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Image courtesy srilankabrief.org

Does the Sri Lankan media exploit parliamentary candidates during elections?

The pricing data of media institutions reveals that the media discriminates against the democratic process by charging higher rates for political ads than commercial ads, during election periods. This *Insight* quantifies the discriminatory pricing and analyses the implications, and highlights the gaps in media regulation that allow for such pricing practices.

As Sri Lanka heads towards the 2020 General Election, political advertising and promotion in the media is particularly critical for both the candidates and the voters. Covid-19 related campaigning restrictions adds to the need, for parliamentary candidates and voters, to connect and be informed through media.

The data analysed in this *Insight* suggests that in the democratic process of communicating with the voter, candidates running for parliament are exploited and discriminated against by the Sri Lankan media.

Discrimination against parliamentary candidates

The present *Insight* is based on an analysis of rate cards that are distributed by media stations to would-be advertisers and their agents. The pricing practice of the media appears to be similar to Sri Lankan hotels: where there is one room rate for foreigners and another room rate for locals – for the same rooms at the same time. It turns out that media institutions in Sri Lanka also have one rate (with a discriminatory mark-up) for advertise-

1.5x
 50 PERCENT

Discriminatory price increase for NEWSPAPER political advertisements

2.7x
 170 PERCENT

Discriminatory price increase for TELEVISION political advertisements

2.1x
 110 PERCENT

Discriminatory price increase for RADIO political advertisements

ments of parliamentary candidates and political parties, and another (normal) rate for all other types of advertisements. Both these rate cards are applied in parallel during election periods.

Exhibit 1 shows the differences in these two rates for a selected set of media stations of which the data was accessible. The data available for a set of newspapers shows that the discriminatory mark-up for the advertisements of parliamentary candidates could be as high as 50% (i.e. 1.5 times the normal price). For the TV channels where the data was accessible, the discriminatory mark-up went up to 170% (i.e. 2.7 times the normal price). For the radio channels, there is data showing the discriminatory mark-up going up to 110% (i.e. 2.1 times the normal price).

This discrimination against parliamentary candidates, by the Sri Lankan media is not a practice that has commenced with the 2020 General Election. Verité Research has previously shared data and analysis of the same type of discrimination being practiced in the 2015 General Election as well. Data on rate cards and pricing practices of the media is limited. A fuller analysis would be possible if such data were more publicly and openly accessible.

This analysis suggests that charging higher rates for ads by parliamentary candidates is an exploitative measure rather than one driven by economic/business necessity.

Democratic and economic logic supports the reverse

The democratic process requires candidates and political parties to campaign effectively and meaningfully disseminate information about their qualifications, their policies, and their ballot numbers. This requires access to media – which is expensive. Therefore, the needs of a democratic society are better served if the discrimination was in the opposite direction- with parliamentary candidates receiving subsidised rates, instead of penal rates, for their ads in the media.

There is also an economic and egalitarian case for providing lower rates for political advertising, instead of the higher rates being charged. It is the same economic case that leads intercity buses to take-in additional "bonus"

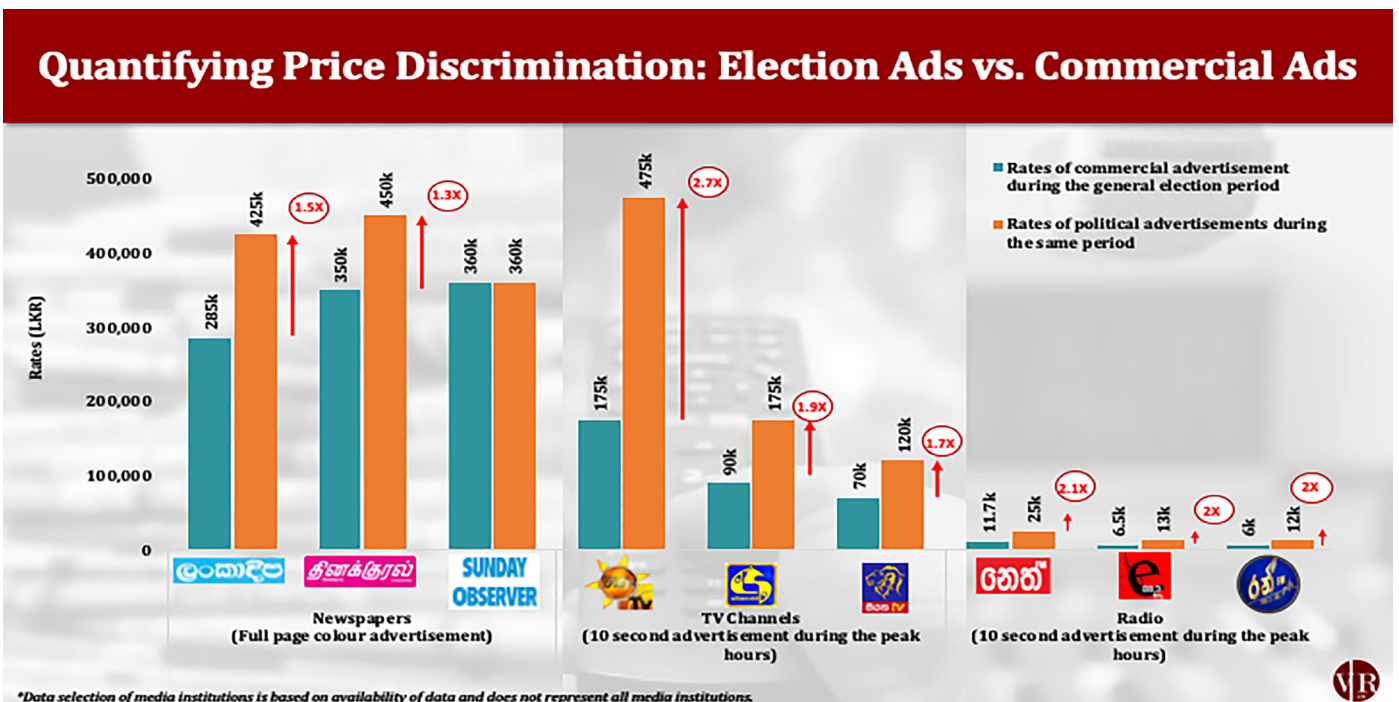
passengers going shorter distances at reduced rates. The cost infrastructure of media is met by the regular flow of commercial advertising – which is therefore priced to ensure, at least, full cost recovery.

Elections occur infrequently and the excess demand for political ads during election periods does not come with a concomitant increase in costs. Therefore, even by charging the normal rates, media stations would make higher overall profits from the extra demand for placing ads during elections. Consequently, even offering a reduced rate for these "bonus" political ads would still enable media institutions to maintain their normal profitability. This analysis suggests that charging higher rates for ads by parliamentary candidates is an exploitative measure rather than one driven by economic/business necessity.

The media is not regulated in favour of democracy

Broadcast frequencies/airwaves which are used by the media are regarded as public property. It is a principle in law that all public property must be held and used in trust for the benefit of the general public, regardless of whether the property is held/used by State or private institutions. Accordingly, any media station that enjoys the privilege

Exhibit 1: Graphic Quantification of Price Discrimination in Advertisements by the Sri Lankan Media



of using public frequencies/airwaves are 'subject to a correspondingly greater obligation to be sensitive to the rights and interests of the public'. This principle is recognised in Article 28 of the Constitution which states that all persons (individuals and corporate bodies) have a "fundamental duty" to uphold the Constitution, respect the rights and freedoms of others, and to protect and preserve public property. Therefore, a further obligation towards the general public is cast on private media stations by Article 28.

Since these ads are one of the most common methods used by parliamentary candidates to communicate with voters, the exploitative pricing practice could be undermining the legally protected right of both voters and politicians 'to participate in public affairs', as set out in the International Covenant on Civil and Political Rights Act No.56 of 2007.

Despite these obligations and duties cast on media stations, there is no specific law/regulation enacted in Sri Lanka which governs the pricing and enforces transparency of political ads during election periods. Consequently, democratic interests are vulnerable to being flouted, instead of being supported, by the media.

The interests of democracy are flouted by discriminatory pricing

Based on the present analysis, two areas emerge in which the interests of democracy can be flouted. Firstly, as shown in Exhibit 1, the democratic process is openly exploited by the imposition of a higher price, on the category of political communication/advertising during the election period.

Secondly, under the current framework, media stations can engage in another level of discrimination as well. Any media station can, without disclosure and at its discretion, offer discounts on these exploitative rates to selected candidates – thus providing them an unfair advantage over candidates that don't receive the same discounts.

A critical gap in these guidelines is that they do not require disclosure of rates, discounts and the resulting advertising revenue by media institutions from specific candidates and political parties during election periods.

Therefore, in addition to the practice of category level discrimination between political ads and other types of ads, the media can also engage in candidate level discrimination between the parliamentary candidates who are placing the ads.

That means certain parliamentary candidates can face not only discriminatory barriers to their ads in relation to other types of ads, but may also face price discrimination in relation to their fellow competitors in the election – undermining their constitutional right to equal treatment and non-discrimination amongst competing candidates as well.

The Election Commission and gaps in media regulation

Through the 19th Amendment to the Constitution, the Election Commission of Sri Lanka ('ECSL') is authorised to issue guidelines to 'any broadcasting or telecasting operator or any proprietor or publisher of a newspaper... to ensure a free and fair election'. On 3rd June 2020, the ECSL published guidelines which are required to be followed by all media institutions in their coverage during election periods. These guidelines state, among other things, that:

"All telecasting, broadcasting and print media shall be neutral and impartial in their reporting of matters relating to an election, and shall not act in a manner which discriminates against any contesting political party, independent group or candidate or

confers a special benefit to any such party, group or candidate, in allocating airtime on radio or television and allotting space in the newspapers for such political party, independent group or candidate."

These guidelines do not address the category level discrimination highlighted by the data. They do, however, address the candidate level discrimination that is facilitated by the category level discrimination; as they prohibit conferring of special benefits to candidates or parties in the allocation of airtime or newsprint space by the media.

Guidelines requiring disclosure can be a first step solution

Although the ECSL issues guidelines to promote ethical media practices, the lack of enforcement mechanisms is a common theme of the guidelines, rendering them rather inconsequential. Even the guidelines for the 2019 Presidential Election, which addressed candidate level discrimination, lacked a mechanism for enforcement. Furthermore, despite the far-reaching consequences of such discrimination, the ECSL also has insufficient power to take legal action against private media institutions. Thus, private media institutions have additional space to flout these guidelines.

Apart from the difficulty of enforcement, a critical gap in these guidelines is that they do not require disclosure of rates, discounts and the resulting advertising revenue by media institutions from specific candidates and political parties during election periods. Due to concerns about the abuse of advertising space, international social media platforms (such as Facebook) now make such data available, while mainstream media in Sri Lanka maintains opacity, which is supported by the lack of guidelines and regulations.

This *Insight* shows how the lack of regulation in favour of democracy has allowed the Sri Lankan media to introduce a price discrimination system during elections, which exploits the democratic interests of the country, and of the parliamentary candidates. ♦