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Breaking the Bench's Glass Ceiling: CJI Surya Kant's to Build a More Inclusive Judiciary

DR C RAJ KUMAR

Justice Surya Kant

The 53rd Chief Justice of India, Justice Surya Kant, who will take over the reins of the judiciary today, will have many challenges to address. There are social expectations that have been generated on account of his progressive mindset and natural ability to navigate complex issues of diversity and inclusion with clarity and sensitivity. One such expectation from the new Chief Justice is in relation to the aspiration of the judiciary to become a more inclusive institution with a greater representation of women across all levels of the judiciary. It is notable that, in the larger context of promoting diversity and inclusion within the legal fraternity, a bench of the Supreme Court led by Justice Surya Kant has already issued several landmark directions mandating reservation for women in the executive bodies of various bar associations across India.

On 28 March 2025, in a reply to a question in the Lok Sabha, Mr Arjun Ram Meghwal, Minister of State for Law and Justice (Independent Charge), observed, "...Since 2014 till date 06 women judges have been appointed in the Supreme Court and 162 women Judges have been appointed in the High Courts. As on March 18, 2025, there are 02 women Judges working in the Supreme Court and 110 women Judges in High Courts. As on February 28, 2025, there are 7,852 women Judges working in District and Subordinate Courts." As of now, there is only one woman judge in the Supreme Court, Justice BV Nagarathna. The silver lining, however lies in the District and Subordinate Courts, which have nearly 35 per cent women and constitute the largest representation within the three tiers of the judiciary.

The next major reform initiative would be to focus on the higher judiciary, especially the High Courts and the Supreme Court. Quite remarkably, the outgoing Chief Justice of India, Justice GR Gavai, poignantly observed on his last working day at a farewell hosted by women lawyers of the Supreme Court at the Women's Bar Room, "...I have a regret that I could not get a woman member to the Supreme Court ... but in so far as High Courts are concerned we had recommended 16 women judges... among them are women lawyers of Supreme Court. So, my collegium always believed in wide representative to women members...".

The spirit of these observations of the outgoing Chief Justice of India echoes a larger vision that needs to be pursued with purpose and conviction by the new Chief Justice of India. Breaking the bench's glass ceiling is absolutely essential for the judiciary to send the right signals that equality and diversity are not just legal and constitutional concepts but require individual and institutional efforts to implement them. Justice Surya Kant is in a position to shape the future of the higher judiciary by ensuring that this becomes an institutional priority and has the full consideration of the collegium. There are three critical aspects to this effort, and they need to be pursued simultaneously:

1. **Collegium should consider recognising gender diversity as a constitutional imperative**

The collegium headed by the Chief Justice of India plays a central role in all judicial appointments to the higher judiciary. The Chief Justice of India, through dialogue and deliberation within the collegium, should work towards building consensus in recognising that gender diversity is not just a policy objective but a constitutional imperative. The endeavour of Justice Surya Kant, along with other members of the collegium, should be to ensure that at least 40 per cent of judicial appointments made to the Supreme Court and the High Courts should be women. This will take significant courage of conviction and consensus-building efforts within the collegium, but the new Chief Justice is well positioned to pursue this bold and unprecedented initiative.

2. **Democratic and inclusive ways of identification of lawyers across High Courts**

The existing methods and mechanisms of identifying suitable candidates in the form of lawyers practicing in High Courts to be considered for appointment as judges may not be suitable for selecting women lawyers. Many outstanding women lawyers may have chosen different pathways into the world of legal practice, and hence, innovative and some out-of-the-box thinking may be necessary to identify potential women for appointment as judges of the High Court.

One idea could be to look into the law firms and other organisations where there could be outstanding women lawyers who may not be actively practicing in the courts. However, their qualifications, competence, and experience is not less significant for being a good and effective judge. This will also be a unique way of addressing the challenge of having judges in the High Courts and the Supreme Court who are familiar with commercial disputes, while recognising the complex relationship between law, policy, regulation, and economics.

3. **Seniority should be occasionally balanced with diversity**

The existing process of selecting judges to the Supreme Court places the strongest emphasis on seniority, including the effort to have Chief Justices of High Courts appointed as judges of the Supreme Court. There have been a few judges who have been directly appointed to the Supreme Court either from the Bar or even when they are not serving as Chief Justice of a High Court. Justice Surya Kant may be able to provide enlightened leadership for engaging in debates and discussions within the collegium for occasionally balancing the need for having diversity while forgoing seniority, especially when selecting women judges to the Supreme Court. This is almost necessary as the historical challenge of having fewer women judges across High Courts has put women at a significant disadvantage when it comes to being eligible, with seniority working in their favour for being considered for appointment as a judge of the Supreme Court.

It is time that the Indian judiciary embraces wholly and substantially the vision of diversity and inclusion in letter and spirit, where the outcomes of the policy should become as important as the process adopted in selecting judges to the higher judiciary. Justice Surya Kant may just have what it takes to address this challenge with honesty and integrity.

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Order Order

Justice Surya Kant to take oath as next CJI today

Justice Surya Kant, who has been part of several landmark verdicts and orders on abrogation of Article 370 removing Jammu and Kashmir's special status, Bihar electoral rolls revision and Pegasus spyware case, will on Monday take oath as the 53rd Chief Justice of India. He will succeed Justice BR Gavai, who demits office this evening.

Justice Kant was appointed as the next CJI on October 30 and will remain in the post for nearly 15 months. He will demit office on February 9, 2027 on attaining the age of 65 years. Born on February 10, 1962 in Hisar district of Haryana to a middle-class family, Justice Kant went from being a small-town lawyer to the country's highest judicial office, where he has been part of several verdicts and orders of national importance and constitutional matters. He also has the distinction of standing 'first class first' in his Master's degree in law in 2011 from Kurukshetra University.

Justice Kant, who penned several notable judgments in the Punjab and Haryana HC, was appointed the chief justice of Himachal Pradesh HC on October 5, 2018.

His tenure as an SC judge is marked by verdicts on the abrogation of Article 370, free speech and citizenship rights. The judge was part of the recent presidential reference on the powers of the Governor and President in dealing with bills passed by a state assembly. The verdict is keenly awaited with potential ramifications across States. He was part of the bench that kept the colonial-era sedition law in abeyance, directing that no new FIRs be registered under it until a Government review. Justice Kant also nudged the Election Commission to disclose the details of 65 lakh voters excluded from the draft electoral rolls in Bihar while hearing a batch of petitions challenging the poll panel's decision to undertake Special Intensive Revision (SIR) of the voters list in the poll-bound State.

In an order that emphasised grassroots democracy and gender justice, he led a bench that reinstated a woman sarpanch unlawfully removed from office and called out the gender bias in the matter.

Supreme Court berates woman lawyer

PIONEER NEWS SERVICE
New Delhi

Why did you get into this mess?", the Supreme Court recently said to a woman lawyer for getting into an intimate relationship with her client, a man, who had come to her seeking advice on his divorce case.

A bench of Justices BV Nagarathna and R Mahadevan said that the lady, being an advocate, should have maintained professional boundaries with her client, particularly when his divorce had not concluded.

The Bench questioned why the woman, who is 36 years old and a practising advocate, entered into a personal relationship with her own client.

"She is an advocate. She is handling the petitioner's divorce case. Why did you do that? We don't expect this," said Justice Nagarathna. When she insisted she had only "guided" him and never formally appeared, the Court noted that the distinction made little difference if she acted as his legal advisor while becoming personally involved.

The Court was hearing the man's petition seeking anticipatory bail in a case filed by the woman, who had been representing him in his matrimonial dispute before they entered a personal relationship. Appearing for the petitioner, advocate Rishi Malhotra submitted that the complainant, a practising lawyer, had filed "four identical cases" of sexual assault against different accused persons and that the Bombay High Court had even ordered an inquiry into her conduct.

Justice Nagarathna took note of the complainant's professional background and asked how an advocate could cross the line of propriety with a client she was representing in a divorce case.

Kerala judge moves Supreme Court against disciplinary action for closing 1,900 petty cases

PIONEER NEWS SERVICE
Kochi

A lady judicial officer from Kerala recently moved the Supreme Court against disciplinary action taken against her by the High Court for stopping proceedings in more than 1,900 minor criminal cases almost a decade ago. A Bench of Justices Vikram Nath and Sandeep Mehta sought a response from the State of Kerala on plea challenging two Kerala High Court orders filed by lady Judge Sony AS that upheld the disciplinary penalty and rejected her request to restore her seniority, increments and service benefits.

The case traces back to 2016, when the officer, then serving as a Judicial First Class Magistrate in Kollam, invoked her powers under Section 258 of the Code of Criminal Procedure to stop proceedings in over 1,900 summons cases involving minor offences such as rash driving and drunken driving. The cases had remained pending for years as the accused repeatedly failed to appear despite coercive steps. According to her petition, these orders were passed in good faith to reduce backlog in accordance with administrative directions encouraging magistrates to prioritise contested trials.

Her performance, she stated, was later commended by the Registrar (Subordinate Judiciary) in multiple letters of appreciation between 2018 and 2022.

Supreme Court's opinion on Presidential Reference: Will it make any difference in the tussle between the Governor and State Governments

RANJIT KUMAR SINHA

President Droupadi Murmu

The Presidential Reference concerning the powers of the Governors and the President in relation to state bills reached the Supreme Court through the exercise of the President's advisory jurisdiction under Article 143 of the Constitution.

The Reference was primarily triggered by a specific judicial decision. The Tamil Nadu Government challenged the Governor's prolonged delay in giving assent to several bills passed by the State legislature.

The Supreme Court, on April 8, 2025, delivered a judgment in which a two-judge Bench found the Governor's indefinite delay to be "illegal" and "erroneous." The Apex Court, using its inherent power under Article 142, set specific timelines for Governors and the President to act on state bills presented for assent under Articles 200 and 201, and even went to the extent of suggesting 'deeming assent' on some long-pending bills.

The Supreme Court's ruling, particularly the imposition of fixed timelines and the concept of 'deemed assent,' created significant constitutional uncertainty regarding the scope of the Governor's and President's powers.

The two-judge Bench prescribed a maximum of three months for the Governor to either withhold assent and return a Bill with a message or reserve it for the President's consideration, and a maximum of one month for the Governor to grant assent to a Bill re-enacted by the State Legislature.

The President was required to decide on Bills reserved for her consideration by the Governor within three months from the date of reference.

Consequently, President DroupadiMurmu invoked her power under Article 143(1) of the Constitution to seek the Supreme Court's advisory opinion on the matter.

The President referred a set of 14 questions to the Supreme Court, seeking clarity on whether the judiciary can fix timelines for them or review the merits of their decisions.

The Supreme Court constituted a five-judge Constitution Bench (as required by Article 145(3) for Article 143 references) to hear the matter. The opinion, delivered on November 20, 2025, by a bench comprising Chief Justice BR Gavai, Chief Justice-Designate Surya Kant, and Justices VikramNath, PS Narasimha, and AS Chandurkar, was unanimous and referred to as the "Opinion of the Court."

The opinion essentially clarified the constitutional position, holding that while Governors cannot sit on bills indefinitely, the Court cannot impose fixed timelines or grant "deemed assent," as this would violate the separation of powers.

This decision significantly enhanced the constitutional power and authority of both the Governor and the President by firmly establishing two key principles: the rejection of fixed judicial timelines and "deemed assent," and the affirmation of the Governor's and President's non-justiciable constitutional discretion.

While rejecting the safeguards sought by the opposition-ruled States, the Supreme Court issued a very strong constitutional caution to Governors, limiting their power through the threat of judicial review of inaction.

The most significant caution is against the practice of sitting on a Bill indefinitely. The Constitution Bench expressed its view that a Governor cannot use silence or deliberate, prolonged inaction as a method to obstruct the legislative will of the State Assembly.

The Apex Court stressed that stalling bills indefinitely and bringing bills to a procedural impasse is antithetical to the Constitution and that the system of cooperative federalism demands dialogue and cooperation, not obstructionism. It said the Governor must choose one of the options expressly provided by Article 200 (Assent, Reserve, or Return) and clarified that the Governor does not have the option to "withhold assent simpliciter." If assent is withheld, the Governor must simultaneously return the Bill to the State Legislature for reconsideration with a message outlining their concerns. This compels constitutional dialogue.

While the Court cannot review the merits of the Governor's decision, it can review the fact of deliberate inaction. It clarified that "inaction that is prolonged, unexplained, and indefinite" will "certainly invite limited judicial scrutiny." If found, the Supreme Court can intervene to issue a limited writ of mandamus, directing the Governor to exercise one of the three constitutional options within a reasonable period, without dictating which one to choose. The immunity under Article 361 cannot shield indefinite delays.

In essence, the Supreme Court's opinion drew a clear red line: Governors have discretion on what to do with a Bill (Assent, Reserve, or Return), but they have no constitutional discretion on when to do it if the delay is clearly a willful attempt to obstruct the elected Government.

Despite the caution mentioned above, does the Supreme Court's opinion have a demoralising impact on Opposition-Ruled States and undermine the People's Choice for governance of the State through elected Government? Will this help in reducing the conflict between Governors and the Opposition-Ruled States?

The enhancement of the Governor's power is widely seen as demoralising for opposition-ruled states, where there has been enormous conflict in the exercise of power by both the Government and the Governors.

Without a fixed deadline, Governors-often perceived as acting on behalf of the central Government — can continue to engage in prolonged, indefinite delay, making it politically and legally challenging for state Governments to get their legislation passed quickly.

Further, this enhanced power, despite the cautions, is perceived by the states as undermining the people's choice and their legislative mandate.

The ruling essentially chose to uphold the Constitution's system of checks and balances (the Governor's power to scrutinize bills) rather than ensuring the quick and easy passage of laws desired by the elected state Government.

The Supreme Court's cautions, like limited judicial review of prolonged delay, are subjective and lack a measurable standard. This means states must still engage in lengthy, expensive legal battles to force a Governor to act, thereby stalling bills meant for the people and frustrating the will of the elected Assembly. It places the burden of fighting gubernatorial obstruction back on the shoulders of the elected state Governments, which is precisely why it is viewed as demoralising.

The Supreme Court's opinion won't stop Governors and opposition-ruled states from fighting, but it does give them rules for how to fight based on the Constitution. Since no deadline, like 60 or 90 days, has been fixed for Governors to act, the process of Bills has been left open-ended. A Governor who intends to obstruct can still cause long delays by offering vague reasons, moving the bill slowly, or engaging in a drawn-out "dialogue."

Some of the lawyers who closely watched the proceedings in the Presidential Reference explained that the opinion has not talked about the deadline for the Governor's action on the Bills, as the five-judge Constitution Bench adhered strictly to the principle of separation of powers.

They said the Court's role in an advisory opinion under Article 143 is to interpret the existing law, not to amend the Constitution. By refusing to impose fixed timelines, the Court signaled that imposing such a procedural rule would be an act of "judicial amendment," which is the exclusive domain of Parliament under Article 368. Therefore, the opinion deliberately offered a judicial remedy (limited review of inaction) instead of a legislative remedy (a constitutional amendment).

In such circumstances, since state Governments are established through the people's choice, Governors are expected to act on Bills quickly and decisively to implement the legislative mandate. The expectation is that the Governor should not use silence or deliberate, prolonged inaction to obstruct the legislative will of the State Assembly.

As the opinion in the Presidential Reference has severely diluted the extreme view taken in the judgment by the two-judge Bench (specifically the fixed timelines and 'deemed assent'), the onus is now firmly placed on the Governors, particularly in opposition-ruled states, to consider every Bill judiciously and within a reasonable time.

Further, the political stakes of this judicial clarification are especially high in opposition-ruled states like West Bengal, Kerala, and Tamil Nadu, all of which are scheduled to go for assembly elections in 2026.

Given the persistent tension between the Governors and the elected State Governments in these states, the Supreme Court's opinion ensures that Governors are now constitutionally compelled to take a definitive, reviewable action (Assent, Reserve, or Return the Bill with a message), thereby ensuring that the Governor's decision will become a more transparent subject for political debate before the elections.

The writer is a senior journalist covering legal affairs