



ABUAD JOURNAL OF PUBLIC AND INTERNATIONAL LAW

AFE BABALOLA UNIVERSITY, ADO-EKITI NIGERIA

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NIGERIA**

VOLUME IV No.1

2018

Print ISSN: 3851 – 3068

ABUAD Journal of Public and International Law
is a publication of the Department of Public and International Law,
College of Law.

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PRINTED BY: Afe Babalola University Press, Ado-Ekiti, Ekiti State Km.
8.5, Afe Babalola Way, P.M.B. 5454, Ado-Ekiti, Ekiti State Nigeria

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Citation: Cite as (2018) 4 (1) ABUAD Journal of Public and International Law
(AJPIL)

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Abdulfatai O. Sambo¹

Abstract

Political defections have become a seasonal fad and always at its peak when elections are approaching. Despite the significant copious constitutional provisions and designs, as well as institutional framework, political defection is endemic, and continues unabated in Nigeria, Malaysia and India. This is usually explained in terms of political culture and leadership leading to an unenthusiastic assumption that law can do little or nothing to prevent abuse of political defections. This paper acknowledged the role of political culture and leadership on political defections. However, the paper found that deficiency in the general constitutional architecture and weak institutional designs of these countries have largely contributed to political defections. The paper concluded that political defection is indeed a threat to the future of party politics in these countries. It is suggested that the entire legal and institutional architecture on political defections should be amended in order to prevent incidences of abuse of political defections in these countries.

1. Introduction

The recent rise of political defections is alarming in Nigeria.² Political routes are often littered with strange bedfellows and broken political relationships.³ The political class has been hit with political defections with the 2019 general elections drawing nearer.⁴ New political suitors are being married and politicians build new shades to ply their political trade. Recently, not less than 37 members of the House of Representatives and 14 Senators of the ruling All Progressive Congress (APC) defected to the opposition People's Democratic

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² S. Abah, The Guidian, 31 August, 2018, Political defections in Nigeria, causes and consequences. Available at: [<https://guardian.ng/opinion/political-defections-in-nigeria-causes-and-consequences/>]. Accessed on 8th December, 2018.

³ C. Gabriel, Political Defectors: In Whose Interest? Available at: [<https://www.vanguardngr.com/2018/08/political-defections-in-whose-interests/>] Accessed on 8th December, 2018.

⁴ Ibid.

Party (PDP).⁵ The spate of these defections is worrisome as it has become seasonal.⁶ The recent situation in Malaysia is similar to the occurrences in Nigeria. The then ruling party, the Barisan Nasional (BN), even expelled some members of the party who defected to the opposition.⁷ It was also warned that the spate of defections could sink the government.⁸ There is also a similar situation in India although there is a strong anti-defection law in India.⁹ The three decades of anti-defection law, notwithstanding, defections still hunt the Indian polity.¹⁰

Despite the numerous constitutional provisions, as well as institutional structures, political defections is still endemic, and continue unabated in these countries. This has been explained in terms of political culture and leadership leading to the conclusion that law cannot prevent incidences of political defections.

This paper acknowledges the role of political culture and leadership on political defections. However, the paper argues that deficiency in the

5. J. Egbas, Sahara Reporters, 25/07/2018 Nigeria's main opposition party now controls near majority seats in the senate after Senate President Bukola Saraki announced the defection of 15 APC senators to the PDP. Available at:

[<http://saharareporters.com/2018/08/06/dealing-aftermaths-defection-nigerian-politics>].

Accessed on 8th December, 2018.

6. Buhari Reacts to Mass Defection of Reps Members, 24 July, 2018. Available at: [dailypost.ng] Politics. Accessed on 8th December, 2018.

7. Y. Ngui May 5, 2018 5:58 a.m. ET Malaysia's Ruling Party Sacks Defectors as Election Fight Heats Up. Available at: [<https://www.reuters.com/article/idINIndia-32571720080319>]. Accessed on 8th December, 2018.

8. The Economist-Um, no! May 10th 2018 Control of Malaysia's parliament changes for the first time *But can the opposition coalition stick together in government?* Available at: <https://www.economist.com/asia/2018/05/10/control-of-malaysias-parliament-changes-for-the-first-time>. Accessed on 8th December, 2018.

9. D. Sarkar, P. C. Mishra "An Analytical Study on the Politics of Defection in India" (2018) 12 No.2 *International Journal of Law and Political Sciences*, 305-309.

10. For more on this, see Defection Politics in India (With Statistics) [<http://www.politicalsciencenotes.com/india/defection-politics/defection-politics-in-india-with-statistics/1028>] Accessed on 8th December, 2018; L.P. Singh, "Political development or political decay in India?" Research Planning and Review Division, Ministry of Home Affairs, Government of India, Defections, 1968. University of British Columbia, Pacific Affairs, vol. 44, no. 1, pp. 65-80, Spring 1971. [2] (2004) 8 SCC 747; S.-C. Kashyap, Anti-Defection Law and Parliamentary Privileges. Delhi, 2nd ed., Universal Law Publishing Co. Pvt. Ltd. 2003, pp. 02-05; "Defection, disaffection" The Hindu, December 8, 2017; B. V. Kumar. "Anti-defection law: welcome reforms," *Economic and Political Weekly*, vol. 38 no. 19, pp. 1837-1838, May 2003; "Defections Galore," *Economic and Political Weekly*, vol. 01, no. 17, pp. 723-725, Dec. 1966. [25] A. M. Singhvi, "Judicial activism is like an unruly horse," *Indian Express*, May 04, 2007; P. Bhushan, "Are amendments required in the anti-defection act?" *Economic and Political Weekly*, vol. 32, no. 47, pp. 22-28, Nov. 1997.

countries' general constitutional architecture and weak institutional designs have largely contributed to political defections. This has indeed threatened the future of party politics in these countries. Ordinarily, courts should have no business in the political affairs of the nations. However, this may become an issue requiring judicial intervention in deserving situations because of the legal issues that may be involved in the act of decamping. The law provides that where a person defects from a political party on which platform he holds a position, such a person should resign from that position he is occupying.¹¹ In a situation where the defector refuses to resign, what is the legal implication? Will the court regard it as a purely political issue and as such not to be enquired by the court? Who has the final decision as to whether the person stands disqualified as a result of defection- the court or the legislature? Is the power of the legislature to resolve the issue of disqualification in this regard adjudicatory in nature? This paper focuses on these issues as well as the perspectives of the countries and suggests areas where reforms are required.

2. Conceptual Analysis of Political Defections

Political defection may be seen as a situation where one or more party members move to the side of their adversary.¹² One of the arguments against passing a law to restrict political defections is that by preventing parliamentarians from changing parties, it reduces government's accountability to the Parliament and the people. Prohibition of party defections also interferes with the free speech and expression of members to curb bad party policies.¹³ However, a law restricting political defections may ensure government stability and act as prevention against shifting of party allegiance. The law also ensures that candidates who are elected with the support and manifestoes of the party remain loyal to the party policies and promotes party discipline.¹⁴

It would appear that the reason for enacting law against political defection arose out of the concern to address problems of prevalent political defections, and their serious effects on the operation of democratic processes in many

¹¹. Article XXXIA Kelantan State Constitution provides as follows: (1) "If any member of the Legislative Assembly who is a member of a political party resigns or is expelled from, or for any reasons whatsoever ceases to be a member of such political party, he shall cease to be a member of the Legislative Assembly and his seat shall become vacant. (2) For the purpose of Clause (1) the Legislative Assembly shall determine whether a seat has become vacant or as to when a seat becomes vacant and the determination of the Assembly shall be final and shall not be questioned in any Court on any ground whatsoever."

¹². A. O. Sambo, *Judicial Review of Political Questions in Nigeria and Malaysia: A Comparative Analysis* (Unpublished Ph.D. thesis, IIUM, Malaysia, 2013), 237-245.

¹³. *Ibid.*

¹⁴. *Ibid.*

countries including Nigeria, Malaysia and India.¹⁵ It is also traceable to the history of dangerous politics of defections over the years legislative assemblies which made them incapable of getting two-thirds majority needed to form a government or take important decisions.¹⁶

Also, political defections are now prevalent in many states of the world, including Nigeria and Malaysia.¹⁷ They generally take place not because of real agitation for their people and good conscience but because of individual gain and self-seeking interests.¹⁸ It is now a damaging form of politics which threatens the purpose of parliamentary/constitutional democracy. This resulted into legislations in many countries. Viewed from this perspective, it can be said that the purpose of this is not just to restrain dissents, but the object is to reduce the decadence political defections is capable of breeding in the political life of a nation.

It can also be argued that prohibiting political defection does not stop a person from changing his political party. It merely means that he should not continue as a legislator if he ceases being a member of the political party he originally belongs. This is more so because he got the position through the instrumentality of the party. Courtesy, therefore, demands that if he is no longer interested in the party for any reason, he should relinquish the office which he got through the instrumentality of the party.

Thus, prohibition merely takes away the right to continue as a member of the legislature. Viewed from this perspective, the law cannot be nullified on the ground that a person's fundamental right has been violated. On the contrary, a member of the legislature has no fundamental right to continue in office if he defects to another party in violation of the law.

It should be noted that the prohibition relating to political defection does not force a member or person to join any political party. He has the choice whether or not to become member of any political party. The mere hindrance is the fact of being a member of the legislature; he cannot withdraw his membership without also relinquishing the seat which he got through that party. This may make it difficult for any party member to resign the

¹⁵. See Bukitt Tunggal [<http://www.bukittunggal.com/2009/10/muslim-melanau-minority-rules-ibandayak.html>] accessed on 27/01/2018.

¹⁶. *Ibid.*

¹⁷. *Ibid.*

¹⁸ See the Interview with Senator Suleiman M. Ajadi, Senator Federal Republic of Nigeria, (1999-2005) in his Abuja Residence on the 19th July, 2011 (Transcript is in file with the Author).

membership of his party. However, it does not mean that there is a total constraint on his right to resign.

3.1 The Judiciary and Political Defections in Nigeria

In Nigeria, the law prohibits defection of legislative members except where there is faction in the party.¹⁹ The court initially refused judicial review in this area. In the case of *Federal Electoral Commission v Alhaji Mohammed Goni*,²⁰ the Great Nigeria Peoples Party (GNPP) which brought in Alhaji Mohammed Goni as the Governor of Borno State was factionalised due to internal crisis. Alhaji Goni defected to the Unity Party of Nigeria (UPN) and emerged as the gubernatorial candidate of the party (UPN) in the 1983 general elections. The Federal Electoral Commission (FEDECO) rejected the candidature of Alhaji Goni on the ground that he was still a serving governor elected under the platform of the GNPP as at the time he became the candidate of the UPN. Alhaji Goni therefore applied to the State High Court for a review of the action of the FEDECO. The High Court held that Goni was exempted from the effect of section 64(1) (g) of the 1979 Constitution because he (Goni) was a governor and not a member of the legislature. This decision was affirmed by the Federal Court of Appeal and the Supreme Court. The Court similarly held in *Attorney General of the Federation v Atiku Abubakar*²¹ that defection of the Vice-President of Nigeria to another political party while in office does not make him loose his seat. Also, in *ANPP v Yuguda*,²² and *ANPP v Bauchi State House of Assembly*,²³ the courts were of the opinions that the defection of the governor does not affect his position despite the fact that it was done while in office.

The position of the law in Nigeria is that defection only affects members of the legislature and not other elected positions. Even with regard to the legislature, before the court can make the defector to vacate his/her seat, it must be shown that there was no faction in the party he left.²⁴ Also, it is the court that has the final power to declare the seat of any legislative member vacant. The head of

¹⁹ See section 68(1)(g) of the Constitution.

²⁰ (1983) 2 SCNLR 227.

²¹ (2007) All FWLR (Pt.375) 405.

²² FHC/BAU/01/2010.

²³ FHC/BAU/03/2010.

²⁴ On Political Defection, Section 68(1) and 109(1) of the CFRN, 1999 states that: "A member of the Senate or House of Representatives (House of Assembly) shall vacate his seat in the House of which he is a member if- (g) Being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that house was elected: "Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored."

the legislature that is President of the Senate or Speaker of the State House of Assembly has the power to declare the seat of a defector vacant but must be in line with the provision of the Constitution.²⁵

However, the Supreme Court recently gave effect to the provision of the Constitution in the case of *Abegunde v Ondo State House of Assembly*.²⁶ In that case, the appellant, a member of the Labour Party defected to the Action Congress of Nigeria. He claimed that the Labour Party in Ondo State was factionalised, and that since labour party was limited to Ondo State, the constitutional provision had been met. The Supreme Court held that the division did not affect the party at the national level to justify the defection. It was therefore decided that the appellant had lost his seat at the House of Representatives. This decision is a remarkable departure from the previous decisions of non-intervention by the courts. It is however evident that the previous decisions were with respect to the executive and there were clear evidence of division within the parties involved.

3.2 The Judiciary and Political Defections in Malaysia

In Malaysia, a number of political defections that took place are worth mentioning. The first incidence took place in 1966 when Ningkan as a Chief Minister of Sarawak was removed from office by Tunku Abdul Rahman (TAR). Dato Stephen Kalong Ningkan was successfully removed as Chief Minister of Sarawak with the assistance of his fellow Iban politicians led by Tun Jugah. It would appear that without Tun Jugah defection, Ningkan would not be removed as a Chief Minister. Another defection arose in Sarawak in 1987 when the seven assemblymen from PBDS defected to SNAP and PBB. Sarawak has seen many political defections since independence. The majority of them were Dayak politicians; and among the first were Nelson Kundai Ngarieng and Stephen Ngelambong from SNAP to PBB, Simon Dembab Maja and Penghulu Abok Anak Jalin from Pesaka to PBB in 1970. Years later Serian MP Richard Riot resigned from PBDS and defected to SUPP. Another one which appears to be the most popular political defection among the dayak politician happened in 1987. Before the State election in April 1987, 28 State assemblymen resigned from their parties to defect to PBDS and Persatuan Rakyat Malaysia Sarawak (Permas). Those from Sarawak National Party (SNAP) joined Parti Bansa Dayak Sarawak (PBDS) and they were SNAP deputy president Edward Jeli, SNAP secretary general Joseph Balan Seling, SNAP vice president Michael Ben Anak Panggi and SNAP CEC member Geman Anak Itam. Their defections prompted Sarawak's Chief Minister Abdul Taib Mahmud to call for a fresh election which was held on 15th and 16th

²⁵ See section 68(2) and section 109(2) of the Constitution.

²⁶ (2014) LPELR 23683; SC 643/2014.

April 1987. PBDS won 15 seats, while Permas won only five seats. Edward Jeli, Geman Anak Itam, Balan Seling and Michael Ben won with big majorities in their respective constituencies. On 14 July 1987, Edward Jeli and Geman decamped back to SNAP, while Balan and Michael Ben hopped to PBB. Sora Anak Rosah defected from PBDS to PBB. PBDS seats were further reduced to seven when months later Gramong Juna, Mikai Mandau and Bolhassan Kambar defected to PBB. Another political defection arose in Sabah in 1994, when the majority of 25 Parti Bersatu Sabah assemblymen defected to BN and helped BN to form-up the government in Sabah. Another defection also took place which appears to be the most controversies political defection in Malaysia history happened in Perak when the 3 Pakatan Rakyat assemblymen defected to BN in February 2009. Two PKR Assembly men and one assemblyman from DAP announced their alliance with BN. Those defections caused Pakatan government in Perak to Collapse.²⁷

Judicial intervention on issue of political defection arose in Malaysia in *Nordin Bin Salleh & Anor v Dewan Undangan Negeri Kelantan & Ors.*²⁸ The issue before the Court concerned the State Constitution which provides that only member of the Legislative Assembly who ceases to be or is expelled from a political party will cease to be member of Legislative Assembly. The decision of the House in respect of the question of vacancy of the person's seat as final and a non-justiciable political question requiring no judicial intervention.²⁹ It was held that Article 10(2) of the Federal Constitution authorises only Parliament and not a state Legislative Assembly to enact law to impose restrictions on the fundamental right of a citizen to form associations. The Court therefore concluded that the consequence of Article XXXIA on the fundamental right of association of the plaintiffs is that it makes the exercise of their right ineffective. The Court noted that if the phrase 'for any reasons whatsoever' provided in the impugned Article XXXIA of the Kelantan State Constitution purportedly includes resignation of membership of a political party, then, that part of Article XXXIA is also not consistent with

²⁷. See Bukitt Tunggal [<http://www.bukittunggal.com/2009/10/muslim-melanau-minority-rules-ibandayak.html>] accessed on 27/01/2018.

²⁸. [1992] 1 MLJ 343.

²⁹. The facts are that on 3rd July, 1991 the first defendant passed a resolution pursuant to the impugned legislation that the first and second plaintiffs had ceased to be members of the Dewan Undangan Negeri Kelantan and declared the seats for the constituencies of Sungai Pinang and Limbongan vacant. Because of the vacancies, the Election Commission of Malaysia (the third defendant) held by-elections in the constituencies and were completed on 26th August 1991. In the by-elections, the plaintiffs stood for election as candidates for the Barisan Nasional but lost. The plaintiffs sought an order declaring that Article XXXIA of the Kelantan State Constitution is null and void because it is *ultra vires* Article 10(1) (c) of the Federal Constitution.

Article 10(1) (c) of the Federal Constitution and is void by Article 4(1) of the Federal Constitution. On appeal, the Supreme Court took similar view and also invalidated Article XXXIA of the Kelantan State Constitution.³⁰

Expectedly, Article XXXIA of the Kelantan State Constitution which prohibits political defections with respect to legislative members has been declared void by the Court in Malaysia on the ground of being inconsistent with Article 10(2) (c) of Malaysian Federal Constitution. The words, 'for any reasons whatsoever', in Article XXXIA of the Kelantan State Constitution is indeed too wide. It includes resignation from membership of a political party. It does not however include a situation where the political party is dissolved. As such, it does not prevent the exercise of any guaranteed fundamental right by the Federal Constitution.

It should also be pointed out that many modern constitutions in the world have provisions curbing defections due to the danger it poses to the polity. For instance, the Singaporean Constitution provides that a member must vacate his seat if he resigns, or is expelled from his party³¹ and the Parliament will decide on any question relating to the disqualification of a member.³² Also, the South African Constitution provides that a member loses membership of the Parliament if he ceases to be a member of the party that nominated him.³³ The Bangladesh Constitution makes similar provision by stating that a member shall vacate his seat if he resigns from or votes against the directions given by his party. The dispute is referred by the Speaker to the Election Commission.³⁴ Kenya also makes similar provision by stating that a member who resigns from his party has to vacate his seat. The decision is by the Speaker, and the member may appeal to the High Court.³⁵

3.3 The Judiciary and Political Defections in India

With respect to India, case laws appear to have developed in this regard. Thus, in the case of *Mian Bashir Ahmad & Ors v State of Jammu & Kashmir & Ors*,³⁶ the petitioners challenged the validity of section 24G of the J & K Representation of the People Act for being contrary to Article 19(1) (a) and (c) of the Indian Constitution.³⁷ The Chief Justice representing majority view in

³⁰ [1992] 1 MLJ 697.

³¹ Article 46.

³² Article 48.

³³ Sections 47.

³⁴ Article 70.

³⁵ Section 40.

³⁶ Jammu High Court delivered on 13th November, 1981.

³⁷ Section 24G which is as follows: Disqualification for being a member of either House of Legislature A person shall be disqualified for being a member of the Legislative Assembly or

that case was of the opinion that the impugned section does not bar the petitioner from leaving his political party but it merely prevents him from continuing as a legislator if he leaves the political party from where he got his position. The impugned section merely takes away the right to continue as a member of the legislature. The Court viewing in this perspective noted that the impugned section is valid. It noted that no person has fundamental right to continue as a member of the legislature. The right to contest for election and the right to continue as a member after the election are statutory rights which can be validly taken away by a statute.

In fact, in India, anti-defection law was passed in 1985 through the 52nd Amendment to the Constitution, which added the Tenth Schedule to the Indian Constitution. The main purpose of the law was to fight "the evil of political defections." The Supreme Court in the case of *Kihota Hollohon v Zachilhu and Others*³⁸ considered whether the right to freedom of speech and expression is curtailed by the Tenth Schedule of the Anti-defection law. It was held that the provisions do not undermine the democratic rights of elected members of the legislatures. It does not violate their conscience. The provisions do not violate any right or freedom under Articles 105 and 194 of the Constitution.³⁹ The Court also considered whether paragraph 7 of the Schedule barring the jurisdiction of courts in cases of disqualification is constitutional. The Court held that the paragraph seeks to change the operation and effect of Articles 136, 226 and 227 of the Constitution which give the High Courts and Supreme Court jurisdiction in such cases.⁴⁰ Any such

the Legislative Council of the State: (a) if he, having been elected as such member voluntarily gives up his membership of the political party by which he was set up as a candidate in such election or of which he becomes a member after such election; (b) If he votes or abstains from voting in such House contrary to any direction or whip issued by such political party or by any person authorised by it in this behalf without obtaining prior permission of such party or person. .. For the purposes of this section political party means: (a) A political party classified as a recognised political party under any law or any rule, regulation, order or notification having the force of law with respect to matters relating to, or in connection with, election to the Legislative Assembly or the Legislative Council of the State; (ii) Any other political party which is recognised by the Speaker of the Legislative Assembly or, as the case may be, by the Chairman of the Legislative Council, as a political party.

³⁸ (1993) AIR 412.

³⁹ Article 105 and 194 of the constitution of India deals with the power privileges and immunities of parliament and its members and of their state legislature and there members respectively.

⁴⁰ 136. (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. (2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

provision is required to be ratified by state legislatures as per Article 368(2).⁴¹ The paragraph was, therefore, held invalid as it had not been ratified. The Court also considered the issue whether paragraph 6 of the Tenth Schedule granting finality to the decision of the Speaker/Chairman is valid. It was held that as long as the provisions grant finality to the orders of the Speaker, the provision is valid. However, the High Courts and the Supreme Court can exercise judicial review under the Constitution. Judicial review should not, however, in the view of the Court, cover any stage prior to the making of a decision by the Speaker/ Chairmen.

Also, in *Ravi S Naik v. Union of India*,⁴² the issue before the Supreme Court was whether resignation above amounts to voluntarily giving up membership of a political party. The Court held that the words "voluntarily giving up membership" have a wider meaning. The Court can infer from the conduct of the member that he has voluntarily given up the membership of his party. The Court also cited the case of *Kihota Hollohon* where it had been said that the Speaker, while passing an order under the Tenth Schedule, performs his functions as that of a Tribunal. The order passed by him would therefore be subject to judicial review. The Court held further that Rules under the Tenth Schedule are procedural in nature. Any violation of those would be a procedural irregularity which is immunised from judicial scrutiny.

The Supreme Court of India also extended defection to include where a party member was expelled from the party. In *Vishwanathan v Speaker, Tamil Nadu*

See also Article 226 which relates to the power of the High Court to issue certain writs and Article 227 on which provides for the power of superintendent of High courts over other courts.

⁴¹ 368. [(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.] [(2)] An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, 4 [it shall be presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill. Provided that if such amendment seeks to make any change in— (a) article 54, article 55, article 73, article 162 or article 241, or (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or (c) any of the Lists in the Seventh Schedule, or (d) the representation of States in Parliament, or (e) the provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States 5 by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

⁴² (1994) AIR 1558.

Legislative Assembly.⁴³ the issue in this case was whether a member can be said to voluntarily give up his membership of a party if he joins another party after being expelled by his old political party. The Court held that once a member is expelled, he is treated as an 'unattached' member in the house. However, he continues to be a member of the old party as per the Tenth Schedule. So, if he joins a new party after being expelled, he can be said to have voluntarily given up membership of his old party.

Also, in *Dr. Kashinath G Jhalmi v Speaker, Goa Legislative Assembly*,⁴⁴ it was held that the Speaker of a House does not have the power to review his own decisions to disqualify a candidate. Such power is not provided for under the Schedule, and is not implicit in the provisions either. In the case of *Rajendra Singh Rana and Ors v Swami Prasad Maurya and Ors*,⁴⁵ one of the issues submitted before the Court was that, at what point in time can the court review the Speaker's decision making process under the Tenth Schedule. In answering this question, the Court held that if the Speaker fails to act on a complaint, or accepts claims of splits or mergers without making a finding, he fails to act as per the Tenth Schedule. The Court said that ignoring a petition for disqualification is not merely an irregularity but a violation of constitutional duties.

4. Conclusion

The paper has revealed that the courts in Nigeria have the powers of judicial review matters relating to political defections. Yet, Nigerian courts have not, until recently in *Abegunde's* case, exercised judicial review power in this regard. Anti-defections provisions apply only to the legislature not the executive. But once the defector can clearly show that there were factions the former political party which permeated the entire structure of the party, defection becomes permissible without losing his seat. In Malaysia, the court has nullified Article XXXIA of the Kelantan State Constitution for being contrary to Article 10(2) (c) of Malaysian Federal Constitution. In India, the courts have played enormous roles in deciding many issues arising from political defections. The law, especially case law, appear more developed in India than the two other countries reviewed. A lot of lessons can thus be learnt from India jurisprudence in this regard. Nethertheless, the practice is not a perfect one even in India. The law does not forbid political defections; it merely requires that a person who defects from one political party to another should vacate the legislative seat which he got on the platform of the party he

⁴³ (1996) 2 SCC 353.

⁴⁴ (1993) 2 SCC 703.

⁴⁵ (2007) 4 SCC 270.

