue that is most significant during the intensive campaign period. This ensures that media will not demonise any particular candidate, and gives them the space to answer queries/issues that are directly related to them that have been reported on in the press.

Fair access in **political advertisements** ensures all electoral actors, whether candidates, political parties or political coalitions, are able to advertise in media and that media cannot refuse political advertisements. However, this access will also have to take into consideration adherence to advertising ethics and the need to curb the influence of money, which will favour coalitions/parties/candidates who have unlimited monetary resources at their disposal. Limitations can be imposed on the amount spent by each candidate/party/coalition on advertising, so the EC can play a role in ensuring a level playing field in the elections.

Precedent

The Election Commission (EC) or its equivalent in many Commonwealth countries, as well as other countries in Asia, plays a proactive role in terms of ensuring fair media coverage. Examples include:

Australia

The Election Commission has a legal role in ensuring truth in political advertisements, which includes, for example, ensuring that no anonymous letters to the editor are published during an election period, regulating 'truth in political advertising', and helping to ensure balanced media content. It is complemented in these roles by the Australian Communications and Media Authority (ACMA), which makes balanced electoral coverage a condition of all broadcasting licenses.

India

The Indian EC involves itself in a range of ways to ensure that there is no bias in media coverage. For example, in 2004, it censured a newspaper for unfair 'mudslinging' editorials, it has issued directives on the use of state-owned media during the campaign period and even monitored the use of personal attacks on candidates. The latter would help to ensure that elections are issue-based rather than personality-based.

South Africa

Section 57 (4) of the Elections Commission Act requires the equitable treatment of all political parties. This is interpreted to mean fair treatment over a series of programmes, not within a programme (similar to the requirements in Australia). The IEC has published a background briefing that states that its role in regard to the media includes:

- regulating access to broadcast media – equal access
- regulating radio & television advertising – minimising the influence of money
- monitoring media bias & intervening to stop it – retrospective reprimands useless
- monitoring utterances in unmediated communication & taking steps to stop them
- maintaining a prominent media profile – regular briefings etc
- ensuring the media covers the IEC accurately
- educating the media about electoral procedures & processes to influence quality of reporting & analysis.

Taiwan

Broadcast of political debates is prescribed by the Central Election Commission at various levels, eg provincial governors and municipal mayors and designated. The television or broadcasting period shall not be shorter than 1 hour each time, and the designated television station may not refuse the designation.

Republic of Korea

Newspaper advertisements are only allowed in the election of President, proportional representative National Assembly members, and Si/Do governors. Ads can run from the beginning of the campaigning period to 2 days before Election Day. Advertisements about political fund-raising are also possible but limited to the presidential election.

Interviews or debates hosted by media such as television and radio broadcasting companies are allowed for all levels of elections. In the Presidential election and election for the proportional representative National Assembly members, the Central Election Debate Broadcast Committee acts as supervisor. The Central Election Debate Broadcast Committee holds a policy debate not less than once in a month in order to make it possible for all political parties to manifest their platform. An interview or debate must be held 3 or more times in the presidential election, and twice or more times in the election for the proportional representative National Assembly members. Interviews or debates organised by unions, alumni association, organisations etc can be advertised on television, radio or Internet TV.

Interim steps towards fair media coverage

The EC needs to start working immediately to ensure fair coverage in the next elections, whether State or Federal. As noted by several authors and commentators, it is important to ensure a culture of integrity and fairness among journalists as a precursor to ensuring fair coverage. This culture is

presently lacking in Malaysia, and the credibility of media – traditional media in particular, whether print, broadcast or state-funded, have taken a beating. To help inculcate this culture, training is vital, necessary but not sufficient¹.

Step One

Working with local and international groups to prepare and implement a training programme for all journalists who will be covering election issues. The cost of the trainings should be borne by the EC, and should be open to journalists from both online and traditional media.

Step Two

The EC needs to draw up guidelines on media coverage during elections. These should be published as election rules, under Article 113 (5) of the Constitution.

These guidelines need to cover advertising and editorial, and should be drawn up in consultation with civil society and journalist groups. The inclusion into the election rules should ensure that offences would be committed by media companies, rather than by individual journalists. Especially given the current environment, criminalising biased coverage is likely to result in selective prosecution, and work against the spirit of these recommendations.

Step Three

It is impossible to redress the imbalance of usual media coverage during a short campaign period. To ensure that media coverage does not unfairly bias the elections, there must be a minimum campaign period of six weeks.

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¹ In the longer-run, significant legislative and industry reform is needed. This is not possible in the three-month time period this paper is supposing.