



# **DAILY NEWSPAPER ANALYSIS**

**THE HINDU**

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**Topic: GS2 - Collegium System:  
Need of Transparency**



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## Open up the Supreme Court

### Context:-

- Currently a five-judge Bench of the Supreme Court reserved the judgment of a case related to the **status of the Chief Justice as a public authority** and **the disclosure of judges' assets**, the question of whether the **correspondence of the Collegium** (the body of judges that selects and makes appointments to the higher judiciary) was **subject to the RTI**.
- The case is related to the appeal made by Supreme Court itself to it against the ruling of **2009, High Court of Delhi judgment**, which held that the Office of the Chief Justice of India (CJI) was a “public authority”, and therefore, subject to the provisions of the Act. Information held by the CJI — including, in the context of the case, information about judges' assets — could be requested by the public through an RTI application.

### Should Office of CJI come Under RTI Act:-

#### ➤ Argument in Favour:

- Like all other power — judicial power being no exception — is held accountable in a modern Constitution.
- A blanket judicial exemption from the RTI Act would defeat the basic idea of “**open justice**”: that the workings of the courts, as powerful organs of state, have to be as transparent and open to public scrutiny as any other body.

- Bringing the judiciary under the RTI Act would not destroy the personal privacy of judges, as, the **RTI Act itself has an inbuilt privacy-oriented protection**, which authorises withholding the disclosure of personal information unless there is an overriding public interest.

➤ **Argument in Against:**

- There is fear of **vexatious RTI request** may compromise the **judicial independence** and may leak the **sensitive information** related to the case. As **2nd ARC** already notice rise of frivolous and vexatious RTI request already compromised the working of Bureaucracy.
- Judiciary is a highly respected institution which necessitated independence to do fair justice, and Constitution put **accountability to judges through the Parliament by process of Impeachment of Judges** and Parliament itself made the law **Judicial Enquiry Act** for it.

**Collegium and Need of Transparency:-**

- The Collegium itself is not mentioned in the text of the Constitution.
- It arose out of a judgment of the Supreme Court, and in response to increased executive interference in judicial appointments, particularly during 1970s.
- The Collegium began life, therefore, as a tool to secure and guarantee the independence of the judiciary.

- However, the Collegium had come under increasing criticism. A major point of critique was its **opacity**: it was increasingly being perceived that judicial appointments were too often made in an ad hoc and arbitrary manner. For example
  - former Supreme Court Justice Markandey Katju admitted that, as the Chief Justice of the Allahabad High Court, he had refused to recommend a High Court lawyer for judgeship because that lawyer was in a live-in relationship without being married.
- The nomination process is secret, the deliberations are secret, the reasons for elevation or non-elevation are secret.
  - This creates an extremely unhealthy climate, in which rumours become staple, and whispers about executive interference are exchanged in court corridors.
- Indeed, the Supreme Court's own **NJAC judgment** acknowledged this critique, and vowed to evolve a system where concerns of transparency were addressed.
- A small step towards this was made during Dipak Misra's tenure as CJI, when the **resolutions of the Collegium began to be published online**.
- There is fear that disclosing the correspondence of the Collegium would "destroy" judicial independence as disclosing the reasons for rejection of a judge would "destroy" his or her life or career.

- However this argument raise the concerns that collegium system is becoming more and more self serving system for judges.
  - first, that there is only one permissible method to secure **judicial independence**
  - and that is through ensuring **judicial primacy** in the appointments process
  - and then to argue that the only permissible way in which this system can work is by making it **immune to transparency**.
- As Supreme Court has instituted a process of appointment that makes itself the final arbiter of judicial appointments, then it must also ensure that that same process meets the **standards of accountability in a democratic republic**.
- Judicial appointments elsewhere suggests that transparency in appointments is integral to the process. For Example :
  - In the **United States** candidates for judicial appointments in the federal judiciary are subjected to public confirmation hearings by the **Senate**.
  - **In Kenya and South Africa**, the interviews of candidates taken by judicial appointments commissions are broadcast live. The public, thus, is in a position to judge for itself the selection process. This is crucial to maintaining public faith in the impartiality of the institution.

### **Conclusion:-**

- The Collegium's recent decisions to recommend a set of names for elevation, and then hastily backtrack on them without any publicly stated reasons, dealt a serious blow to its reputation for impartiality and independence.
- The only way to salvage this is to open up the court.
- A judiciary that is confident of itself and of its place in the democratic republic should not be worried about subjecting judicial appointments to public scrutiny.
- The occasional discomfort that might come from the harsh public glare is more than outweighed by the cleansing value of transparency.