
**ADVANCING DEMOCRATIC REPRESENTATION,
STABILITY AND ACCOUNTABILITY:
Regulating Change of Party Affiliation
in Malaysia**

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Part A Conceptual Introduction

Party-hopping is the shorthand for change of elected representatives' party affiliation, which may take various forms including resignation from party, expulsion from party, independent lawmakers joining parties, and in Malaysia, parties leaving or expelled from coalition. Balancing readability and precision, we would use 'party-hopping' in general discussion and 'party affiliation change' in legal context.

While the prevalence of party-hopping frustrates and angers many Malaysians, leading to a national consensus for some Anti-Hopping Law (AHL) before the 15th General Election (GE15) at all costs, the issue is complex and deserves some humble and prudent deliberations.

As the saying goes, "the path to Hell is often paved with good intentions", we must look out for unintended or unforeseen consequences of our remedies, so that we would not trade one problem with another. Before considering the constitutional and legal questions in details, we will start with some basic conceptual understandings on party-hopping and AHL.

1 Party-hopping: Causes, Frequency and Consequences

Party-hopping is symptomatic of political changes and potentially instability, the management and treatment of which must take precedence of fixing the symptom. A better understanding of the symptom may be achieved by looking at three dimensions to the phenomenon: causes, frequency and consequences.

In term of causes, it may happen because of political corruption if elected representatives sell their legislative votes for power or material gains. However, it may also happen when an existing party cannot represent new issues or new social forces that emerge in society, that some politicians feel the need to leave the party, whether to become independents, to form a new party or to join another existing party. In many cases, it could be a combination of both.

In term of frequencies, it may happen once in a blue moon involving one or few elected representatives, with little or no impact on the political system. In such situation, even if it happens because of corruption, it may not require a systemic response or remedy. However, it may also happen very frequently that even if the causes are genuine political differences, the political instability can become unbearable for society and economy.

In term of consequences, party-hopping may happen in one direction, from the Opposition to the Government, resulting in concentration of power and weakened check and balance, especially if it is driven by political corruption. It may have a stabilising effect in the short run before power concentration induces corruption, power struggle and political instability. Crossover may also happen in all directions and result in frequent changes of government, regardless if its driver is corruption or genuine political differences.

These two extremes should not blind us from seeing the third possible pattern of party-hopping, steady political realignment that is mainly driven by political differences and likely manifested by splits and merger. Such evolution of the party system can cause short-term disruption but may restore stability in medium or long term.

2 Anti-Hopping Law: Mechanisms and Implications

AHL cannot stop hopping but it seeks to remedy and deter hopping. As party-hopping is a change of representation without voters' express consent, the remedy could be restoring the status quo in party representation or verifying voters' consent. Predetermined by electoral system design, these two different ways to think about remedy leads to three methods and their different implications. (Table 1)

Table 1 Electoral System and Options in Anti-Hopping Mechanism

Method	Examples of Electoral System	Method of Seat Vacation	Method of Replacement	Implications
AHL with party-list	Closed List Proportional Representation (CLPR)	Automatic	Replacement by the next candidate on the same list	Party system is frozen between elections. Voters' consent cannot be verified.
Traditional AHL in FPTP	First-Past-The-Post (FPTP)	Automatic	By-election	Voters' rejection of party-hopping is assumed before by-election. Restoration of status quo may not be guaranteed.
Anti-Hopping Recall	First-Past-The-Post (FPTP)	Voters-initiated	By-election	Voters' rejection of party-hopping needs to be proven before by-election. Restoration of status quo may not be guaranteed.

For countries that employ Closed List Proportional Representation (CLPR), whether in full like South Africa or in part like New Zealand and Taiwan, AHL for the party-list seats takes the form of automatic seat vacation without by-election. Under CLPR, a constituency returns several elected representatives, every party can nominate the same number of candidates on a list with a fixed order of priority and seats are allocated between parties based on their vote shares. When an elected representative hops, his/her seat will be vacated and filled by the next eligible candidate on the same party list. If the remedy sought is restoration of status quo before party-hopping, only this method can guarantee such outcome. As the underlying logic is to preserve inter-party proportionality between elections, the other remedy – verifying voters' support of party-hopping – is simply impossible. This means, if new cleavages or issues emerge in politics, voters cannot respond to them but have to wait for the next general election. However, because status quo is unchangeable, party-hopping can be effectively deterred.

The opposite is true for the two other methods under First-Past-The-Post (FPTP), where by-election follows after seat vacation. Through by-elections, voters' consent or dissent to party-hopping gets to be verified. Exactly because of that, the other remedy – the restoration of status quo – cannot be guaranteed. This is true even if party-hopping is driven by political corruption, as voters may personally benefit from the trickle-down of political corruption. In the 2020 Sabah State Election, out of 17 party hoppers who recontested in their original constituencies, 11 succeeded their seats. For their voters, the main appeal might be their personality, communal ties, and/or patronage capacity, and jumping to a resource-rich government party only enhanced instead of weakening their appeal. (Wong, 2020b)

Hence, if the remedy sought in a FPTP system is the restoration of status quo, the only effective step is to change the electoral system to CLPR accompanied by an AHL. With a FPTP, an AHL – whether traditional or by way of call - cannot rule out corruption unless the political system and political culture undergo real transformation to first eliminate politics of patronage amongst voters. Advocates of AHL must not over-promise voters to cause disillusion later.

For FPTP countries, what is the fundamental difference between Traditional AHL and Anti-Hopping Recall? It boils down to one question: should voters' rejection of party-hopping be assumed (in Traditional AHL) or examined (by recall) before by-election is called?

A preference for the former implies both a belief that voters' choice is for parties and political parties are the rightful holder of voters' trust. In other words, individual lawmakers are more likely to betray voters than their parties do. The greatest advantage is that by-election can happen immediately, without any intermediate process that may consume money and time.

In contrast, recall will take time as it functions as a filter before by-election. Originally not designed specifically to punish party-hoppers, recall needs not to take the form of an election before by-election. In its simplest form, it can be collection of voters' signatures at a reasonable high threshold, as in British Columbia which sets it at 40%. The design proposed in the Private Members' Bill by Datuk Seri Azalina Othman Said, Member of Parliament (MP) of Pengerang, proposes only a petition which must garner 40% or half the last turn out rate of voters signatures within 21 days. It is misinforming to speak off a 'recall election' in this context.

Will recalls cost more than having only by-elections? It depends on the types of constituencies the filter is applied on. In constituencies where voters' rejection of party-hopping is obvious, recalls incur extra costs. In constituencies where voters embrace party-hopping, recalls may save million dollars from unnecessary and evitable by-elections. Between them in the grey area, recalls give

the incumbents a slight advantage because voters' rejection of them needs to be proven, and not assumed, before by-election can take place.

Why should party-hoppers be given the benefit of doubt that voters do not dismiss them until proven otherwise? For Malaysia, three circumstances are worthy of consideration.

First, if a party splits over genuine political difference, a splinter party may enjoy support but lack the machinery to survive many by-elections in one go, and with their main leaders defeated in by-election, the splinter party may be buried before the general election is called. A traditional AHL is therefore obstructive for emergence of new parties, at time when society needs champions for new issues or representation of cleavages. If such a law was in place in Malaysia in 2015, Parti Amanah Negara (Amanah), Parti Bersatu Bumiputera Malaysia (PBBM) and Parti Warisan (Warisan) may not have emerged as new parties in the 2018 election.

Second, the presence of pre-election coalitions complicates the use of a Traditional AHL. A vote can be a mandate for the candidate, the party, or the coalition. When a party leaves its coalition, should the system punish the MPs who stay with their party and hence leave the coalition, or the MPs who leave their party to stay with the coalition? If the former, coalition-hopping cannot be deterred. If the latter, then pre-election coalition becomes parties, parties lose their autonomy and flexibility in renegotiating their position. Vacating seats for coalition-hopping may also replicate the power abuse at the coalition leadership level – dominant parties can expel their allies from coalitions to grab the latter's seats in by-elections. These complications are not hypothetical. In 2020, Bersatu pulled out of Pakatan Harapan (PH) but later six of Bersatu parliamentarians left or were expelled from the party in protest of the Sheraton Move. On whom should the AHL be applied?

Third, expulsion poses a challenge to the design of AHL – if excluded, then AHL may become toothless if traitors can get away from seat vacation by sabotaging from within the party or getting expelled. However, if expulsion is included, then the Traditional AHL allows party leaders to eliminate inter-party rivals by sacking them from the party and forcing them into by-elections. The expelled incumbent may even have to wait for the next general election if by-elections are considered too close to the next general election. In Malaysia, that waiting period may run up to two years and the expelled incumbents may have become irrelevant when the general election is called. Recall ensures that if an expelled lawmaker faces by-election, voters' support for his/her expulsion is preliminarily confirmed.

3 Anti-Hopping Law and Parliamentary Democracy: Logic and Principles

The discontent against party-hopping must also be examined by looking into the role of parties in parliamentary democracy. While the Westminster system is often linked to two-party systems, it has a deep root in recognising autonomy of parliamentarians.

In 1774 before the modern British party system was established, Burke told his constituents in Bristol that he was their independent-minded representative, not their obedient delegate, without any mention of party affiliation:

“Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion ... Parliament is not a congress of ambassadors from different and hostile interests, which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a member of parliament.” (Select Committee on Modernisation of the House of Commons, 2007: 8)

A few days before he resigned as Prime Minister in 1955, Churchill expanded on Burke’s view and placed party after nation and constituency in a speech in Essex:

“The first duty of a member of Parliament is to do what he thinks in his faithful and disinterested judgment is right and necessary for the honour and safety of Great Britain. His second duty is to his constituents, of whom he is the representative but not the delegate. Burke’s famous declaration on this subject is well known. It is only in the third place that his duty to the party organization or programme takes rank. All these three loyalties should be observed, but there is no doubt of the order in which they stand under any healthy manifestation of democracy.” (King-hall, 1954: 302)

The British political class developed the “Collective Cabinet Responsibility” doctrine (Taylor, 2016) to discipline government ministers but they also tolerate ‘backbench revolt’ by other government MPs. A good example is former Labour leader Jeremy Corbyn who voted against his party’s

instructions for 428 times in the 13 years when Labour was last in government, or an average 33 times per year. Corbyn was never sacked or denied candidacy in his constituency. The price he paid was only exclusion from the party's frontbench until his own election as party leader. (Cowley, 2016; Knight, 2016).

That MPs have independence within some confines is a necessary notion to keep single party majority governments in check in the Westminster system. The UK even sets a upper limit of payroll votes – Ministers and others on Government's payroll who are obliged to support Government's motions, bills and policies – to avoid Government's agenda getting bulldozed through in Parliament.

We must not sacrifice Parliament in our eagerness to strengthen political parties. As necessary as the AHL is, it must strengthen MPs and parties at the same time. Restricting parliamentarians' voting freedom in the House, as practiced in India's AHL despite having a FPTP electoral system, must not be emulated. If we want to preserve the inter-party proportionality between elections as New Zealand does, then we must first introduce proportional representation in our election.

Part B Constitutional Amendments and New Legislations

4 Definition of Party Affiliation

Definition of party affiliation in Malaysia requires answering of these three questions:

- (a) Is party affiliation defined by party membership or party symbol used in elections?
- (b) Should party membership and coalition membership be distinguished?
- (c) Is partylessness (being independent lawmakers) a state of party affiliation?

(a) Is party affiliation defined by party membership or party symbol used in elections?

The first question arises because Malaysian parties sometimes nominate candidates from amongst non-members including members of allies, for various reasons. On surface, going by party symbol would resolve the second question by covering coalition membership if coalition symbol is used, but this is exactly why the second question should be addressed on its own and not resolved via the first question.

In essence, party symbol offers a precarious relationship between the holder of party symbol (party leader who signs the nomination letter or watakah) and lawmakers. If the lawmakers are not the party's members, they have no democratic control over the party's leader. Then, allowing the party's leader to control lawmakers is placing parties above Parliament/Legislatures, members of which are supposed to deliberate and vote based on their best judgement. And if one follows Winston Churchill's suggestion, lawmakers' should make their judgement in the order of national interest, constituency interest and party platform. Parliament/Legislatures should not be seen as a contestation of only parties, certainly not before lawmakers are elected entirely on the basis of party.

In practice, candidates from Bersatu, Democratic Action Party (DAP) and Amanah contested in the Peninsula in 2018 under Parti Keadilan Rakyat (PKR)'s symbol because their coalition PH then could not be registered and Bersatu was also deregistered. Should the then PKR president be given the power to determine if and when the lawmakers from these parties have ceased to be affiliated to PKR? If no,

then the AHL is ineffective. If yes, the PKR president would become the de facto leader of these parties.

To prevent these complications, the Elections Act would need to be amended to bar parties from nominating non-members. This merely restricts parties' strategic options and flexibilities. The complication is absolutely unnecessarily if the purpose is merely to solve the second question.

Our suggestion: Party affiliation should be primarily defined by party membership.

(b) Should party membership and coalition membership be distinguished?

Section 2 "Interpretation" of the Societies Act 1966 currently defines political party as

- (a) any society which by any of its objects or rules, regardless whether such object or rule is its principal object or rule, or constitutes merely an object or rule which is ancillary to its principal object or objects or to its principal rule or rules, makes provision for the society to participate, through its candidates, in elections to the Dewan Rakyat, or to a Dewan Undangan Negeri, or to a local authority, or makes provision for it to seek the appointment or election of a person proposed or supported by it to the Dewan Negara; or*
- (b) any society which, notwithstanding anything contained in its objects or rules, carries on any activity or pursues any objective which involves its participation, through its candidates, in elections to the Dewan Rakyat, or to a Dewan Undangan Negeri, or to a local authority, or which involves its seeking the appointment or election of a person proposed or supported by it to the Dewan Negara;*

not distinguishing coalition of parties from parties, and by extension, membership of both.

Currently, Barisan Nasional (BN), Pakatan Harapan (PH), Perikatan Nasional (PN), Gabungan Parti Sarawak (GPS) and Gagasan Rakyat Sabah (GRS) are political parties just as the 20 political parties that join one or more of them.

Not distinguishing coalition and party membership can cause confusion and indeterminateness when an anti-hopping mechanism is put in place. As a test, apply it

to the Sheraton Move, when Bersatu left PH, should Bersatu MPs have their seats vacated because they ceased to be members of PH? Or should they retain their seats because they remain members of Bersatu?

Things can get more complicated when parties join more than one coalition, for example, Bersatu, STAR and SAPP are members of both PN and GRS. If Bersatu pulls out from one of the coalitions, should its MPs lose their seats despite remaining in their party and the other coalition?

While overlapping membership in coalitions may be resolved by defining party affiliation based on party symbol (with its own complications explained above), treating coalition-hopping exactly like party-hopping is fundamentally problematic. It restricts parties' flexibility in coalition politics and may lead to abuse of coalition power. For example, if a party is forced to leave a coalition or expelled from the coalition by other members due to some irreconcilable differences, why should the party be punished by facing by-elections alone?

It would be wiser to define political parties and coalition of political parties distinctively in the Constitution, unlike the Societies Act, so that different remedies may be proposed. To provide for circumstances of parties joining multiple coalitions, coalition membership may be defined by coalition symbol, so that only one coalition exists for a candidate in an election.

Our suggestion: Distinctive definition of political parties and coalition of political parties in Article 160, Federal Constitution

Article 160 should be amended in Clause (2) by inserting the following definitions:

“political party” has the same meaning assigned to it by section 2 of the Societies Act 1966 or by any law relating to registration or regulation of societies established for participation in public office election, other than those consisting of political parties;

“coalition of political parties” means a registered coalition consisting of two or more political parties and contesting an election under the same party symbol;

(c) Is partylessness (being independent lawmakers) a state of party affiliation?

Just like colourlessness is a state of colour, partylessness is also a state of party affiliation. If party-based MPs who leave their parties to become independents have to face by-elections, then it is not consistent to completely exclude independent MPs who join parties from by-elections. However, these two forms of party affiliation change are different in nature and implications, hence different anti-hopping mechanisms may be applied, which we will discuss in the next section.

Our suggestion: Independents joining parties should be included as a form of party affiliation change but different anti-hopping mechanism from that for outright party-hopping may be applied.

5 Definition of Change of Party Affiliation

Change of party affiliation should include the following forms that the Malaysian public wants to see curbed, but they may need to be separated into two categories:

- a. clear-cut circumstance:
 - i. resignation from party, to become independents or to join another party;
- b. nuanced or grey area circumstances:
 - ii. expulsion from party;
 - iii. change of coalition affiliation; and
 - iv. independents joining parties

which require different remedies: automatic vacation of seat for the former and voters-triggered vacation of seat (recall) for the latter. In both cases, the incumbents must be allowed to stand in the by-elections. The detailed mechanism would be explained in the next session.

Meanwhile, party affiliation change must not cover the following:

- v. defiance or deviation from party's line in parliamentary voting.
- vi. dissolution or deregistration of political parties;
- vii. merger with other parties, and resignation due to merger;
- viii. resignation from party to assume the office of Parliamentary Speaker or Deputy Speaker; and

i Resignation from party

If the public wants automatic vacation of seats of party-hoppers to deter party-hopping, then this would fit best for resignation from party – whether to join another party or merely to be an independent lawmaker – because the change of party affiliation is undisputed and voluntary. As most parties prohibit multiple membership, one may cease to be a party member by joining another party, even without the explicit act of resignation. For simplicity, resignation and ceasing to be member (except for other circumstances specified below) are treated in one category here.

Voters can re-elect the incumbents in by-election if they support his/her move. Here, the five years' ban on re-contestation after resignation imposed on MPs by Article 48(6) - and on State Assemblypersons through State Constitution by Section 6(5) of the

Eighth Schedule - must be repealed, so that lawmakers who want to leave their party may voluntarily seek re-election in by-election, without waiting for the AHL to cause a vacancy.

ii Expulsion from party

To impose automatic seat vacation on any lawmaker expelled by his/her own party is akin to give party leaders an enormous power to sack intra-party rivals or dissidents from the party and the House in one go, making this mechanism susceptible to abuse. However, an anti-hopping mechanism would be ineffective if any defector can escape seat vacation by simply remaining in his/her party while acting against the party or by having expelled by the party. To overcome this dilemma, seat vacation should be initiated by voters via recall, to ensure the cause of seat vacation is voters' support for his/her expulsion from the party, not the expulsion itself.

iii Change of coalition affiliation

Likewise, automatic seat vacation can be easily abused by dominant parties in a coalition which move to expel another party to cause by-elections, or may inhibit parties from leaving a coalition even if they have irreconcilable differences with other parties. Leaving this as a trigger for recall would be the best solution. If a party is recalled for leaving or being expelled from a coalition, it is not due to the bullying of other parties, but because voters withdraw their support once the party is no longer part of the coalition.

iv independents joining parties

If an independent candidate changes his/her mind to join a party after winning election, then voters in his/her constituency should have the chance to change their mandate given in a by-election. However, should the by-election happen automatically or be triggered by voters' initiatives via recall?

Is an independent lawmaker joining a party the exact mirror image of a party-nominated lawmaker leaving his/her party to be an independent? We think not. While both would have won votes on their personal appeal, a party-nominated lawmaker is likely to have owed more votes to his/her party symbol than an independent lawmaker owing his/her votes to his/her partyless appeal. Hence, independent MPs leaving

parties should be treated as other nuanced forms of party affiliation change like expulsion and party hopping, subject to recall but not automatic seat vacation.

v defiance of or deviation from party's line in parliamentary voting

India's AHL, possibly the most stringent one in the world, defines so broadly party affiliation change to cover defiance of or deviation from party's line in parliamentary voting, as per Paragraph 2(1)(b) of the Indian Constitution's Tenth Schedule that,

"if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention."

Section 55D(a) of New Zealand's Electoral Act provides a similar ground to vacate seats for an MP who

"has acted in a way that has distorted, and is likely to continue to distort, the proportionality of political party representation in Parliament as determined at the last general election"

and thus

"ceases to be a parliamentary member of the political party for which the Member of Parliament was elected." [Section 55A(2)].

'The proportionality of political party representation in Parliament' is partly measured by how the MPs vote. In 2003, New Zealand's Court of Appeal ruled that Donna Awatere Huata, a party-list MP sacked by the ACT party could retain her seat because she had voted along ACT's party line and not caused a distortion of proportionality. (The verdict was later reversed by the Supreme Court on the ground that her sacking from party did affect ACT's membership in select committees, speaking time and party funding.) (Joseph, 2006: 153-155)

Penalising MPs on their parliamentary voting record – whether covering all voting as in India and New Zealand or governing only key votes like confidence and supply – is turning Westminster parliamentary democracy on its head. It takes away the autonomy

and freedom of expression for parliamentarians, who are elected as representatives and not delegates to rise beyond narrow interests, as Edmund Burke had eloquently argued in 1774 (Select Committee on Modernisation of the House of Commons). In similar vein in 1955, Winston Churchill listed parliamentarians' three duties in the order of national interest, constituents, and party. (King-hall, 1954: 302)

Thus, one cannot see how such an anti-hopping provision may survive another constitutionality challenge in the direction of Nordin Salleh versus DUN Kelantan, except that this would be on "the right to freedom of speech and expression" under Article 10(1)(a) and not "the right to form associations" under Article 10(1)(c).

More pertinently, the Federal Constitution recognises MPs as free agents. This is clear in Article 43(2)(i) which reads,

the Yang di-Pertuan Agong shall first appoint as Perdana Menteri (Prime Minister) to preside over the Cabinet a member of the House of Representatives who in his judgment is likely to command the confidence of the majority of the members of that House.

On matters like confidence and supply, parliamentarians are expected to act independently with no explicit roles for political parties. In fact, the word 'party' appears only once in the Federal Constitution in Article 54(1) where the two-year period to have no by-election is provided for:

... the numerical strength of the party that constitutes a majority of all the members of the House of Representatives is being affected by such vacancy...

If we want to emulate New Zealand, where the political system has since 1996 moved away from the Westminster model by adopting the Mixed Member Proportional (MMP) electoral system, then we must first emulate the goal of its AHL, "*the proportionality of political party representation in Parliament*" and introduce proportionality in our electoral system and parliamentary business before introducing this stringent form of AHL.

vi dissolution or deregistration of political parties;

As found in Article 14A (2) of the Penang State Constitution introduced since 2012, a clause to exclude dissolution or deregistration of political parties is necessary to avoid

punishing MPs for their parties' evolutions such as demise or merger, or potential power abuse by the Registrar of Societies (ROS) to deregister political parties and cause by-elections.

vii resignation from party to assume the office of Parliamentary Speaker or Deputy Speaker

This exclusion clause is necessary to allow parliamentary speaker and deputy speakers to relinquish party ties for non-partisanship and impartiality, without causing by-elections. Such an exclusion clause is found in Article 14A(2)(b) of the Penang State Constitution, but it covers only the Legislative Speaker. We believe deputy speakers should be covered even if non-partisanship has yet to become a standard expectation for them.

Our suggestion: A new Article 52A of the Federal Constitution, with Clauses (1)-(3) to define and regulate change of party affiliation.

We propose for the new Article to be placed immediately after Article 52 "Absence of a member" instead of Article 48 "Disqualification for membership of Parliament" because seat vacation due to party affiliation change does not affect one's qualification to become an MP, not even for a limited period like five years if one is sentenced to minimum a one-year jail term or a fine of RM 2000. Comparatively, while India's AHL uses 'disqualification', the New Zealand one uses only "ceasing to be a parliamentary member". It should be treated as comparable to seat vacation due to MPs' absence without leave from parliamentary sittings for six months.

Change of a member's political party affiliation etc.

52A. (1) *Subject to the provisions of this Article, a member of the House of Representatives shall cease to be a member of that House and his seat shall become vacant immediately if having been elected to the House of Representative as a member of a political party, he resigns or ceases for any reason whatsoever to be a member of, that political party.*

(2) *A member of the House of Representatives shall not cease to be a member of that House pursuant to this Article only by reason of—*

(a) *the dissolution or cancellation of the registration of his political party; or*

(b) his resignation from the membership of his political party upon election as a Speaker or Deputy Speaker.

(3) A member of the House of Representatives may be recalled by the electors of the constituency from which he is elected in accordance with the provision of federal law relating to the recall of members if—

(a) he is expelled from his political party;

(b) having been elected to the House of Representatives otherwise than as a member of political party, he joins a political party;

(c) having been elected to the House of Representatives as a member of a coalition of political parties, his political party ceases for any reason whatsoever to be a member of that coalition; or

(d) having been elected to the House of Representatives as a member of a coalition of political parties, he resigns from his political party due to his party ceasing for any reason whatsoever to be a member of that coalition.

and, if he is recalled successfully, his shall cease to be a member of that House and his seat shall become vacant immediately.

6 Mechanisms of Seat Vacation

6.1 Amendment of Article 10

The Supreme Court's decision on *Dewan Undangan Negeri Kelantan & Anor v Nordin Salleh & Anor [1992]* raises the question whether an AHL can be passed without amending Article 10 of the Federal Constitution. The crux of the decision which reads,

that the direct and inevitable consequences of Article XXX1A of the Kelantan State Constitution which is designed to enforce party discipline does impose a restriction on the exercise by members of the Legislature of their fundamental right of association guaranteed by Article 10(1)(c) of the Federal Constitution and that such restriction is not only protected by Article 10(1)(c) of the Federal Constitution but clearly does not fall within any of the grounds for disqualification specified under s. 6(1) of Part 1 of the Eighth Schedule of the Federal Constitution.

consists of two parts: first, automatic seat vacation over party affiliation change restricts the right of association guaranteed by Article 10(1)(c); and second, states cannot impose such restriction because it is not provided for under Section 6(1) of the Eighth Schedule. These two parts led to the unconstitutionality of Kelantan's Article XXX1A and similar state-level AHLs.

The first part is drawn from the minority opinion in the Indian case of *Mian Bashir Ahmad & Ors. v. the State of Jammu & Kashmir & Ors., [1982]*, over a state-level AHL in Jammu and Kashmir before the national AHL (The Tenth Schedule to the Indian Constitution) was introduced in 1985. The minority opinion held that

[in] testing the validity of State action with regard to fundamental rights, what the Court must consider is whether it directly affects the fundamental rights or its inevitable effect or consequence on the fundamental rights is such that it makes their exercise 'ineffective or illusory'.

The second part has the context of the permitted restriction on right of association under Article 10(2)(c) which reads

Parliament may by law impose...

(c) on the right conferred by paragraph (c) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, public order or morality.

and reserves the power to impose restrictions on freedom of association to Parliament.

Hence, the 1992 verdict will not invalidate an AHL applicable to only Members of Parliament (including Senators), even in the form of a parliamentary act drawing from on the ground of “morality” under Article 10(2)(c). However, it is unjustifiable to have a matter as important as seat vacation over party affiliation change introduced without a constitutional basis, that its introduction and potentially repeal or modification in future can be done without a two-third majority in both houses of the Parliament.

Hence, it makes sense to have a special provision in the Federal Constitution, as the proposed Article 52A above, to explicitly provide for the anti-hopping mechanisms. Automatic seat vacation is straightforward and will not have details that require a parliamentary act. In contrast, voters-initiated seat vacation (recall) has detailed arrangement that needs to be spelled out in either a Constitutional schedule or a parliamentary act. Also notably, because seat vacation in recall is not a direct and inevitable consequence of party affiliation change, but only a consequence of voters expressing their will in response to party affiliation change as a trigger, recall is substantially different from the standard AHL with automatic seat vacation that the 1992 decision set to invalidate.

In conclusion, amendment to the Article 10 is not necessary for an AHL governing parliamentarians. Considering the concern that amendments to Part II “Fundamental Liberties” should be avoided, a States-empowering amendment to the Eighth Schedule is superior to enable State-level AHL with automatic seat vacation. However, if an amendment to Article 10 is still preferred, it must be narrowly worded to avoid any abuse of power, and this may be considered:

(3A) Notwithstanding paragraph (c) of Clause (2) and Clause (3), in the interest of morality, restrictions on the right to form associations, conferred by paragraph (c) of Clause (1), of Members of Parliament and Members of the State Legislative Assemblies relating to the change of their political party affiliation after election may also be imposed by this Constitution and the State Constitutions respectively.

Our suggestion: Amendment to Article 10 of the Federal Constitution is not necessary for a federal-level AHL and can be substituted with a States-empowering amendment to the Eighth Schedule for state-level AHLs with automatic seat vacation.

6.2 Automatic Seat Vacation

Automatic seat vacation is not so automatic in practice, as the vacancy needs to be ascertained by an institution which then conveys it to the Election Commission (EC) which then conducts by-elections. A delay in the process may buy time for the anger over party-hopping to subside, hence to the benefit of the hoppers; or slip into the last two years of the parliamentary term when by-elections cannot be held as per Article 54(1), hence at the expense of the hoppers. A good system design should rule out if not minimise room for such manipulation to selectively produce different outcomes of law.

The main institution to determine that a seat should be vacated due to a change in party affiliation can be the Speaker (India, Penang), the House (Kelantan), the MP or the affected party (New Zealand).

Paragraph 6(1) of the Tenth Schedule of the Constitution of India reads:

(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such

member of the House as the House may elect in this behalf and his decision shall be final.

While the Indian Court has established its competence to review Speakers' decision since 1992, it cannot do anything before decisions are made. Ruling parties could then court defection of opposition lawmakers and protect them from disqualification. (Poddar, 2021) Such political impunity was enjoyed by 20 opposition lawmakers in Andhra Pradesh who defected in 2016. (PTI, 2017) In Telengana, 26 opposition lawmakers who defected in 2014-2016 held their seats until the Assembly was dissolved in 2018, with twelve of them made cabinet ministers. (Veeraraghav, 2018)

In Penang, Article 14A(4) of the State Constitution reads,

The Speaker shall notify the Election Commission upon the occurrence of a vacancy under this Article.

In practice, the Penang State Government treats it as a matter requiring a motion passed by the State Legislative Assembly, similar to the now repealed Article XXXIA(2) of the Kelantan State Constitution which then read,

For the purpose of Clause (1) the Legislative Assembly shall determine whether a seat has become vacant and the determination of the Assembly shall be final and shall not be questioned in any court on any ground whatsoever.

On 7 October 2020, the Penang State Government declared that it would not table a motion in the state legislative assembly to declare vacant the seats of four assemblypersons who left PH, two each from Bersatu and PKR. Citing the spike of Covid-19 cases from the Sabah state elections in September, it said it did not want to have by-elections due to the concerns of public health and safety. (Dermawan, 2020)

Whatever their justification, when the Executive can decide – whether through the Speaker or the House – whether or not to cause a by-election when a crossover happens, making it a matter of political discretion and not a consistent and inevitable consequence of legal operation, the AHL risks becoming a partisan tool to advance government parties' interest instead of affirming parliamentary democracy.

In New Zealand, the Electoral Act provides for a carefully-designed system where the exit of an MP from a party can only be conveyed to the Speaker via a written notice by

the MP (compliant with Section 55B) or the parliamentary leader of the party (compliant with Section 55C). As it covers expulsion, Section 55C then requires the notice to be accompanied by a statement compliant to Section 55D.

The Section 55D statement is a documentation of the expulsion process that must state that

(a) ...the parliamentary leader reasonably believes that the member of Parliament concerned has acted in a way that has distorted, and is likely to continue to distort, the proportionality of political party representation in Parliament as determined at the last general election;

and that the concerned MP has had 21 working days to respond and that the expulsion is agreed by two-third of the party's MPs.

The New Zealand's AHL leaves no room for the Speaker to exercise any discretion to decide or delay on the vacancy of seat. Considering the experiences of India and Malaysia how the AHL can be reduced to a partisan tool at the hand of the Speaker or the Legislature, we suggest that Malaysia emulates the New Zealand model without the complexity of Section 55D if expulsion is to be dealt with by recall. Upon notification by the MP who leaves the party or by the party leader who needs not be an MP that the MP has resigned or ceased to be a member, the Speaker must inform the Election Commission within three working days.

Our suggestion: Clause (4) of the new Article 52A, Federal Constitution

Change of a member's political party affiliation etc.

(4) The Speaker shall notify the Election Commission on the occurrence of a vacancy under Clause (1) within three working days from the date he receives a written notice from a member of the House of Representatives or the leader of his party with evidence that the member has resigned from or ceased to be a member of the party.

6.3 Voters-triggered Seat Vacation (Recall)

For voters-triggered seat vacation, a parliamentary act would be necessary to spell out the operational details of the recall mechanism.

Contrary to the common perception that recall must entail a separate election before the by-election, a recall procedure can take the form of a mere petition with a high threshold, as in the Canadian province of British Columbia which sets the bar at signatures of 40% of registered voters. To save the time taken to verify voters' signatures collected by the petition proponents as in Taiwan, booths can be set up by the Election Commission to collect signatures. To avoid abuse of recall mechanisms to overturn marginal victories or to pursue political vengeance, grounds to trigger recalls can be limited.

In the UK, recall can only be triggered when an MP commits crimes or misbehaves in one of the three scenarios: (a) having been sentenced to imprisonment on whatever grounds; (b) having been convicted for an offence of providing false or misleading information for parliamentary allowance claims; and (c) Suspension from the House of Commons, following a report from the Committee of Standards, for at least 10 sitting days or at least 14 days. Once one of the conditions is met, the Speaker will order the Returning Officer of the MP's constituency to organise collection of voters' signatures for six weeks. If at least 10% of the voters endorses the petition to vacate the MP, then the seat will be vacated, and a by-election will take place.

To deal with the nuanced forms of party affiliation change - expulsion of lawmakers by parties, independent lawmakers joining parties, parties leaving or being expelled from coalitions – a recall procedure can be tailor-made by combining and modifying features from the British Columbian and British models.

This has in fact been done in a Private Member's Bill titled "Regulation of Party-Hopping and Political Accountability Bill 2021" submitted by Datuk Seri Azalina Othman Said, MP of Pengerang to the House of Representatives in November 2021. (see Table 2)

Table 2 Key Features of MP Azalina Othman Said’s Recall Bill

Model	UK	British Columbia, Canada	Malaysia (Azalina’s Bill)
Initiator	Parliamentary Speaker	Voter	Voter
Grounds for recalls	Law breaking, misbehaviour	Unlimited	Party-hopping, law-breaking, absenteeism
Deposit to start recall	No	No	RM 10,000 (forfeited if less than 12.5% voters’ signatures are collected)
% of registered voters’ signatures as threshold for recall to succeed	10%	40%	40% or half of the last turnout rate;
Collectors of signatures	Returning Officer’s office	Voters (unpaid canvassing allowed)	Election Commission
Collection period	42 days	60 days	21 days
Recontestation for Recalled lawmaker	Allowed	Allowed	Allowed

Parliament can and should enact a Anti-Hopping Recall Law (AHRL) to be passed in the next parliamentary sitting in July 2022 as a companion to the AHL. Depending on the degree of rigidity in amendment Parliament prefers, the AHRL may take the form of a Constitutional schedule or a parliamentary act, dependent on the degree of rigidity in amendment Parliament prefers. The content of the AHRL can be built by modifying MP Azalina’s bill as the starting point, without having to start from scratch or reinvent the wheel.

Our suggestion: An Anti-Hopping Recall Law, built on MP Azalina’s Bill, to be enacted in July 2022.

7 Immediate and Precise Application

7.1 Immediate Commencement

This Act shall come into force on the date immediately following the date of its publications in the Gazette. The public expects to see the AHL enacted as soon as possible. Having an indefinite date of enforcement only risks any derailment that stops its enforcement in the 15th General Election. The delayed commencement of the Constitutional Amendment to lower voting age to 18 and implement automatic voters registration (AVR) should serve as a lesson. It is also not necessary for different parts of the constitutional amendment bill to come in force at different dates just to obtain the States' consent. The amendments can be made in an empowering way that the States would not object.

Our suggestion: The Constitutional Amendment should come into force immediately after gazetting.

7.2 Precise Application

For precise application, the proposed Article 52A can specify when party affiliation starts.

Our suggestion: Clause (5) of the new Article 52A, Federal Constitution

Change of a member's political party affiliation etc.

(5) In this Article —

(a) the time at which a person is elected as a member of the House of Representatives is the beginning of the day after —

(i) the polling day for the election at which the person is elected as a member of the House of Representatives; or

(ii) where the person has been elected as a member of the House of Representatives more than once, the polling day for the election at which the person is last so elected; and

(b) a person is elected to the House of Representative as a member of a collation of political parties if he contests the election under the symbol of that coalition.

8 Restrictions on Having By-Elections

Currently, by-elections cannot be held in the last two years of a Parliament's term unless a vacancy may cause the government party to lose its majority in the House. When Governments tend to serve close to full terms since 2008, a vacancy of two years is too long and unfair for both constituencies and parties. With an AHL, this two-year gap can be abused by party leaders or coalition leaders to undermine the political career of their rivals. For example, if an MP loses his or her seat after expulsion and the next election will happen only two years later, he or she may have become politically irrelevant by then. Likewise, if the AHL is so designed that expulsion from a coalition can cause a party to have all its MPs' seats vacated but the incumbents cannot recontest in two years, the party may become irrelevant when the general election is called. If the Speaker holds the power to notify the EC on occurrence of vacancy over party affiliation change, the notification may be delayed after Parliament enters its fourth year to deny the incumbent the chance to immediately recontest.

As the two-year period was introduced to replace a smaller gap of six months by a constitutional amendment in 1993, the original provision should be reinstated.

Our suggestion: The original Article 54(1), Federal Constitution should be reinstated

Article 54 'Vacancies in Senate and casual vacancies' of the Federal Constitution should be amended in Clause (1) by substituting the second proviso with the following:

Provided further, if a casual vacancy in the House of Representatives is established on a date within six months of the date Parliament shall, in accordance with Clause (3) of Article 55, stand dissolved, such casual vacancy shall not be filled.

9 Applicability of Dewan Negara Members

The basis of any AHL lies in lawmakers being representatives of political parties, which does not exist in the Senate. The Senate is meant to be a house representing the States and sectoral interests, not that of political parties.

This is made clearly in Clauses (1) and (2) of Article 45 “Composition of Senate” which read,

(1) Subject to Clause (4), the Senate shall consist of elected and appointed members as follows:

(a) two members for each State shall be elected in accordance with the Seventh Schedule; and

(aa) two members for the Federal Territory of Kuala Lumpur, one member for the Federal Territory of Labuan and one member for the Federal Territory of Putrajaya shall be appointed by the Yang di-Pertuan Agong; and

(b) forty members shall be appointed by the Yang di-Pertuan Agong.

(2) The members to be appointed by the Yang di-Pertuan Agong shall be persons who in his opinion have rendered distinguished public service or have achieved distinction in the professions, commerce, industry, agriculture, cultural activities or social service or are representative of racial minorities or are capable of representing the interests of aborigines.

If the AHL is intended to include the Senators, senatorial election as provided under Clause (4) of Article 45 should be first introduced to be contested by party nominees.

Our suggestion: The AHL should not cover Senators until Senatorial election is held.

10 State-level Anti-Hopping Laws

The States should be given the freedom to bypass the Supreme Court's 1992 decision and enact their own AHL with automatic seat vacation, even if voters-initiated seat vacation (recall) is not confined by this decision. To this end, the Eighth Schedule can and should be amended to give the States flexibility and freedom to choose their best anti-hopping mechanisms.

To have a carbon copy of the Federal AHL in all the States is informed not by the need of bypassing the 1992 decision, but the nostalgia for law uniformity, which is outdated in an era of decentralisation both at home and internationally. Such notion also ignores the benefits of and the need for initiatives and experimentation in institutional designs when AHL itself started first at the state level before moving to the Federal level, in both India and Malaysia.

Most dangerously, the idea of having one identical AHL for the federal Parliament and all 13 State Legislative Assemblies rests on two dangerous assumptions.

The first assumption is that Parliament knows the best design of AHL even when Malaysian politics is undergoing unprecedented fragmentation, realignment and transformation. This assumption is manifestly untenable when MPs from both the government and opposition benches are hard pressed to pass an AHL before the next general election and admit that they have no time to study the causes, implications and remedies of party-hopping in details. It would be irresponsible for Parliament to impose their quick-fix solution onto all the State Legislative Assemblies, which may have more knowledge and interest to seek better designs.

The second assumption is that all the States have the same political context as the Federation where party-hopping is concerned. This reflects a Kuala-Lumpur-centric arrogance that dismisses local context and wisdom.

What if the AHL imposed by the Federal Government fails or even becomes counter-productive in some States? None of the States can then modify their AHL before the Eighth Schedule is amended with another two-third majority, which is difficult given the political fragmentation.

Allowing the States to decide the commencement date of this part of the AHL is no remedy to its one-size-fits-all flaw. The States will be forced to choose between conforming or delaying its consent. Instead, the States should be given the room to explore, deliberate and decide the best anti-hopping mechanism in their own context, with an empowering clause in the Eighth Schedule.

Our suggestion: A new Section 6A in the Eighth Schedule, Federal Constitution that empowers the States.

Change of a member's political party affiliation etc.

6A. *The Legislative Assembly shall by provision of this Constitution and/or law impose restrictions on the change of political party or affiliation of a member of the Legislative Assembly after election such that a person shall in accordance with the provision of this Constitution and/or state law so provides cease to be a member of the Legislative Assembly of this State and his seat shall become vacant immediately.*

11 Restriction on Government Frontbench Size and Salaried Political Appointments

A key motivation for lawmakers to crossover and join or install a government is getting rewarded with ministerial positions or lucrative appointments to Statutory Bodies or Government-Linked Companies (GLCs). If the number of government ministers and deputy ministers can be capped, and lucrative political appointments for lawmakers can be prohibited, the pull factor for party-hopping would be constrained.

In British politics, ministers and others who are government's payroll are called 'payroll vote' for they have the obligation or motivation to support the government. If the size of payroll vote grows too big, then Parliament's capability to check and balance the Executive would be compromised. As the UK has no written constitution, the caps of salaried posts are found in two parliamentary acts.

The Ministerial and Other Salaries Act 1975, in paragraph 2 of Schedule 1, limits the numbers of salaries for various categories of ministers other than Prime Minister and Chancellor of the Exchequer: 21 Secretaries of State, 50 Ministers of State, 83 ordinary Parliamentary Secretaries, five Junior Lords of the Treasury, seven Assistant Whips of House of Commons, and five Lords in Waiting. Some of these posts are held by members of the House of Lords.

The number of Ministers from the House of Commons is capped at 95 by the House of Commons Disqualification Act 1975. Its Section 2 'Ministerial offices' reads,

(1) Not more than ninety-five persons being the holders of offices specified in Schedule 2 to this Act (in this section referred to as Ministerial offices) shall be entitled to sit and vote in the House of Commons at any one time.

(2) If at any time the number of members of the House of Commons who are holders of Ministerial offices exceeds the number entitled to sit and vote in that House under subsection (1) above, none except any who were both members of that House and holders of Ministerial offices before the excess occurred shall sit or vote therein until the number has been reduced, by death, resignation or otherwise, to the number entitled to sit and vote as aforesaid.

(3) A person holding a Ministerial office is not disqualified by this Act by reason of any office held by him ex officio as the holder of that Ministerial office.

Subsection (2) makes clear the purpose is to prevent the Government has more than 95 votes by default in parliamentary voting. The Parliamentary Select Committee on Public Administration suggested in 2010 that payroll vote should be capped at 15% of its 650 members, or not more than 98. (Zolgekar, 2021)

Likewise, Article 75(1A) of the Constitution of India reads,

The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. of the total number of members of the House of the People.

As the House of the People or Lok Sabha has currently 543 members, the Council of Ministers cannot have more than 81 members. Similarly, Article 164(1A) imposes a 15% cap onto the size of State-level Councils of Ministers.

More interestingly, its AHL (the Tenth Schedule) also impacts the membership of the Council of Ministers, which does not exclude, for up to six months, a person who is not a member of either Parliamentary House. Article 75(1B) reads,

A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

while Article 164(1B) imposes an identical restriction onto the States.

Further, Article 361B further provides that,

A member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier.

Hence, the Indian AHL blocks appointments in Council of Ministers or 'remunerative political post' at both the federal and state levels to deter party-hopping at its root.

In Malaysia, the size of a State Executive Council or Cabinet is kept between five to eleven members including the Chief Minister. Sabah and Sarawak can further appoint assistant ministers, the number of which is kept at 10 in Sabah but unlimited for Sarawak. Note that the size of State Executive members is not tied to the size of State Legislative Assembly, enabling a high percentage of payroll vote in states with a small legislature. The case in point, 60% of the 15 State Assemblypersons in Perlis are members of its Executive Council.

More problematically, there is no upper cap on federal ministers and deputy ministers. Consequently, a huge government majority may result in a bloated cabinet in number. In 2004, when Prime Minister Tun Abdullah Badawi won a 91% majority in the Parliament, 92 parliamentarians were appointed as ministers, deputy ministers and parliamentary secretaries, constituting 46% of all BN parliamentarians and 42% of all parliamentarians. This huge team was further joined by three Senators.

On the other hand, a weak parliamentary majority may also cause the creation of a large payroll vote, measured as the percentage of government MPs, to secure support within the government bench. Under Prime Minister Tan Sri Muhyiddin Yassin who controlled only 113 seats (51%) in the Parliament, his frontbench contained as many as 65 government MPs including three ministerial-level special envoys, constituting 57% of the government bench and 29% of the House. They were joined by seven Senators. For the remaining 48 government MPs, 35 were appointed to various Statutory Bodies or GLCs. (Wong, 2020a)

The pull factors for party-hopping can be easily reduced if a cap is put on the number of government frontbenchers and remunerative political appointments are prohibited for MPs. To make it more acceptable for aspiring politicians, the former can start with a cap higher than 15% in the UK and India, like 25%, which translated into 56. The latter can be done by expanding the grounds of disqualification for MPs under Article 48.

Our suggestions: A new Article 43BA and an amendment to Article 48, Federal Constitution.

Number of Ministers, Deputy Ministers and Parliamentary Secretaries

43BA. *The total numbers of Ministers, including the Prime Minister and any member of the House of Representatives with Ministerial-status, Deputy Ministers and Parliamentary Secretaries, shall not exceed twenty-five per cent of the total number of members of the House of Representatives.*

Article 48 ‘Disqualification for membership in Parliament’ of the Federal Constitution is amended in Clause (1)(c):

He holds an office of profit or a salaried office with a statutory body or a company that the Federal Government has a controlling stake.

12 Other Reforms to Promote Political Stability and Accountability

AHL should be a means to promote political stability and accountability, not an end in itself to block party affiliation changes even when they do not disrupt political stability and accountability. More so, as explained in Section 2 of this paper, given the FPTP electoral system, an AHL – whether seat vacation is automatic or voters-initiated – cannot guarantee that voters will punish party-hoppers even if their hopping is driven by political corruption. To this end, other measures must be explored by Parliament.

Reforms must be introduced to address the pull and push factors of party-hopping from selective prosecution, discrimination in constituency allocation and money politics. Constitutional mechanism to reduce frequency of government turnovers and elections such as Constructive Vote of No Confidence (CVNC) and Fixed Term Parliament should also be considered. Finally, if the remedy sought is restoration of pre-hopping status quo, then we should consider modify from our electoral system to one with both elements of FPTP and CLPR.

12.1 Reform of Attorney-General's Chambers (AGC), Malaysian Anti-Corruption Commission (MACC) and Inland Revenue Department (IRD)

Selective prosecution or enforcement of law – perceived or real – by the AGC, MACC and IRD has been cited as a motivation of party-hoppers. It cannot be dismissed as a mere coincidence that many party-hoppers faced prosecution or threat of being prosecuted before hopping.

The long list of party-hoppers with legal troubles since 2020 includes Peter Anthony (formerly Warisan state assemblyperson), Xavier Jayakumar and Steven Choong (formerly PKR parliamentarians), Paul Yong Choo Keong (formerly DAP state assemblyperson). In 2009, two PKR exco members of Perak, Mohd Osman Mohd Jailu and Jamaluddin Mohd Radzi crossed over to UMNO after being charged for corruption. By 2010, they were acquitted by the Court as reportedly “the prosecution failed to establish a prima facie case”. (FMT Reporters, 2021; Staff Writers, 2021a, 2021b; Cheah, 2021; Bernama, 2013, 2010)

To reduce the pull factor of selective prosecution on party-hopping, the AGC should be re-organised such that an independent Public Prosecution Office would be established, free from interventions from the AG who would function primarily as the

Federal Government's legal advisor. MACC and IRD should be placed under the scrutiny of a Parliamentary Special Select Committee.

12.2 Equal/Equitable Constituency Development Fund Act

A push factor for party-hopping is discrimination against opposition lawmakers in constituency allocation. Without adequate funding to meet voters' expectation, lawmakers found themselves greatly disadvantaged in winning the next elections. The allocations earmarked for Opposition-held constituencies are given to "constituency coordinators" appointed by the ruling parties, who are normally groomed as their future candidates.

Before 2018, Opposition MPs received nothing as compared to millions yearly given to their counterparts in Government. From 2018 to February 2020, the Opposition MPs were given annually RM 100,000 without any increase while the Government MPs' allocations grew yearly from RM 800,000 to RM 1,800,000 to RM 3,800,000 including RM 300,000 to run constituency service centres. (Sri, et al., 2021)

Under the Memorandum of Understanding for Political Transformation and Stability (MOU) signed by the Ismail Sabri Government and PH on 13 September 2021, constituency allocation of RM 3,800,000 (Peninsula) and RM 4,300,000 (Sabah and Sarawak) are given to PH parliamentarians, on par with their Government counterparts. This arrangement however hinges on the continuity of the MOU and exclude Opposition MPs who are not a party to the MOU.

Except for Perak which provides equal constituency allocation to all state lawmakers regardless of party affiliation under a Confidence and Supply Agreement (CSA) between UMNO and PH signed in December 2020, Opposition state lawmakers are given either less allocations (in states helmed by PH, BN and Bersatu) or nothing at all (in states helmed by PAS and GPS).

The hunger for constituency allocation have been cited by several party-hoppers at both the federal and state levels as the reason they made their moves. (Wong, 2020a: 592-3). The latest case was former Warisan MP and State Assemblyperson Mohamaddin Ketapi who was denied funding because his party refused to sign the MOU. (Bernama, 2021; Lee, 2021)

To reduce the push factor for party-hopping, Parliament must legislate an Equal/Equitable Constituency Development Fund Act to provide equal or equitable (based on some objective and fair formula) constituency allocation to all MPs. Likewise, this should be done in all states.

12.3 Political Financing Act

Party-hopping is also driven by unregulated political financing and the absence of public funding for political parties, allowing big parties and their financiers to court resource-poor lawmakers to crossover.

Parliament should not delay any more in tabling and passing the Political Financing Bill, the drafting of which has started under Prime Minister Najib Razak and continued under PH, PN and currently BN.

12.4 Constructive Vote of No Confidence

Political instability can happen with the break-up of post-election coalition governments in a hung parliament, without MPs hopping from parties, or parties hopping from pre-election coalitions.

To reduce frequent changes of government, with or without election, the process of no-confidence vote can be modified to demand a 'positive majority' before a government can be ousted. In this mechanism of "constructive vote of no-confidence", a motion of no-confidence against the incumbent Prime Minister must be simultaneously a motion of confidence for the new Prime Ministerial candidate. Hence, if the Opposition parties are united only by their rejection of the incumbent government but divided on how the next government should take shape, then the motion of no-confidence will not get passed, and the incumbent government can continue to run the country. (Balakrishnan, 2021)

This would require a Constitutional amendment to Article 43 or a change of the House of Representatives' Standing Orders. As this does not rule out the Prime Minister's right to request for an early dissolution, the King's discretionary power to agree or not to such request remains intact.

12.5 Fixed-Term Parliament

Fixed-term Parliament is a constitutional arrangement, which may take the form of a Constitutional amendment or a parliamentary act, that demands the Government to serve full term unless Parliament agrees to an early dissolution with a two-third majority. This can reduce the frequency of elections and may even result in fixed election dates. If Parliament votes for an early dissolution, the Prime Minister will still need the Royal assent to dissolve Parliament. Hence, it does not obstruct the King's discretionary power. (Balakrishnan, 2021)

12.6 Change of Electoral System

Party-hopping cannot be dealt with technically without considering the design of electoral system and party system. (Spiess and Pehl, 2004: 217) Constituency-based First-Past-The-Post (FPTP) system and list-based proportional representation (PR) have different principles in representation, decision and accountability. The regulation of MPs' legislative voting is not an issue in New Zealand because its post-1996 MMP electoral system is meant to create proportionality, and AHL preserves the inter-party proportionality between elections. Giving the power for MPs to regulate their colleagues' behaviour would not produce an elected dictatorship in New Zealand because the MMP system had produced hung parliaments from 1996 till 2020, making inter-party compromises a norm. In contrast, the stringent AHL in India eliminates the room for MPs to act autonomously. This reduces MPs to followers of their party leaders and can turn Parliament into a rubber stamp the Executive if it is a single-party majority government.

If Malaysians want to strengthen political parties because they have lost trust in individual politicians, then it is time to introduce Closed List Proportional Representation (CLPR) alongside the existent FPTP system and create a Mixed Member Proportional (MMP) system as in Germany and New Zealand or Mixed Member Majoritarian (MMM) system as in Japan and Taiwan. Automatic seat vacation can be applied on party hoppers from CLPR – the seat would be vacated and replaced by the next available candidate from the same party list, without even having a by-election – while recall can be used against party hoppers in FPTP constituencies.

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Appendix Proposed Amendments to the Federal Constitution

Main Proposal

Article	Section in this paper	Nature	English	Bahasa Malaysia
43BA	11	Insertion	<p>Number of Ministers, Deputy Ministers and Parliamentary Secretaries</p> <p>43BA. The total numbers of Ministers, including the Prime Minister and any member of the House of Representatives with Ministerial-status, Deputy Ministers and Parliamentary Secretaries, shall not exceed twenty-five per cent of the total number of members of the House of Representatives.</p>	<p>Bilangan Menteri-Menteri, Timbalan-Timbalan Menteri dan Setiausaha-Setiausaha Parlimen</p> <p>43BA. Jumlah bilangan Menteri-Menteri, termasuk Perdana Menteri dan mana-mana ahli Dewan Rakyat yang bertaraf Menteri, Timbalan-Timbalan Menteri dan Setiausaha-Setiausaha Parlimen tidak boleh melebihi dua puluh lima peratus daripada jumlah bilangan ahli Dewan Rakyat.</p>
48(1)(c)	11	Amendment	<p>Disqualification for membership of Parliament</p> <p>48. (1) Subject to the provision of this Article, a person is disqualified for being a member of either House of Parliament if —</p> <p>(c) he holds an office of profit or a salaried office with a statutory body or a company that the Federal Government has a controlling stake.</p>	<p>Kehilangan kelayakan menjadi ahli Parlimen</p> <p>48. (1) Tertakluk kepada peruntukan Perkara ini, seseorang hilang kelayakan untuk menjadi ahli mana-mana satu Majlis Parlimen jika—</p> <p>(c) dia memegang sesuatu jawatan berpendapatan atau sesuatu jawatan bergaji dengan badan berkanun atau syarikat yang Kerajaan Persekutuan memegang kepentingan kawalan.</p>
52A	5 6.2 7.2	Insertion	<p>Change of a member's political party affiliation etc.</p> <p>52A. (1) Subject to the provisions of this Article, a member of the House of Representatives shall cease to be a member of that House and his seat shall become vacant immediately if having been elected to the House of Representative as a member of a political party, he resigns</p>	<p>Pertukaran afiliasi parti politik ahli dsb.</p> <p>52A. (1) Tertakluk kepada peruntukan Perkara ini, seseorang ahli Dewan Rakyat hendaklah berhenti menjadi ahli Dewan ini dan kerusinya hendaklah menjadi kosong serta-merta jika setelah dipilih ke Dewan Rakyat sebagai seorang ahli parti politik, dia melepaskan keahliannya atau</p>

Article	Section in this paper	Nature	English	Bahasa Malaysia
			<p>or ceases for any reason whatsoever to be a member of, that political party.</p> <p>(2) A member of the House of Representatives shall not cease to be a member of that House pursuant to this Article only by reason of—</p> <p>(a) the dissolution or cancellation of the registration of his political party; or</p> <p>(b) his resignation from the membership of his political party upon election as a Speaker or Deputy Speaker.</p> <p>(3) A member of the House of Representatives may be recalled by the electors of the constituency from which he is elected in accordance with the provision of federal law relating to the recall of members if—</p> <p>(a) he is expelled from his political party;</p> <p>(b) having been elected to the House of Representatives otherwise than as a member of political party, he joins a political party;</p> <p>(c) having been elected to the House of Representatives as a member of a coalition of political parties, his political party ceases for any reason whatsoever to be a member of that coalition; or</p> <p>(d) having been elected to the House of Representatives as a member of a coalition of political parties, he resigns from his political</p>	<p>atas apa-apa jua sebab terhenti daripada menjadi ahli parti politik tersebut.</p> <p>(2) Seseorang ahli Dewan Rakyat tidak boleh terhenti menjadi ahli Dewan ini menurut Perkara ini hanya oleh sebab—</p> <p>(a) pembubaran atau pembatalan pendaftaran parti politiknya; atau</p> <p>(b) pelepasan keahlian party politiknya apabila dipilih sebagai Speaker atau Timbalan Speaker.</p> <p>(3) Seseorang ahli Dewan Rakyat boleh dipecat oleh pemilih-pemilih bahagian pilihan raya yang daripadanya dia dipilih mengikut peruntukan undang-undang persekutuan yang berhubungan dengan pemecatan ahli-ahli jika—</p> <p>(a) dia dipecat daripada parti politiknya;</p> <p>(b) setelah dipilih ke Dewan Rakyat selain sebagai seorang ahli parti politik, dia menyertai parti politik;</p> <p>(c) setelah dipilih ke Dewan Rakyat sebagai seorang ahli gabungan parti-parti politik, parti politiknya atas apa-apa jua sebab terhenti daripada menjadi ahli gabungan tersebut; atau</p> <p>(d) setelah dipilih ke Dewan Rakyat sebagai seorang ahli gabungan parti-parti politik, dia melepaskan keahlian parti politiknya kerana</p>

Article	Section in this paper	Nature	English	Bahasa Malaysia
			<p>party due to his party ceasing for any reason whatsoever to be a member of that coalition.</p> <p>and, if he is recalled successfully, his shall cease to be a member of that House and his seat shall become vacant immediately.</p> <p>(4) The Speaker shall notify the Election Commission on the occurrence of a vacancy under Clause (1) within three working days from the date he receives a written notice from a member of the House of Representatives or the leader of his party with evidence that the member has resigned from or ceased to be a member of the party.</p> <p>(5) In this Article —</p> <p>(a) the time at which a person is elected as a member of the House of Representatives is the beginning of the day after —</p> <p>(i) the polling day for the election at which the person is elected as a member of the House of Representatives; or</p> <p>(ii) where the person has been elected as a member of the House of Representatives more than once, the polling day for the election at which the person is last so elected; and</p> <p>(b) a person is elected to the House of Representative as a member of a collation of political parties if he contests the election under the symbol of that coalition.</p>	<p>partinya atas apa-apa jua sebab terhenti daripada menjadi ahli gabungan tersebut</p> <p>dan, jika dia Berjaya dipecat, dia hendaklah terhenti menjadi ahli Dewan ini dan kerusinya hendaklah menjadi kosong serta-merta.</p> <p>(4) Yang di-Pertua hendaklah memaklumkan Suruhanjaya Pilihan Raya mengenai berlaku suatu kekosongan di bawah Fasal (1) dalam tempoh tiga hari bekerja dari tarikh dia menerima suatu notis bertulis daripada seseorang ahli Dewan Rakyat atau ketua partinya dengan bukti bahawa ahli itu telah melepaskan keahliannya atau terhenti daripada menjadi ahli parti.</p> <p>(5) Dalam Perkara ini —</p> <p>(a) masa seseorang dipilih sebagai ahli Dewan Rakyat adalah pada permulaan hari selepas —</p> <p>(i) hari mengundi bagi pilihan raya di mana orang tersebut dipilih sebagai ahli Dewan Rakyat; atau</p> <p>(ii) jika orang tersebut telah dipilih sebagai ahli Dewan Rakyat lebih daripada stau kali, hari mengundi bagi pilihan raya di mana orang tersebut kali terakhir dipilih; dan</p> <p>(b) seseorang adalah dipilih ke Dewan Rakyat sebagai seorang ahli gabungan parti-parti politik jika dia bertanding dalam pilihan raya di bawah symbol gabungan tersebut.</p>

Article	Section in this paper	Nature	English	Bahasa Malaysia
54	8	Amendment	Provided further, if a casual vacancy in the House of Representatives is established on a date within six months of the date Parlimen shall, in accordance with Clause (3) of Article 55, stand dissolved, such casual vacancy shall not be filled.	Dengan syarat selanjutnya, jika kekosongan luar jangka dalam Dewan Rakyat dipastikan pada suatu tarikh dalam masa enam bulan dari tarikh Parlimen adalah terbubar mengikut Fasal (3) Perkara 55, maka kekosongan luar jangka itu tidak boleh diisi.
160	4(b)	Insertion	<p>“political party” has the same meaning assigned to it by section 2 of the Societies Act 1966 or by any law relating to registration or regulation of societies established for participation in public office election, other than those consisting of political parties;</p> <p>“coalition of political parties” means a registered coalition consisting of two or more political parties and contesting an election under the same party symbol;</p>	<p>“parti politik” mempunyai erti yang sama yang diberikan kepadanya oleh seksyen 2 Akta Pertubuhan 1966 atau oleh mana-mana undang-undang yang berhubungan dengan pendaftaran atau pengawalseliaan pertubuhan yang ditubuhkan bagi penyertaan dalam pilihan raya jawatan umum, selain yang terdiri daripada parti politik;</p> <p>“gabungan parti-parti politik” ertinya gabungan berdaftar yang terdiri daripada dua atau lebih parti-parti politik dan bertanding dalam suatu pilihan raya di bawah symbol parti yang sama;</p>
Eighth Sch.	10	Insertion	<p>Change of a member’s political party affiliation etc.</p> <p>6A. The Legislative Assembly shall by provision of this Constitution and/or law impose restrictions on the change of political party or affiliation of a member of the Legislative Assembly after election such that a person shall in accordance with the provision of this Constitution and/or state law so provides cease to be a member of the Legislative Assembly of this State and his seat shall become vacant immediately.</p>	<p>Pertukaran afiliasi parti politik ahli dsb.</p> <p>6A. Dewan Undangan hendaklah melalui peruntukan dalam Perlembagaan ini dan/atau undang-undang mengenakan sekatan-sekatan ke atas pertukaran afiliasi parti politik seseorang ahli Dewan Undangan selepas pilihan raya supaya seseorang hendaklah mengikut peruntukan Perlembagaan ini dan/atau undang-undang negeri yang diperuntukkan sedemikian terhenti menjadi ahli Dewan Undangan Negeri ini dan kerusinya hendaklah menjadi kosong serta-merta.</p>

Alternative Proposal

Article	Section in this paper	Nature	English	Bahasa Malaysia
10	6.1	New Insertion	(3A) Notwithstanding paragraph (c) of Clause (2) and Clause (3), in the interest of morality, restrictions on the right to form associations, conferred by paragraph (c) of Clause (1), of Members of Parliament and Members of the State Legislative Assemblies relating to the change of their political party affiliation after election may also be imposed by this Constitution and the State Constitutions respectively.	(3A) Walau apa pun perenggan (c) Fasal (2) dan Fasal (3), demi kepentingan moraliti, sekatan-sekatan ke atas hak untuk membentuk persatuan yang diberikan oleh perenggan (c) Fasal (1) bagi ahli Parlimen dan ahli Dewan-Dewan Undangan Negeri mengenai pertukaran afiliasi parti politik selepas pilihan raya juga boleh dikenakan oleh Perlembagaan ini dan Perlembagaan-Perlembagaan Negeri masing-masing.