

# Opening collegium to RTI

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## Manifest Pedagogy

Judiciary is a hot topic this year. Almost all issues related to it are in news! Some of the most crucial judgments have been given this year. On the other side of it Judiciary has been a centre of criticism due to the Collegium system and its reluctance to come under RTI. All these issues needs to be prepared in depth!

## In news

Supreme Court reserves verdict related to the opening of the collegium to RTI

## Placing it in the syllabus

Structure, organization, and functioning of the Judiciary

## Static dimensions

- Collegium system and its growth
- Advantages and disadvantages of Collegium system

## Current dimensions

- Issues related to NJAC
- Supreme Court decision related to the opening of the collegium to RTI and its implications

## Content

### What is the decision?

Supreme Court has reserved the verdict on the opening of

Collegium to RTI.

A five-judge constitutional bench headed by Chief Justice Ranjan Gogoi was the hearing of appeals lodged in 2010 by the Secretary-General of the Supreme Court and the Supreme Court's Central Information Officer challenging a Delhi High Court ruling that the office of the Chief Justice falls within the scope of the Right to Information Act.

Attorney general Venugopal stated that if pushing the collegium under the public domain through RTI would destroy judicial independence.

### **Collegium system**

Collegiums system in India is the system by which the judges are appointed by the judges only, it is also referred to as "Judges- selecting- Judges".

It is the system of appointing and transferring judges that has evolved through the Supreme Court's judgments (three judges case), not through a parliamentary act or a constitutional provision.

The Collegium of the Supreme Court is headed by India's Chief Justice and includes four other senior judges of the Supreme Court.

### **Three Judges cases**

Following are the three judges cases through which the Collegium system has been evolved

- **First Judges case (1982)**: in this case, the Court held that consultation(while appointing judges) does not mean concurrence and it only implies the exchange of views.
- **Second Judges case(1993)**: but in this case, the Court reversed its earlier ruling and changed the meaning of the word consultation to concurrence. Hence, it ruled that the advice tendered by the Chief Justice of India

is binding on the President in the matters of appointment of the judges of the Supreme Court. But, the Chief Justice would tender his advice on the matter after consulting two of his seniormost colleagues.

- **Third Judges case(1998):** the court stated that the consultation process to be adopted by the Chief justice of India requires 'consultation of plurality judges'. The sole opinion of the chief justice of India does not constitute the consultation process. He should consult a collegium of four seniormost judges of the Supreme Court and even if two judges give an adverse opinion, he should not send the recommendation to the government.

## **Advantages and disadvantages of Collegium system**

### **Advantages**

- **Protection of the Judicial Independence:** It minimizes the interference of the executive in the dispensation of the justice system.
- **Identification of capable Judges:** The Judicial trained mind can determine who is capable and competent in law to become a judge of the court.
- **Political influence will be minimized:** Because involvement of executive in the appointment of judges would influence their judgments.

### **Disadvantages**

- **Nepotism:** Since Judges are appointed by judges there would be chances of favoring a person who may not be capable.
- **Undemocratic:** many termed the collegium system a non-democratic as it only takes the consultation of some group of judges(Judiciary) but not other organs of democracy the executive and legislature.
- It makes the elected government less important.

- It failed to keep pace with the stalled vacancies in the system.
- The Supreme Court Bar Association has blamed it for creating a “give-and-take” culture, creating a rift between the haves and have-nots

### **The issue of NJAC**

- In 2015 the Supreme Court rejected the National Judicial Appointments Commission (NJAC) Act and the 99th Constitutional Amendment which was aimed at giving a final say to politicians and civil society in appointing judges to the highest courts.
- The court termed it unconstitutional and stated that involvement of executive in the appointment of judges will be detrimental to the independence of the Judiciary.

### **Composition of NJAC**

As per the amended provisions of the constitution, the Commission would have consisted of the following six persons:

- Chief Justice of India (Chairperson, *ex officio*)
- Two other of senior judges of the Supreme
- Court next to the Chief Justice of India – *ex officio*
- The Union Minister of Law and Justice, *ex-officio*
- Two eminent persons

These (two) eminent persons would be nominated by a committee consisting of the

- Chief Justice of India,
- Prime Minister of India, and
- The leader of Opposition in the Lok Sabha (or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in Lok Sabha), provided that of the two eminent persons, one person would be from the Scheduled Castes or Scheduled Tribes

or OBC or minority communities or a woman. The eminent persons shall be nominated for a period of three years and shall not be eligible for re-nomination.

### **Implications of present decisions**

The registry of the Supreme Court told the court that disclosure of highly confidential information such as deliberations collegium in appointing or elevating judges under RTI law would be “harmful to the functioning” of the judiciary. To the contrary many are of the opinion that this would bring transparency in the governance of the Judiciary.