

The Agami Summit

Prepared Remarks of Carl Malamud

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Good evening. Thank you Sachin for that kind introduction.

I'd like to also thank the core team at Vayam and HumLab for making tonight's Agami Summit possible and for inviting me to speak.

Ladies and Gentlemen.

Our distinguished judges for this evening's Agami Prize.

The finalists for the Agami prize. (A truly amazing group!)

My fellow citizens.

We are here tonight to talk about the future of legal innovation in India—to celebrate what is good and great about the Indian legal system, both right now and also what's next—Agami! Tonight is a celebration of “innovations and entrepreneurial initiatives—that can exponentially increase quality, effectiveness, access, and inclusion—in and around law and justice in India.”

So, you may rightly be asking yourself why your first speaker is not from India. Indeed, I'm not only a firangi, I have a further confession to make, which is that I'm not even a lawyer.

Although I'm not Indian, I do share a common heritage with you. America and India are the two largest and most vibrant democracies in the world. We are both melting pots.

Both our countries have brought many cultures, religions, points of views, and customs together and out of that we have built democracies that are constitutionally based—that are of the people, by the people, for the people.

Both India and the United States celebrate the rule of law—in both our countries it is the people that are the sovereigns. We—the people—we own our governments.

I just landed here in Delhi a few hours ago from London, where I was meeting with Members of Parliament and civil society groups, attempting to get all legally-mandated public safety standards required in the European Union available for anybody to read—without paying a tax or signing a license agreement first.

It is very hard to get attention in England right now. They have been engaged in what some people in the country seem to feel is a fight for liberation—Brexit—a virulent quest to “Quit Europe.”

This has not gone well. It appears that instead of *purna swaraj*, they are going to end up with dominion status and will continue to bow to a supreme law from the Euro Raj in Brussels—but will not enjoy the benefits of true and equal citizenship. Perhaps you can relate?

Personally, I think Brexit was a huge mistake, but then I’m not a British citizen, so this is not my call.

My visit to London to make legally-mandated public safety standards available for all to read—and for all to speak—is also the reason I am here in India.

We will be appearing before the Honorable High Court of Delhi on Friday in our Public Interest Litigation suit to make Indian Standards more broadly available for the students, government employees, engineers, and citizens of India.

As in Europe, in India technical standards—such as building codes—are sold for high prices and restricted by copyright, despite the fact that they have the force of law just like any other government regulation or edict of government.

I'm very pleased to be joined in this PIL by two Indian co-petitioners, including my good friend Dr. Sushant Sinha who is here tonight, and lawyers from the firms of Nishith Desai and Associates and the Chambers of the Honorable Salman Khurshid, who are also here.

The reason we're in court is I committed an act of satyagraha. I bought all 19,000 Indian Standards. These are expensive documents. The National Building Code costs 14,000 rupees. For a book! I bought the standards, and I posted them for free access.

I committed this act, I notified the Bureau of my reasons, they said these laws were their property. I respectfully disagreed and said they belonged to the people. We petitioned the Ministry to reverse their position, and when they refused, we went to court. They said we broke the law. We said we posted the law. Now it is for the courts to decide.

My efforts to liberate the law—to make it available for all to read and to comment upon, for all to suggest changes—for all of us to know our rights and our obligations as citizens—this is a struggle for all of us, not just lawyers.

Law is the bedrock from which we build the temple of justice. The law is the raw material of our democracies.

Because the U.S. and India are the largest democracies in the world, we have a special obligation to make our system of laws and justice effective and transparent. We face great challenges in both our countries. We also face a bright future, but only if we struggle to make that future happen.

But we must struggle. This is my message tonight. We must not be complacent. Martin Luther King said it so well when he told us that “change does not come rolling in on the wheels of inevitability, it comes only with continuous struggle.”

Tonight, we are here at the Agami Summit, the future of legal innovation. Big prizes. Fantastic finalists, dealing with important and transformational issues. Fighting human trafficking. The rights of migrant workers. Legal advice for citizens. Promulgation of the law for lawyers and citizens alike. This is an important event at an important moment.

I am particularly heartened to see here tonight the Honorable Chief Justice Gita Mittal of the Jammu and Kashmir High Court to discuss the vulnerable witness program, as well as representatives from the marvelous Telangana Prison project—both of which are evidence that innovation and change can come from within the legal system.

Change must come from within our legal system, but it must also come from the outside. If we own our government, we must assert that ownership and be the democracy we wish to see.

I have said that the law is any democracy. This is because we are governed by the rule of law. Let me elaborate on that thought.

The rule of law means we govern ourselves by a rule book. We don't make it up as we go along—after the fact, haphazardly, on the whim of some official—we don't make the rules in back rooms filled with smoke. We write the laws down and we promulgate those laws for all to know and we make those laws fair and of general applicability.

These are the three principles of the rule of law. Let me go over them one at a time. I draw here on Lord Thomas Bingham's famous formulation of the three principles in his seminal book titled *The Rule of Law*. It is a short, well-written book which I highly recommend.

The first element of the rule of law is the principle of jurisprudence. This how we make the law, be it opinions of a court, acts of parliament, or the delegated powers of the regulators.

The rule of law says the laws shall be made prospectively—will apply to future actions—and that the laws shall be written down. We do not allow arbitrary decisions to be handed down on the caprice of some official.

As John Adams said, we are a government of laws not of people. An empire of laws, not of people. An empire of laws is concerned with right. An empire of people is concerned with power. Checks and balances, the separation of powers, the mechanics of justice. These are the vital components of the machinery of democracy.

But if all we have is the principle of jurisprudence—of committing the laws to writing and developing them prospectively—we do not yet have the rule of law. For the law to be effective, it must be known. As citizens, we must know our rights and our obligations. Ignorance of the law is no excuse. The second principle of the rule of law is thus the principle of promulgation.

The principle of promulgation of the law goes back to the most ancient times. Throughout India, we see the rock edicts of the great emperor Ashoka, the dearly beloved of the gods. Those edicts communicated the principles of *dharma* to the people.

If you read the rock edicts, you will see that they run from the most general principles of justice—such as religious tolerance—to specific public safety proclamations about the safety of medicines and roads.

In Rome, the Twelve Tables of the Law served the same purpose. When the aristocrats were making up the law as they went along, charging for access to the courts, it was the people, the plebes, who revolted and demanded that the patricians write those laws down and to display those twelve tables in every marketplace.

In England when King John made access to justice a question of access to wealth, the Barons confronted him on the fields of Runnymede and demanded that the King sign Magna Carta.

Magna Carta laid down the general principles of an open and transparent system of justice. It decreed “to no one will we sell, to no one will we deny or delay right or justice.”

Like the Ashokan edicts, Magna Carta also dealt at length with technical public safety proclamations having to do with the standardization of weights and measures, to ensure the free navigation on English rivers, and the safety of bridges.

Law is all about the details, which is why I care so much about the details of technical laws such as Indian standards. Indian standards encompass the safety of buildings, the transportation of hazardous materials, the safety of our water and air, the safety of machines in factories toys for children. These are laws that matter to everybody, and they should be made carefully, and they should be promulgated freely.

These two principles I have discussed—the principles of jurisprudence and promulgation—these are not sufficient for the rule of law. You can write your laws down, and you can promulgate them and you do not yet have justice. All you have is rule by law, not rule of law.

You can make a law that says people of color in the southern states of America must ride on the back of the bus. You can make that law and you can promulgate that law far and wide. You can make it known to all, you can enforce it with dogs and firehoses and police intimidation.

You can say people of color in the south of the United States may not eat at lunch counters with white people. That they may not use the same drinking fountains or the toilets, that they shall go to separate schools, that they shall be denied the right to vote, that people of color may not make their homes next to white people.

You can say all these things, and do so prospectively, and you can promulgate those laws, but you do not have a just society. This is not the rule of law.

In India, the laws said that Indians must grow indigo but must not make salt, that they could not vote—that indenture under cruel and unusual provisions in foreign lands was allowed as a transparent replacement for a system of slavery—the issue that kept a young lawyer named Mohandas Gandhi in South Africa for two decades—where he learned the art of satyagraha and showed us the courage to practice it. This was not a just society. This was not the rule of law.

For true rule of law in a democratic society we must go beyond the principles of jurisprudence and promulgation and embrace the principle of justice. For the rule of law to be true, the laws must be laws of general applicability, not laws for or against one person or one community or one religion. The laws must be fair and just to all.

The principle of justice is the hard part of the rule of law, the hard part of democracy, but we must pay attention to all three principles. We must make the law. We must promulgate the law. We must make good law.

We can clearly see from the efforts of our finalists tonight that the law is there for all of us, not just the legal practitioners. Informed citizens are the key to a working democracy.

An informed citizenry—citizens taking ownership of their government—this is the only way our society can work. This was eloquently stated by John Adams in his *Dissertation on the Canon and Feudal Law*, and I'd like to quote to you a few passages from this classic text.

John Adams said “wherever a general knowledge and sensibility have prevailed among the people, arbitrary government and every kind of oppression have lessened and disappeared in proportion.”

He said “liberty cannot be preserved without a general knowledge among the people, who have a right, from the frame of their nature, to knowledge ... they have a right ... to that most dreaded and envied kind of knowledge, I mean, of the characters and conduct of their rulers. Rulers are no more than attorneys, agents, and trustees for the people.”

He said “the preservation of the means of knowledge among the lowest ranks, is of more importance to the public than all the property of all the rich men in the country ... Let us dare to read, think, speak, and write.”

He said “let the public disputations become researches into the grounds and nature and ends of government, and the means of preserving the good and demolishing the evil. ... In a word, let every sluice of knowledge be opened and set a-flowing.”

It is easy to be cynical about our governments today. I certainly have grave doubts about the current administration of Donald Trump and the gridlock, ignorance, and corruption that is thriving in Washington, D.C. I know it is also easy to be cynical or despondent about the future of democracy in India.

But there is much to celebrate here in India and we must not forget that.

India is constitutionally directed and constitutionally grounded and we must all celebrate the ground-breaking work of the constituent assembly under the leadership of Dr. Ambedkar, there is so much to learn from reading their deliberations.

We must also celebrate the huge body of constitutional law from the Honorable Supreme Court of India and the amazing work of the High Courts. These tribunals have handed down some of the most influential judicial pronouncements in the world.

We must not forget that India has the best Right to Information law in the world, the result of a 25-year struggle by Aruna Roy and MKSS, a model and inspiration for the world, an epic tale of citizens changing how their government works.

Many of you in this room are lawyers, many of you practice the law. But we must also not forget that the practice of law can only have one goal, and that is to serve society.

As I read the history of fight for liberation in India, I am struck by how many of the leaders of this struggle were lawyers who gave up their law practice to become public workers. Sardar Patel. Rajaji. Jawaharlal Nehru. Motilal Nehru. Mahatma Gandhi. And, so many others.

They were lawyers, but first they were citizens. Like them, we must all strive to make our society better and tonight we are celebrating the efforts and dedication of some of our fellow citizens—the finalists for the Agami Prize.

But we must do more than celebrate their achievements. We must work with them, we must struggle with them, we must all strive to make our society one in which “justice flows like the waters so that righteousness pours forth like a mighty stream.”

Thank you very much.