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

SHANKAR IAS PARLIAMENT
Information is Empowering