

Status of Election Symbol When Party Splits

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Why in news?

- The Election Commission decided that the Shiv Sena faction led by Maharashtra Chief Minister Eknath Shinde was the real Shiv Sena as opposed to the group led by former CM Uddhav Thackeray.
- It said the party name and symbol of 'Bow and Arrow' would be retained by the Shinde group.

Fight for symbol when party splits

- When a prominent party splits, a tussle often ensues for its election symbol. This symbol is frequently considered as the embodiment of the identity of the party.
- In October 2021, the ECI had frozen the 'Bungalow' election symbol of the Lok Janshakti Party (LJP).
 - The LJP had split in June 2021.
- Before that, tussles over the election symbol had been witnessed in 2017 after the Samajwadi Party (Cycle) and the AIADMK (Two leaves) split.

How does the ECI decide who gets the symbol?

- It is decided as per the provisions of the **Symbols Order, 1968**. This rule applies to disputes in recognised national and state parties.
 - Para 15 of the Symbols Order, 1968 empowers EC to decide on the claim of rival factions in case of split.
 - EC decides on the issue after taking into account all the available facts and circumstances of the case and hearing their representatives.
- The decision of the Commission shall be binding on all such rival sections or groups.
- For splits in **registered but unrecognised parties**, the ECI usually advises the warring factions to resolve their differences internally or to approach the court.

Is there a way other than the test of majority to resolve a symbol dispute?

- In almost all disputes decided by the EC so far, a clear majority of party delegates/office bearers, MPs and MLAs have supported one of the factions.
- Whenever the EC could not test the strength of rival groups based on support within the party organisation (because of disputes regarding the list of office bearers), it fell back on testing the majority only among elected MPs and MLAs.
- Only in the case of the split in the AIADMK in 1987, which happened after the death of M G Ramachandran, the EC was faced with a peculiar situation.
 - The group led by MGR's wife Janaki had the support of the majority of MPs and MLAs, while J Jayalalithaa was supported by a substantial majority in the party organisation.
 - But before the EC was forced to make a decision on which group should retain the party symbol, a rapprochement was reached.

What happens to the group that doesn't get the parent party's symbol?

- Before 1997, EC used to recognise the party, not getting the symbol, based on the criteria fixed for recognition of parties under Paras 6 and 7 of the Symbols Order. I.e., if the breakaway party had support of sufficient MPs/MLAs as per the criteria, it was recognised by EC as National/State Party.
- The **EC in 1997 felt that merely having MPs and MLAs is not enough**, as the elected representatives had fought and won polls on tickets of their parent (undivided) parties.
- The EC introduced a **new rule** under which the splinter group of the party — other than the group that got the party symbol — **had to register itself as a separate party**.
- These parties could lay claim to national or state party status only on the basis of its performance in state or central elections after registration.

Background of the recent decision of EC:

- The political crisis in Maharashtra erupted when some of the MLAs of Shiv Sena aligned themselves with the party's rebel leader Eknath Shinde.
- Since June 2022, the two sides claimed they represent the real Shiv Sena and staked claim to the exclusive use of the name and the 'bow and arrow' symbol.
- In October 2022, through an interim order passed recently, ECI froze the election symbol of the Shiv Sena until the competing claims for recognition by the two rival factions is decided.
- Finally, on 17 February 2023, EC gave its verdict on the issue.

News Summary: EC recognises Shinde faction as real Shiv Sena

- Eknath Shinde's claim on the party's name and bow-and-arrow symbol has been cleared by the Election Commission.
- The EC ruling comes at a time when the Supreme Court is still to decide on the dispute over the powers of the Deputy Speaker to disqualify rebel Shiv Sena MLAs when a notice for his own removal has been given.

How EC decided on the real Sena?

- **EC analysed three tests mentioned in the Sadiq Ali case (supra)**
 - The three tests were:
 - Test of Aims and Objects of the Party Constitution – it was found to be inapplicable.
 - Test of Party Constitution, and
 - Test of Majority
- **EC held that the Test of Party Constitution for determining the present dispute case will be undemocratic**

- While refusing to apply this test, EC held the 2018 changes to the Shiv Sena party constitution as undemocratic since it centralised the party's control.
 - EC was of the view that if such test is applied in the present case, it would be catalytic in spreading such practices across parties.
 - **Majority in organisational party structure was inconclusive**
 - The details of organisational structure was not mentioned by any of the faction.
 - Hence, proving the test of majority in organisational party structure was inconclusive.
 - **EC used the test of majority in the legislative wing of the party**
 - Since, the test of majority in organisational party structure was inconclusive, EC had to resort to the test of majority in the legislative wing of the party.
 - This test showed qualitative superiority to the Shinde faction which has support of 40 out of 55 Sena MLAs and 13 out of 18 Sena MPs.
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Q1) What is Election Commission of India?

The Election Commission of India is an autonomous constitutional authority responsible for administering Union and State election processes in India.

The body administers elections to the Lok Sabha, Rajya Sabha, State Legislative Assemblies in India, and the offices of the President and Vice President in the country.

Q2) Who allots party symbol?

The party symbols are allocated by the Election Commission of India. A symbol assigned to a party designated as a national party can not be used by other parties in the country. A symbol assigned to a state party in one state can be allocated to different state party in another state.

Source: [EC recognises Shinde faction as real Shiv Sena, allots name & symbol](#) | [Ministry of Law and Justice](#) | [Indian Express](#) | [The Hindu](#)

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