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Loopholes in Malaysia's Anti-Defection Law | FULCRUM

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Demonstrators gather downtown to protest the appointment of Muhyiddin Yassin as the country's new prime minister on 1 March 2020, in Kuala Lumpur, Malaysia. Most Malaysians suspect that party-hopping is fuelled by money politics or personal gain. (Photo by Ore Huiying / Getty Images via AFP)



The Sheraton Move of 2020 saw the collapse of a coalition government. A 2022 anti-hopping law has some utility, but it is ridden with some loopholes.

In parliamentary democracies, the electorate determines which party or

coalition controls parliament and forms the next government.

Regrettably, the practice of “party-hopping”, “floor crossing” or “defection” can subvert this democratic right. In 2022, Malaysia enacted a new law to restrict party-hopping. This is useful, but there are some loopholes.

Party-hopping involves election candidates, representing parties or platforms, switching camps to other parties or coalitions after receiving the mandate from the electors. Most Malaysians suspect that party-hopping is fuelled by money politics or corrupt calculations of personal or political gain. The result often is the fall of an elected government due to its loss of parliamentary majority, plunging the nation into political instability.

In Malaysia's history from 1962 to 2022, defections caused the fall of eight state governments. Two of them — Sabah and Perak — were toppled on multiple occasions. At the federal level, the spectacular “[Sheraton move](#)” in February 2020 caused the downfall of the Mahathir government in 2020. Party-hopping led to a similar fate for the Muhyiddin government in 2021. Since 2018, there have been four changes of prime minister and governments!

For 67 years, there was no anti-hopping law at the federal level. Attempts by the state governments of Kelantan and Sabah to enact such a law were thwarted by the 1992 Supreme Court decision in *Nordin Salleh* that the right to switch parties was part of freedom of association under Article 10. This ruling is now rendered ineffective by the [Constitution \(Amendment\) \(No. 3\) Act of 2022](#). This seeks to penalise party-hopping by stipulating that a defecting MP's seat can be declared vacant but that the MP has the right to contest in the ensuing by-election.

The Speaker of the House of Representatives, acting on a complaint, is charged with the duty to “establish” that a vacancy has arisen on one of

three grounds: (1) the MP was elected on a political party or coalition's ticket but "resigned" from the party or the coalition; (2) he or she was elected as an independent candidate but joined a political party or a coalition; or (3) he or she has "[ceased to be a member of the party or coalition](#)". If the Speaker establishes the vacancy, the Election Commission shall be informed, and a [by-election shall be called within 60 days](#).

Article 49A(3) states that an MP "resigning from" or "ceasing to be a member of" a political party will have the seat vacated but also explicitly mentions "expulsion" from a party as a ground on which a seat does not fall vacant. Perhaps the intention was to prevent abuse by party leaders who, without the provision, could expel an MP from the party to trigger a by-election and replace that MP with another party candidate. However, Article 49A(3) is fatally defective in failing to clearly distinguish between "ceasing to be a member" and being "expelled" from the party. The matter is, therefore, open to interpretation. It is unclear whose interpretation — the courts, aggrieved political parties or the Speaker of the House — should prevail.

Another undesirable feature of the 2022 amendment is that though individual MPs are locked down, parties and coalitions are free to realign at any time. This means that a mid-term Sheraton Move-type realignment that the nation witnessed in 2020 and 2021 is possible.

The lack of a definitive interpretation is pertinent. In a recent case, six Parti Pribumi Bersatu Malaysia members declared support for Prime Minister Anwar Ibrahim while remaining members of the opposition party. On the Speaker's ruling, this did not result in a vacancy. Critics allege that this permits vast flexibility to MPs to be wedded to one party but to bed with another without resigning from their party.

Another relevant issue is that even if the defecting MPs' seats are declared vacant on one of the three constitutional grounds, they are not disqualified from recontesting. If, at the by-election, they are re-elected, they may be rewarded with a cabinet post or some other lucrative government appointment.

Another undesirable feature of the 2022 amendment is that though individual MPs are locked down, parties and coalitions are free to realign at any time. This means that a mid-term Sheraton Move-type realignment that the nation witnessed in 2020 and 2021 is possible. This is unethical and a serious breach of the electoral trust owed to voters.

En bloc political realignments should be allowed after a general election only if there is a "hung parliament" and no party or coalition has a majority in the House of Representatives. To assist the monarch in overcoming political uncertainty, the Constitution should allow an interim period of realignments (perhaps three to four weeks) between an election result and the appointment of a new prime minister by the Yang di-Pertuan Agong (monarch) under Article 43(2). But mid-term, en bloc realignments should be forbidden.

If, due to the disqualification of MPs under Article 48, or their disability or death, the prime minister loses his majority in the House before the next general election, the solution should be as provided in Article 43(4) — the prime minister's resignation, or a request to the monarch for early dissolution. These will trigger the monarch's broad discretion to accept or refuse the request for dissolution or to ask the incumbent to [stay in a caretaker interim capacity till](#) the monarch succeeds in the appointment of a coalition, unity, or minority government.

The law should draw a clear and rational distinction between "ceasing to be a member" (which results in a vacancy) and being "dismissed" (which

does not cause the seat to fall vacant).

The political and financial rewards of defecting must also be taken away, including by preventing a defecting MP, even if re-elected, from holding a cabinet post or any remunerative post in government, [statutory bodies and GLCs](#) during the remaining parliamentary term.

Indeed, Malaysia should emulate India in amending the Constitution to restrict the number of federal ministerial and deputy ministerial posts to no more than 50. Note that almost all state constitutions, including Johor, put a cap on the number of state cabinet posts. The Federal Constitution should emulate State Constitutions on this point.

In the decades ahead, genuine coalition politics will likely be the norm. Sabah and Sarawak's political clout will continue to increase, and their restraining role in the Peninsula's identity politics may become effective. A resurgent monarchy may also help to provide new directions and moderate extremism. In this milieu, better legal controls over political parties are necessary.

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