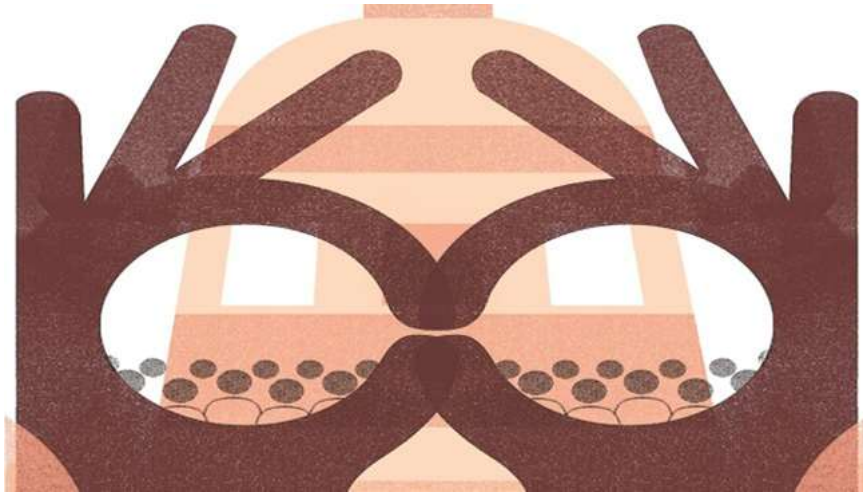


# An open letter to the new Chief Justice: A five-point action plan for His Lordship

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*With his excellent record, unimpeachable integrity and humane approach, Justice Surya Kant is perfectly suited to address the judiciary's challenges. His tenure will be keenly watched. (Illustration: C R Sasikumar)*

On November 24, Justice Surya Kant assumes office as India's 53rd Chief Justice. At a time when democracies around the world are facing a variety of institutional challenges, India's institutions continue to be robust, notwithstanding the high level of social expectations. While all institutions are important in their own right, the judiciary is the only institution with the power to interpret and evaluate the actions of other wings of the government, according to the constitutionality criteria. The framers of the Constitution had enormous faith in the judiciary, especially the Supreme Court. That's why Article 142 of the Constitution notes, "The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it...". The concept of "complete justice" empowers the Court to transcend the limitations of law.

On assuming charge as CJI, Justice Surya Kant could consider giving importance to the following five issues that will address current challenges as well as shape the future of the judiciary. One, fill up posts of judges in the Supreme Court and high courts. Justice Surya Kant will have a 15-month-long tenure as the CJI, during which he will lead the efforts for the appointment of six new judges to the SC. More than 300 posts of judges across various high courts are also vacant. The new CJI, therefore, has an opportunity to build the next generation of the judiciary. Appointment of judges to the high courts and the Supreme Court has been a matter of public debate. The crux of this conversation is about striking a critical balance between the imperatives related

to the independence of the judiciary and the objective of appointing judges with competence and integrity. The new CJI also has an opportunity to address the issue of diversity, especially the need to increase the number of women judges.

The second task for Justice Surya Kant is to address the pendency of cases. According to the National Judicial Data Grid, approximately 47.56 million cases are pending in district and taluka(subordinate) courts, 6.38 million cases are pending in high courts, and 88,000 are pending in the SC, as of September. In other words, 153 million cases are pending across the judiciary. Justice Surya Kant has already spoken about the use of technology in addressing some of these issues. A multi-pronged approach that involves every possible reform, including, but not limited to filling up of vacancies across all levels of the judiciary, revisiting the policies and regulations relating to adjournment, reimagining the existing practice of appeals across multiple levels of the judiciary, training and capacity building of lawyers and judges in faster disposal of cases, and other such initiatives, is imperative.

The government (Centre and states) is a party to 50 per cent of the pending cases. It is important, therefore, that the judiciary and the government work closely to address this crisis. In a recent lecture, Justice Surya Kant drew attention to the massive backlog and warned that even the strongest legal aid framework “loses its meaning when justice arrives too late.” He described pendency as a direct threat to constitutional guarantees of timely justice.

Three, establishing a national academy for lawyers. There are about 1.8 million lawyers in India, and about a lakh enter the profession every year. There is, thus, a compelling case for establishing a national academy, different from the Bar Council of India, which has regulatory powers to maintain standards in legal education and the legal profession. The academy will function as a training institution and undertake capacity-building initiatives to prepare the next generation of lawyers and judges. While the National Judicial Academy in Bhopal and the state judicial academies have been able to pursue these tasks for the benefit of judges, the country does not have a national-level agency that can focus purely on training lawyers. Private sector organisations, including law firms, corporations, and other such business entities, have programmes to train lawyers. But independent legal practitioners across the country need greater attention.

Four, promote judicial reforms. Justice Surya Kant has been at the forefront in bringing mediation to the centre stage of different forms of dispute resolution in the country. On several occasions, he has talked about the importance of mediation as a critical tool to promote access to justice. He recently observed that mediators not only resolve disputes but also help preserve relationships between people and different sections of society. “They choose understanding over victory, conversation over conquest, healing over harm. Courts decide. Mediators heal. This ancient wisdom has now found its most comprehensive legal expression in the Mediation Act of 2023,” he said.

For mediation to play a larger role in the imagination of the legal and justice delivery system, it is important to work towards building a wider consensus among the members of the Bar.

Five, protecting the rule of law while maintaining the independence of the judiciary. The SC has a rich history of protecting the rights and freedoms of ordinary people. But it failed to rise to the occasion during the Emergency, when executive excesses were left unaddressed. The ADM Jabalpur case (habeas corpus case) remains a blot on the judiciary's record. The SC's role during the Emergency is a stark reminder that eternal vigilance through institutional checks and balances is the most important way by which we can protect, preserve, and promote the rights and freedoms of the people.

With his excellent record, unimpeachable integrity and humane approach, Justice Surya Kant is perfectly suited to address the judiciary's challenges. His tenure will be keenly watched.

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