

## SC Ruling Against Judicial Transparency

### Why in News?

The Supreme Court (SC) has barred citizens from securing access to court records under the Right to Information (RTI) Act.

### What is the SC ruling?

- The SC held that these records could be accessed only through the rules laid down by each High Court under **Article 225** of the Constitution.
- It ruled so in the Chief Information Commissioner (CIC) v. High Court (HC) of Gujarat case.
- This ruling does not preclude the application of the RTI Act to the administrative side of the court.
- But it firmly denies access to the court records filed on the judicial side under the RTI Act.
- The SC's verdict in this case is based on **Section 22** of the RTI Act.

### What is the Section 22 of the RTI Act?

- The Section 22 states that the **RTI Act shall override any other law** to the extent that the latter is inconsistent with the former.
- It is **non-obstante clause** which means that it can be used as a common drafting device by legislatures to permit certain actions regardless of what is mentioned in existing legislation.
- Despite this, the SC and, High Courts on previous occasions have concluded exactly the opposite.

### Why records should be shared?

- A significant number of decisions taken by the courts influence a person's daily life.
- Every prosecution before a criminal court is essentially an opportunity to hold the police accountable.
- The pleadings filed by parties contain information that are useful to citizens, journalists, shareholders, etc., who can better inform the public discourse on the ramifications of these decisions.

### What reasoning did the court give?

- The court concludes that there is **no inconsistency** between the RTI Act and the court rules.
- It is factually incorrect as the Gujarat HC Rules require the submission of an affidavit stating the purpose of seeking copies of the pleadings.
- But, the RTI Act requires no reasons to be provided while seeking information.
- The court argues that an enactment can't be overridden by a later general enactment simply because the latter opens up with a **non-obstante clause**, unless there is clear inconsistency between the two legislations.
- But that is exactly the point of a non-obstante clause.
- The court concludes that the **Section 22** could not be read in a manner to imply repeal of other laws, such as the Gujarat High Court Rules.
- The court states that if the intention was to repeal another law, the legislature would have specifically stated so in the RTI Act.
- This reasoning is bewildering because it would render non-obstante clauses entirely useless.

### Why it's a problematic decision from citizen's perspective?

- **Administrative discretion** - Some HCs allow only parties to a legal proceeding to access the records of a case and some allow third parties to access court records if they can justify their request.
- This is entirely unlike the RTI Act, where no reasons are required to be provided thereby reducing the possibility of administrative discretion.
- **Logistical difficulties** -An application under the RTI Act can simply be made by post, with the fee being deposited through a postal order.
- Most HCs and the SC require physical filing of an application with the Registry, and a hearing to determine whether records should be given.

### What could the SC do?

- It should understand that the judiciary's track record of transparency is vastly inferior when compared to other arms of the state.
- The judiciary shouldn't resist from making itself transparent in a meaningful manner, or else it'll have eroding effect on its legitimacy.

Source: The Hindu