

**PARTY HOPPING: A COMPARATIVE STUDY ON THE LEGAL POSITION OF
MALAYSIA AND INDIA**

By

Nur Asilah Bt Mohd Nor (2008401842)
Nur Atiqah Bt Mohd Zaki (2008401822)
Aina Syazwani Bt Salleh (2008401818)
Nur Faradiana Bt Suhaimi (2008401796)
Khairunnisa Bt Badruddin (2008408704)

Submitted in Partial Fulfillment of the Requirements
for the Bachelor in Legal Studies (Hons)

**Universiti Teknologi MARA
Faculty of Law**

October 2010

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where references has been made to the work of the others.

ACKNOWLEDGEMENT

This project paper required a lot of time, effort and research that have been poured in throughout the last six months and it was carried out by a team which includes Nur Asilah Bt Mohd Nor, Nur Atiqah Bt Mohd Zaki, Aina Syazwani Bt Salleh, Nur Faradiana Bt Suhaimi and Khairunnisa Bt Badruddin. This project paper would not have been a success without the help of a few people and the contributions of those who have selflessly assisted us in this study will not go unnoticed.

First, we would like to extend our deepest gratitude to Mr Irmohizam Ibrahim, our dedicated supervisor for his helpful advice, assistance and support throughout the entire course of our study. This project paper will not have been possible without his wise guidance. The assistance of our Legal Research and Methodology (LAW 557) lecturer, Madam Norha Abu Hanifah which made the study so much easier for us semester is greatly appreciated as well.

Also, we would like to thank all the distinguished people who contributed their wisdom in the interview sessions that were held during our research despite their busy schedules. Thank you Y.B. Tuan Sivarasa Rasiah, Emeritus Datuk Dr. Prof. Shad Saleem Faruqi, Mr. Edmund Bon and Ms. Khaizan Shahrizad Razak Dali.

Last but not least, we would like to convey our utmost appreciation to the librarians at the Perpustakaan Tun Abdul Razak UiTM Shah Alam, the National Library of Malaysia and the library of the Palace of Justice in Putrajaya who had assisted us in our search for the right materials in order to conduct this study.

ABSTRACT

The issue of political defection, or party hopping as it is commonly known, is in the spotlight after the recent Perak Crisis. The crisis which took place a year ago was one of the greatest constitutional challenges in the history of Malaysia. Although the problem has been solved and a new state government has been put in place, the debate on the ethics of party hopping is still gaining heat in the local scene. We felt absorbed into the debate and thought that it would be an interesting topic for our project paper.

This research focuses on the practice of party hopping. We have delved into the issue deeper to understand the root of the problem and the harms that it brings about. We also sought to find the best solution for the rampant act of party hopping. In the effort to find the best solution, we decided to draw a comparison of the status quo in Malaysia to that of India where there is an anti-defection law. The effectiveness and the constitutionality of the Indian Anti-defection Law have been analyzed as well as its suitability to be adopted in Malaysia.

At the end of this study, we have provided our recommendation which we feel is the best way to regulate the practice of party hopping and balance the rights of all parties involved.

CONTENTS

Acknowledgement	ii
Abstract	iii
List of Cases	vii
List of Statutes	viii
CHAPTER ONE: INTRODUCTION	
1.0 Introduction	1
1.1 Background	1
1.1.1 Legal position in Malaysia	2
1.1.2 Legal position in India	3
1.1.3 The harms of Party hopping	4
1.2 Problem Statement	4
1.3 Objectives of the Study	6
1.4 Methodology	7
1.5 Limitations of the Study	7
1.6 Significance of the Study	8
1.7 Conclusion	9
CHAPTER TWO: LITERATURE REVIEW	
2.0 Introduction	10
2.1 Literature review	10
2.2 Conclusion	18
CHAPTER THREE: LEGAL POSITION IN MALAYSIA	
3.0 Introduction	19
3.1 The Malaysian Electoral System	19
3.2 Election Commission	20
3.2.1 Composition	21
3.2.2 Independence of the Election Committee	21
3.2.3 Functions	21
3.3 The Election Law	22
3.4 The Conduct of Elections	24
3.5 Anti-defection Law	25
3.5.1 Nordin Bin Salleh & Anor v Dewan Undangan Negeri Kelantan & Ors	25
3.6 Statutory Provisions Regulating Elections	26
3.7 Conclusion	26

CHAPTER ONE

PARTY HOPPING

1.0 Introduction

This is an overview of the definition of party hopping and also the basic introduction to the study.

1.1 Background

Article 10 of the Federal Constitution guarantees the freedom to associate with any bodies or parties. One of the ways this freedom is materialized is through election where voters elect for parties or candidate that they feel best reflect their principles and ideologies. When a candidate is voted in on a ticket of a particular party, he is deemed to have committed himself to that party and will continue committing himself to that party till his term expires. If he does not maintain loyalty to the party and decides to 'change sides', he is said to have party-hopped.

Party hopping is defined as the amendment or change of political loyalty.¹ In simple terms it means changing sides. As far as the issue is concerned, it has always been discuss in the context of defection with dishonest motives, opportunistic intentions and objectives² even though it must be conceded that the context does not apply in all cases. Although in any other context allegiance switching is acceptable, the issue is much more complex when discussed in the light of political parties and political representation as it involves the voters and their trust. This is especially important, as majority of Malaysians tend to vote on party line.³

¹ H. M. Seervai, Constitutional Law of India: A Critical Commentary (A.S. Pandya 1979)

² Ibid.

³ "Anti-hopping Laws: Vice or Virtue?", <<http://malaccabar.org/>> accessed on 15 MARCH 2010