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Who Inherits the Symbol? The Supreme Court Reopens the Test for a Split Party

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POLITY**GS2**

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Who Inherits the Symbol? The Supreme Court Reopens the Test for a Split Party

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INTERVIEW ANGLE

"A party splits. One faction has most of the legislators; the other has most of the district units and the founder's family. If you were the Election Commissioner deciding who gets the name and symbol, what would you weigh, and what evidence would you demand before you weighed it?"

Source: [Original editorial](#)

Hindustan Times

✓ Every fact web-verified against primary sources

THE LIFT LINE

The Tenth Schedule refuses to excuse a group defection. The Symbols Order can still hand that group the party.

WHY THIS EDITORIAL MATTERS FOR YOUR EXAM

Party splits are the most reliably examined subject in GS2 polity that students prepare least well. Most answers can name the Tenth Schedule and stop there. Almost none can name the instrument that actually decides who gets the symbol, which is not the Constitution at all but a 1968 order made by the Election Commission, or the 1971 judgment that supplies its tests.

This editorial gives you the full chain: the **statutory** power, the case law, the constitutional amendment that was supposed to close the loophole, and the live litigation in which the Supreme Court is now examining whether the test itself is defective. That chain is worth far more than a recital of anti-defection provisions.

GS Paper 2: Salient features of the Representation of People's Act; appointment to and powers, functions and responsibilities of various Constitutional Bodies; separation of powers; parliament and state legislatures, structure, functioning, conduct of business, powers and privileges.

CONCEPT	MEANING	WHY IT IS TESTABLE
Recognised political party	A party meeting the vote share and seat thresholds in the Symbols Order, entitled to a reserved symbol	Only recognised parties have a reserved symbol to fight over
Reserved versus free symbol	A reserved symbol belongs exclusively to a recognised party; free symbols are allotted to others election by election	Explains why the losing faction gets a new symbol, not none
Paragraph 15, Symbols Order 1968	The Election Commission's power to decide which rival section of a split party is the party	The single provision most students cannot name
Organisational wing versus legislature party	The party's membership and office bearer structure, versus its elected legislators	The heart of the present dispute
Tenth Schedule	The anti-defection schedule inserted by the 52nd Amendment, 1985	Interacts with the symbol question in a way that produces the contradiction
Paragraph 3 (deleted)	The split exception protecting one third of a legislature party, removed by the 91st Amendment, 2003	A very frequent Prelims fact and the analytical pivot here

BACKGROUND AND CONTEXT

The immediate trigger is the Supreme Court hearing of the Uddhav Thackeray faction's challenge to the Election Commission's recognition of the Eknath Shinde group as the Shiv Sena. A bench of **Chief Justice Surya Kant and Justices Joymalya Bagchi and V. Mohana** heard arguments on **5 and 6 August 2026**, with Kapil Sibal appearing for the Thackeray side and arguments set to continue on 11 August.

Two observations from the bench define the issue. The Court said that a political party has subsisting control over its legislature party, so that a valid decision of the party must prevail over the will of a majority of its legislators. It then asked the larger question: if constitutional institutions are expected to be organised on democratic principles, must political parties not be as well? On the party's own constitution the bench remarked that the Shiv Sena had moved from a democratic framework towards what it described as virtually a one-person structure.

The legal architecture behind the dispute is older and simpler than the politics.

INSTRUMENT	YEAR	WHAT IT DOES
Election Symbols (Reservation and Allotment) Order	1968	Made by the Election Commission under its Article 324 powers; reserves symbols for recognised parties and, in Paragraph 15 , empowers the Commission to decide rival claims when a recognised party splits
Sadiq Ali v. Election Commission of India	Decided 11 November 1971, reported 1972	Upheld Paragraph 15 in the dispute over the Congress split and the “two bullocks with yoke” symbol; endorsed three tests: aims and objects, party constitution, and majority in the organisational and legislative wings
52nd Amendment (Tenth Schedule)	1985	Introduced disqualification for defection
91st Amendment	2003	Deleted Paragraph 3 of the Tenth Schedule, removing the protection for a “split” by one third of a legislature party; only a merger of two thirds now survives

Recent practice has run through the third test alone. In its **February 2023** order the Election Commission recorded that neither faction had made out a satisfactory claim to an organisational majority and therefore decided on the legislature party, in which the Shinde group held **40 of 55 MLAs and 13 of 18 Lok Sabha members**; the same order described the party’s existing constitution as undemocratic. In **February 2024** the Commission recognised the Ajit Pawar group as the Nationalist Congress Party and allotted it the clock.

THE ANALYSIS

- 1. The symbol is three things at once, and only one of them is aesthetic.** It is property, in that a reserved symbol is an exclusive legal entitlement of a recognised party. It is identity, in that it carries the accumulated goodwill of every campaign the party has fought. And it is electoral shorthand, in that a substantial part of the electorate locates a party on the ballot by its mark rather than its name. A decision under Paragraph 15 therefore transfers an asset, an inheritance and a piece of voter infrastructure in a single order, which is why the criteria for making it cannot be left as thin as they are.
- 2. The test that survived is the one that measures the most purchasable wing.** Of the three tests in *Sadiq Ali*, the legislative headcount is the only one routinely applied, and it is the one that measures a set of a few dozen individuals each of whom holds office, seeks office, and can be offered office. The organisational wing is larger, more diffuse and far harder to move at scale. Choosing to measure the small, individually incentivised body over the large, diffuse one is not a neutral administrative convenience. It selects for the outcome most easily engineered.
- 3. The perverse interaction with the Tenth Schedule is the core of the editorial’s case.** Before 2003, a legislator could defect with one third of the party and escape disqualification under the old Paragraph 3. The 91st Amendment closed that door precisely because group defection was being manufactured to fit the threshold. But the Symbols Order was untouched. So the position today is that a group of legislators who leave together face

disqualification with no split defence, and simultaneously become the strongest claimants to the party's name and symbol. The Constitution says the conduct is not excusable. A subordinate instrument says the conduct is decisive. A legal order that punishes and rewards the same act has not resolved anything.

4. Sequencing compounds the contradiction. Disqualification under the Tenth Schedule is decided by the Speaker, on no fixed timeline, while the symbol dispute is decided by the Election Commission on the political clock of an approaching election. When the symbol question is answered first, the Commission counts legislators whose very membership of the House may later be annulled. The count that decides the party's identity may thus rest on legislators who, on a later Speaker's order, should not have been counted at all.

5. Internal party democracy is the missing precondition, not a separate reform. The reason the Election Commission fell back on legislators in 2023 is that it could not verify either side's organisational claim. That is a symptom of parties that do not maintain honest membership rolls or hold genuine organisational elections. Any test weighing organisational strength therefore requires that something reliable exist to weigh. This is why the Supreme Court's question about whether parties must themselves be democratically organised is not a digression; it is the enabling condition for the better test.

6. But the administrative objection is real and must be answered, not waved away. The Commission is not a court. It cannot compel discovery from a private association, audit disputed membership registers at speed, or resolve a contested organisational claim in the weeks before a general election. If the answer to a symbol dispute becomes a full evidentiary trial, the practical result is either a symbol frozen through an election or a decision arriving after the election it was meant to govern. A reformed test must be structured enough to be administrable, which is an argument for sequencing and burden of proof rather than for abandoning the legislative count entirely.

DATA AND INSTITUTIONS VAULT

PRELIMS-GRADE FACTS:

Election Symbols (Reservation and Allotment) Order, 1968, made by the Election Commission of India under its powers traceable to Article 324; it is subordinate legislation, not a statute passed by Parliament

Paragraph 15: where rival sections or groups of a recognised political party each claim to be that party, the Commission may decide, after taking into account all available facts and circumstances and hearing the sections, that one of them is that party; the decision is binding on all rival sections

Sadiq Ali v. Election Commission of India: decided 11 November 1971, reported 1972; arose from the Congress split of 1969 and the “two bullocks with yoke” symbol; upheld the validity of Paragraph 15

The three tests endorsed in *Sadiq Ali*: aims and objects of the party, the party constitution, and majority support in the organisational and legislative wings

Tenth Schedule inserted by the 52nd Amendment Act, 1985

91st Amendment Act, 2003 deleted Paragraph 3 (the one third “split” exception). Paragraph 4 (merger, two thirds) survives

February 2023: Election Commission recognised the Eknath Shinde group as the Shiv Sena with the bow and arrow; the Thackeray group became Shiv Sena (Uddhav Balasaheb Thackeray) with the flaming torch. The Commission relied on the legislature party: 40 of 55 MLAs and 13 of 18 Lok Sabha members

February 2024: Election Commission recognised the Ajit Pawar group as the Nationalist Congress Party with the clock; the other faction became NCP (Sharadchandra Pawar)

August 2026 hearing: bench of Chief Justice Surya Kant, Justice Joymalya Bagchi and Justice V. Mohana; the Court observed that a political party has subsisting control over its legislature party

Registration of political parties is under Section 29A of the Representation of the People Act, 1951

WATCH THE TRAP: THE SYMBOLS ORDER IS NOT A CONSTITUTIONAL PROVISION AND NOT AN ACT OF PARLIAMENT. WRITING THAT THE CONSTITUTION DECIDES WHO GETS A PARTY SYMBOL IS WRONG, AND IT IS EXACTLY THE CONFUSION THAT MAKES THE TENTH SCHEDULE CONTRADICTION HARD FOR STUDENTS TO SEE. SECOND TRAP: THE 91ST AMENDMENT DELETED THE SPLIT PROVISION; IT DID NOT DELETE THE MERGER PROVISION. THIRD TRAP: *SADIQ ALI* WAS DECIDED IN NOVEMBER 1971, THOUGH IT IS ALMOST ALWAYS CITED BY ITS 1972 REPORT YEAR.

THE DEBATE

Argument FOR judicially defined criteria. Paragraph 15 confers a discretion of enormous consequence with almost no statutory guidance, and unguided discretion in a body deciding between political rivals invites the perception, and the possibility, of politicised outcomes. The current default rewards precisely the conduct the Constitution refuses to excuse, creating an incentive to defect in bulk. Structured criteria weighing organisational

strength and internal democracy would restore the enquiry *Sadiq Ali* actually prescribed, reduce litigation by making outcomes predictable, and remove the appearance that a symbol follows whichever faction can assemble the larger number of legislators.

Argument AGAINST. The Election Commission chose the legislative test in 2023 because the alternative was unusable, not because it was lazy. Membership rolls in Indian parties are frequently unverifiable, organisational elections are often nominal, and the Commission lacks the investigative machinery of a court. A criterion built on organisational strength therefore risks either paralysis or an outcome no less contestable, arrived at more slowly. There is also a separation of powers point: Paragraph 15 deliberately confers wide discretion on a constitutional body, and judicially fixed parameters may substitute the Court's judgment for the Commission's in an area where flexibility to respond to unlike facts has value. Finally, the legislative wing does carry a democratic claim that the organisational wing does not, since its members have faced voters.

Balanced verdict. The objection to the present practice is not that legislators are counted but that only legislators are counted, and counted first. The right correction is a sequenced test with an allocated burden of proof rather than a wholesale substitution: aims and objects and the party constitution first, verified organisational strength second with the claimant bearing the burden of production, and the legislative count as a tiebreaker available only once disqualification proceedings under the Tenth Schedule have been decided. The administrative objection is then answered by procedure rather than by capitulation, and the Court's deeper question about internal party democracy becomes the reform that makes the better test possible rather than a pious aside.

HOW TO THINK ABOUT THIS

The transferable pattern here is: **when two instruments regulate the same conduct, check whether they point in the same direction.**

The Tenth Schedule and the Symbols Order both bear on a legislator who leaves a party with others. One treats that act as a disqualifying wrong. The other treats it as evidence of who the party is. Neither instrument is incoherent standing alone. The incoherence lives in the gap between them, and the gap opened because the 91st Amendment reformed one instrument in 2003 without touching the other.

Ask the question in three parts whenever you meet a legal contradiction of this kind.

Which instrument is superior in the hierarchy? Here a constitutional schedule confronts an order made by a constitutional body. The subordinate instrument should yield, which is the strongest ground for the Court's intervention.

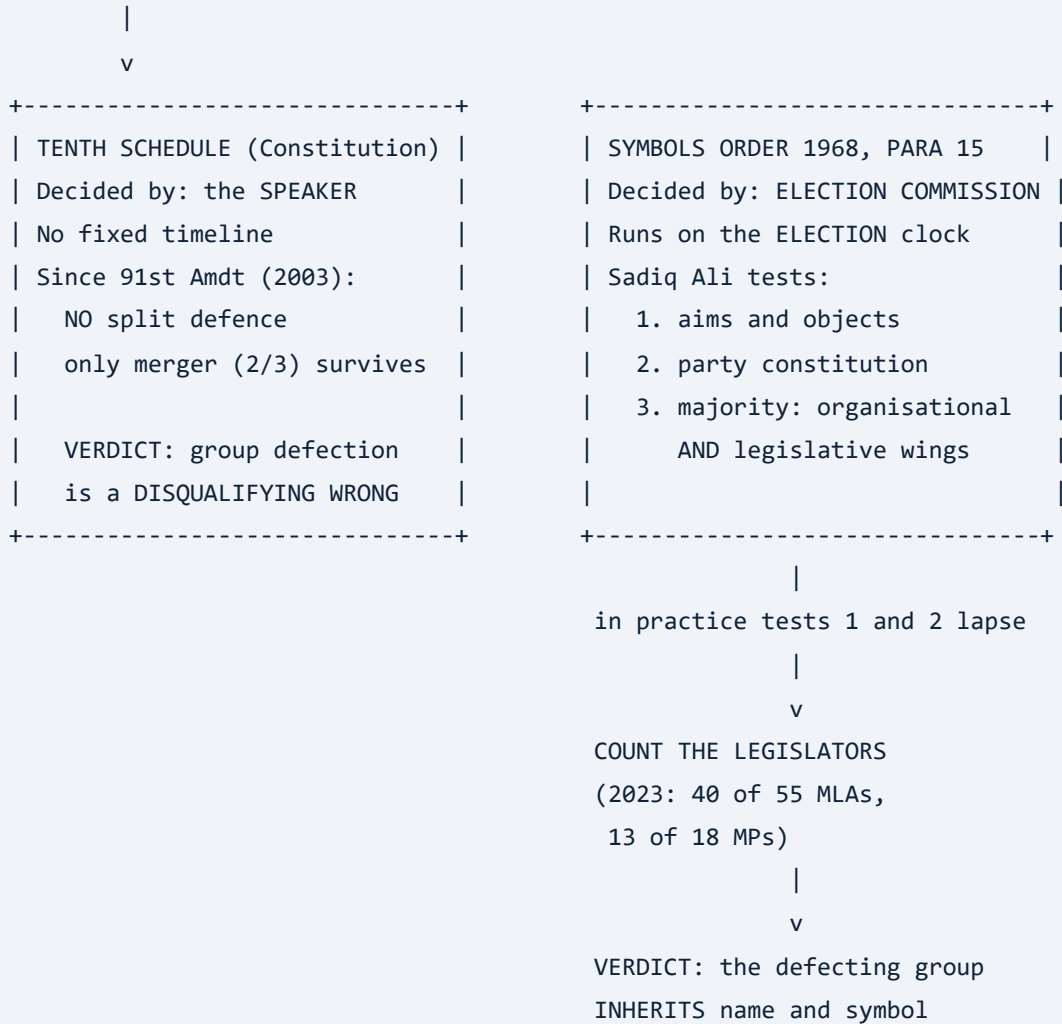
Was the gap designed, or did it open through partial reform? Designed gaps often serve a purpose. Gaps opened by partial reform almost never do, and this one dates precisely to 2003.

Who is the marginal actor, and what does the combined rule tell them to do? A legislator deciding whether to leave alone or with forty colleagues reads both instruments together. Leaving alone means disqualification and nothing else; leaving with forty means disqualification proceedings plus a serious claim to the party itself. The combined rule therefore rewards scale in defection, which is the opposite of what the 91st Amendment intended.

This pattern recurs across the syllabus: in the tension between a governor's discretion and the aid and advice of the council of ministers, between a fundamental right and a preventive detention statute, and between environmental clearance rules and sectoral regulations that permit what the clearance regime forbids.

DIAGRAM-IN-WORDS

A RECOGNISED PARTY SPLITS



THE CONTRADICTION

Same act. Constitution says: not excusable.

Subordinate order says: decisive.

Incentive produced: DEFECT IN BULK, NOT ALONE.

THE PROPOSED REPAIR

sequence the tests -> place burden of proof on the claimant

-> decide disqualification BEFORE the symbol

-> require verifiable internal party democracy

so that test 3 has something honest to measure

TAKEAWAY BOX

A party symbol carries the goodwill of every election the party has ever fought. Deciding its ownership by counting the wing most exposed to inducement measures the least durable thing about a political party.

Paragraph 15, Election Symbols (Reservation and Allotment) Order, **1968**, made by the **ECI**, not by Parliament; **Sadiq Ali v. ECI**, decided **11 November 1971**, reported **1972**, upheld Para 15, arose from the **1969 Congress split** and the **two bullocks with yoke** symbol; three tests: **aims and objects, party constitution, majority in organisational and legislative wings**; Tenth Schedule inserted by the **52nd Amendment, 1985**; Paragraph 3 split exception deleted by the **91st Amendment, 2003**, merger under **Paragraph 4 (two thirds)** survives; **Section 29A, RP Act 1951** governs registration of parties; ECI recognised the **Shinde** faction with the **bow and arrow** in **February 2023** and the **Ajit Pawar** faction with the **clock** in **February 2024**.

an institution given a wide discretion and no criteria will eventually be accused of bias whichever way it decides, and the accusation will be unfalsifiable. Does a constitutional body have an ethical duty to bind itself with published reasons and stated tests, even where the law does not require it? What is the difference between being impartial and being demonstrably impartial, and which does public trust actually depend on?

UPSC has repeatedly examined the *anti-defection law*, the discretionary powers of constitutional authorities, and the role of the Election Commission in maintaining free and fair elections. Mains questions have asked whether the anti-defection law has achieved its objective and how the Speaker's role in disqualification proceedings should be reformed. This editorial supplies the missing half of that answer, the symbol dispute, which almost no candidate brings to it.

"The 91st Amendment closed the split loophole in the Tenth Schedule, but left it open in the Symbols Order." Critically examine the criteria used to decide rival claims to a split party's name and symbol, and suggest reforms.

Sources: Hindustan Times, Election Commission of India, Legislative Department, Ministry of Law and Justice

Source: Who Inherits the Symbol? The Supreme Court Reopens the Test for a Split Party — Ujiyari.com | Free UPSC & State PCS Editorial Analysis

• KEY ARGUMENTS AT A GLANCE

The present practice of settling rival claims to a split party's name and symbol on a headcount of legislators is analytically the weakest of the three tests laid down in *Sadiq Ali*, because the legislative wing is precisely the wing most exposed to inducement, and because the 91st Amendment removed the split defence from the Tenth Schedule while leaving the symbol available as a prize for the same conduct; the Supreme Court's move to define objective parameters weighing organisational strength and internal democracy is therefore a correction of a real perverse incentive rather than judicial overreach.



SUPPORTING

- Paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968 gives the Election Commission a wide, largely unstructured discretion: where rival sections of a recognised party each claim to be that party, the Commission may decide, after taking into account all the available facts and circumstances, that one of them is the party, and that decision binds all sections. The width of the discretion is the problem, not its existence.
- *Sadiq Ali v. Election Commission of India*, decided by the Supreme Court on 11 November 1971 and reported in 1972, upheld Paragraph 15 and endorsed three tests: the aims and objects of the party, the party constitution, and majority support in the organisational and legislative wings. The order of that list matters.
The legislative headcount was the third test, not the first, and was never intended to be the whole enquiry.
- In its February 2023 Shiv Sena order the Election Commission found both sides' claims to organisational majority unsatisfactory and therefore fell back on the legislative wing, where the Shinde group had 40 of 55 MLAs and 13 of 18 Lok Sabha members. In February 2024 the Commission recognised the Ajit Pawar group as the Nationalist Congress Party and allotted it the clock.
In both cases the operative reason was the count of legislators.
- The interaction with the Tenth Schedule is perverse. The 52nd Amendment (1985) inserted the anti-defection schedule; the 91st Amendment (2003) deleted Paragraph 3, which had shielded a "split" by one third of a legislature party from disqualification.
Group defection was thereby stripped of its constitutional defence, yet the Symbols Order continues to make a large group of defecting legislators the strongest claimant to the party's own name and symbol.



COUNTER

The strongest case for the legislative headcount is administrative rather than principled. The Election Commission is not a court: it has no machinery to audit membership registers, no power to compel discovery from a private association, and often no reliable record of organisational elections because parties do not hold them.

Legislators, by contrast, are a closed, verifiable, publicly known set. A test that the Commission can actually apply within an election cycle is worth more than a superior test it cannot administer, and pushing the enquiry towards organisational strength risks either endless litigation or a symbol frozen through an election, which disenfranchises voters who identify a party by its mark. There is also a democratic argument: legislators are the only faction members who have actually faced the electorate.

→ **WAY FORWARD**

The Court should lay down a structured, sequenced test rather than a single number: first, the aims and objects and the party constitution as in Sadiq Ali; second, verified organisational strength, with the burden on the claimant to produce membership and office bearer records; third, the legislative count only as a tiebreaker and only where legislators have not incurred disqualification proceedings. Alongside this, the sequencing problem must be fixed so that a Speaker's decision on disqualification under the Tenth Schedule precedes rather than follows the symbol decision.

In the longer run, statutory minimum standards of internal party democracy, periodic organisational elections, published membership rolls and audited internal polls, would give any test something real to measure, and the Election Commission needs an express power to freeze a symbol and allot neutral marks to both factions while the dispute is decided.


MAINS ANSWER FRAMEWORK
QUESTION

The Election Commission's practice of resolving disputes over a split political party's name and symbol by counting legislators sits uneasily with the anti-defection scheme of the Tenth Schedule. Critically examine, with reference to Paragraph 15 of the Election Symbols Order, 1968 and relevant case law. (250 words)

INTRODUCTION

A political party's symbol is not decoration. For a large share of the electorate it is the ballot itself, and in law it is the property of a recognised party protected by the Election Symbols (Reservation and Allotment) Order, 1968.

When a party splits, Paragraph 15 of that Order empowers the Election Commission to decide which rival section is the party. The Supreme Court, hearing the Shiv Sena dispute in August 2026, has questioned whether the criteria for that decision are adequately defined.

BODY

The governing precedent is *Sadiq Ali v. Election Commission of India*, in which the Supreme Court upheld Paragraph 15 and endorsed a three-part enquiry: the aims and objects of the party, its constitution, and majority support in both the organisational and the legislative wings. In practice the first two tests have withered and the third has been reduced to its legislative half.

In the February 2023 Shiv Sena order the Commission held that neither side had established an organisational majority and decided on the legislature party, where the Shinde group held 40 of 55 MLAs and 13 of 18 Lok Sabha members; the Ajit Pawar group was similarly recognised as the Nationalist Congress Party in February 2024. The objection is not that legislators are irrelevant but that they are the least reliable proxy for a party's identity.

The legislative wing is small, individually incentivised and directly exposed to office and inducement, which is precisely why the Tenth Schedule regulates it and why the 91st Amendment (2003) deleted the Paragraph 3 split exception that had protected group defection. The result is a contradiction inside the same legal order: conduct that the Constitution refuses to excuse can nonetheless be rewarded with the party name and symbol under a subordinate instrument.

The Supreme Court has also raised the deeper condition, asking whether parties that seek constitutional recognition must themselves be organised on democratic principles, and observing that the Shiv Sena constitution had moved towards a single-leader structure. Against all this stands a genuine administrative difficulty: the Commission can count legislators but cannot easily audit membership claims that parties themselves do not maintain honestly.

CONCLUSION

The remedy is a structured test rather than a substituted one. Aims and objects and the party constitution should be examined first, verified organisational strength second with the burden of proof on the claimant, and the legislative count used only as a tiebreaker and only after disqualification proceedings are resolved. That sequencing, backed by statutory minimum standards of internal party democracy and an express power

to freeze a disputed symbol, would restore the logic Sadiq Ali intended and close the gap through which the anti-defection law is currently circumvented.

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