

**FORMER PRESIDENT OF INDIA, SHRI PRANAB
MUKHERJEE DELIVERING DR RAJENDRA PRASAD
MEMORIAL LECTURE BEING ORGANISED BY BAR
ASSOCIATION OF CALCUTTA**

I am honored to be delivering the Rajendra Prasad Memorial Lecture today. The man whom we remember today was not only the first President of India, but was a great freedom fighter of rare dedication, a founding father who presided over the Constituent Assembly and a Statesman of earlier days who shaped modern India in the initial one and a half decades after Independence. I feel privileged to have attained the same prestigious office of the 13th President of the Republic that was once held by Rajendra Babu- one of the chief architects of the Indian Republic. A close disciple and comrade of the Mahatma, he was President of the Indian National Congress thrice (1934, 1939 and 1947) along with being an active witness and participant in the critical turning point of the Congress becoming a mass based movement, when he along with Raj Kumar Shukla brought Gandhi Ji to Champaran to launch Satyagraha for the peasants of the area who were exploited by the indigo planters. He along with Pt. Nehru, Sardar Patel and Maulana Azad shaped Independent India in her nascent years of Independence.

2. Rajendra Babu was first elected as the President of India by the Constituent Assembly, in its capacity as the Provisional Parliament in 1950. He was re-elected in 1952 by the Presidential Electoral College as per the provisions of the Constitution; the Electoral College consisting of the elected members of the two houses of Parliament and the State Assemblies after General Election held in 1952 and then again for a second full term in 1957 (in effect the third term) and continued till 1962. Throughout his presidency of more than 12 years, he remained true to the letter and spirit of the Constitution and set the bar quite high for his successors.

3. In his concluding speech to the Constituent Assembly just before the motion for adoption of the final document of the Constitution was moved and adopted on November 24th 1949, Rajendra Babu as its President enunciated the salient features of the Constitution. In doing so he not only underlined the letters that defined them but also touched upon the unwritten spirit that was to guide the implementation of the Constitution. Speaking about the role of the President, the office that he was soon to assume, he said, and I quote, "The

President of the Republic will be an elected President. It is for the first time that it becomes open to the humblest and the lowliest citizens to deserve and become the head of this big State. Some people think too much power has been given to the President, others think that the President, being elected should have even more powers... since he is elected twice over by the representatives of the people in the State Legislatures and in the Central Parliament. But although the President is elected by the same electorate as the Central and the State Legislatures, it is as well that his position is that of a Constitutional President. The Ministers are of course responsible to the Legislatures and tender advice to the President who is bound to act according to that advice. Although there are no specific provisions, in the Constitution itself making it binding for the President to accept the advice of his Ministers, it is hoped that the President, on account of convention, not so much on account of the written word in the Constitution, but as a result of this very healthy convention, will become a Constitutional President in all matters".

That was the position in Article 74 till the 42nd amendment of the Constitution. Now President is legally bound to act as per advice of Ministers.

Indeed, it goes to Rajendra Prasad's credit that he not only lived and practiced his words in totality, but also helped strengthen the position of an elected Parliament and Executive despite having serious difference of opinion with the two on many an occasion.

4. Dr Rajendra Prasad had a strong connection with Kolkata where he lived intermittently from 1901 to 1915, first as a brilliant student completing his degrees in Science, Economics and Law from Presidency and Rippon Colleges, Calcutta University, then as a teacher at Rippon College and then as a member of this same bar, before moving to the Patna High Court Bar. I congratulate the Bar Association of Calcutta for taking up meaningful issues and providing space for discussion on matters of legal and public importance. It is my considered view that for a country like ours every form, right from a debating society to the Parliament, debate, discussion, dissent and then decision is not only desirable but imperative.

Friends, Ladies and Gentlemen,

5. Today, I have been asked to speak on the topic **“Whether giving effect to the Uniform Civil Code in Indian Judiciary is a prime necessity for establishing secularism in the real sense or is it just an idle formality?”** It is indeed a very significant matter for our country and our polity as well as the judiciary has from time to time deliberated and professed upon it at length. However, though envisioned clearly in the Constitution of India a Uniform Civil Code is yet to see the light of the day.

6. Debating vociferously on its desirability right after independence; we took a giant leap forward in this direction with the four enactments of the Hindu Code Bill in the years 1955-56. In the debate that preceded these enactments, Dr Rajendra Prasad himself, though holding a more conservative and status quo-ist view, held that it should be brought about after due consultation with the social community concerned and irrespective of the religious identity and personal laws of any religion.

Thereafter, in various judgments, the Apex Court pronounced strongly on it. I quote a few.

In the April 23rd 1985 judgment in the famous Shahbano case, a five judge bench of the court headed by CJI YV Chandrachud (along with Rangnath Mishra J, DA Desia J, O Chinnappa Reddy J and ES Venkataramaiah J) observed and I quote,

“(i) A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.

(ii) It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and unquestionably, it has the legislative competence to do so.

(iii) A beginning has to be made if the constitution is to have any meaning inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be

suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal laws cannot take the place of a common Civil Code.

(iv) Justice to all is a far more satisfactory way of dispensing justice than justice from case to case.”
Unquote.

In the Sarla Mudgal Vs Union of India (1995) case, The Supreme Court, through Justice Kuldeep Singh observed, “when more than 80% of citizens have already been brought under the codified personal law, there is no justification to keep in abeyance, any more, the introduction of Uniform Civil Code for all citizens.”
Unquote.

Upholding the same judgment, a double Judge bench of the Apex Court in Lily Thomas Vs UoI, comprising Justice S Shagrir Ahmed and Justice RP Sethi held on April 5th, 2000 that “the desirability of Uniform Civil Code can hardly be doubted but it can concretize only when social climate is properly built up by the society, statesmen

amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change for the betterment of the nation at large.” Unquote.

Similarly, in another case in 2003 Chief Justice V N Khare observed, “it is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing Common Civil Code in the country.” Unquote.

Dear Friends, Ladies and Gentlemen,

7 If one were to go by the above quotes, it is more than clear that the judiciary has not been left wanting as far as this issue is concerned. However a consistent debate between the perceived conflict between Article 14 and 15 enumerating the fundamental right to equality and Article 26 and 28 enumerating right to religious freedoms, in conjunction with Article 44 of Directive Principles of State Policy through which our founding fathers mandated the Uniform Civil Codes, it becomes clear that the hither to

existing debate and discussion has been more political than social or juridical in nature.

8 It is my firm belief that the legislature or the executive cannot engineer social change, they can catalyze it. Social legislation that is exclusive of social realities cannot bring about desired changes. For Social legislation to succeed, it is necessary that any such attempt is preceded by social reformist movements and political mobilization. In the din of the political debate on the Hindu Code Bill one tends to forget that more than two centuries long social reform movements and concerted attempts towards a renaissance in the Hindu society, made it possible for the Codes to become acceptable. Right from the reformist *bhakti* movements in the 12th and 13th Century A.D. followed by the more recent efforts by individuals such as Ishwar Chand Vidyasagar, Raja Ram Mohun Roy, Dayanand Saraswati, Jyotiba Phule, Shri Narayan Guru, Swami Sahajanand Sarawati, Mahatma Gandhi and organizations like the *Satya Sodhak Samaj*, Brahma Samaj, SNDP (Sree Narayana Dharma Paripalana Yogam) and the Arya Samaj to name a few, the Hindu

Society was undergoing unprecedented reforms and changes in its outlook and perceptions. Be it movements against Sati, Child marriage and Untouchability and efforts towards widow-re-marriage, women's education, temple entry and abolition of Zamindari, all had created a progressive atmosphere which was largely ripe and positive for the enactment of the path breaking Hindu Code Bill. Such legislations cannot come out of intellectual debates only, but require extensive social participation and sanction.

9 Having said that one cannot but endorse the desirability of a Uniform Civil Code. It is not only a tool for the emancipation of the repressed and the underprivileged, but for many it is also a matter of dignity. The state cannot and should not be seen to be perpetuating inequality but at the same time it cannot acquire the role of a steamroller, where it seeks to level community specific bumps that had been erected by the communities themselves. The Uniform Civil Code on the face of it appears to be an easy solution, but to my mind a solution as simplistic as one that envisages a singular way

of life for every individual does not address the complexities that come with a society as deeply religious and traditional like ours.

Dear Friends, Ladies and Gentlemen,

10 To sum it up, it would be enough to say that Uniform Civil Code is not only desirable but it is an idea whose time has far exceeded its due date. However, for it to fructify the two essential things that are required to be done are (i) to take it out of the realm of political debate about secularism and (ii) for the society as a whole, to rise above partisan considerations and create a situation where in the communities concerned themselves are up to civil codification without any duress or coercion. There is a need for communities themselves undergo a renaissance and to realize about the desirability of such legislation.

I once again pay my humble tributes to the First President of India Bharat Ratna Dr Rajendra Prasad and wish the

Organisers of the programme all success in their future endeavours.

Thank you,

Jai Hind