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THE BANKING LAW

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RACK 3 - BANKING LAW



The Lawyer with a Difference

B. Gopalakrishnan

*President & Head of Law Dept,
AXIS Bank Ltd.*

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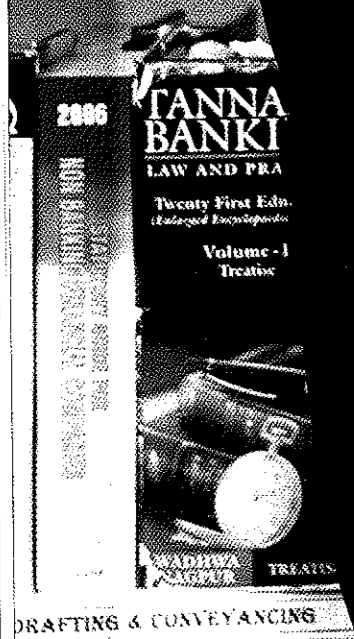


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The Lawyer with a Difference

B. Gopalakrishnan

President & Head of Law Dept,
AXIS Bank Ltd.



With over three decades of experience in the field of law, Gopalakrishnan heads the legal department at AXIS Bank, one of India's most reputed private-sector banks. Having begun his career as a practicing commercial lawyer much before economic liberalization set in, Gopalakrishnan specializes in several critical areas of corporate law including Structured Finance, M&As, Taxation Laws, Banking Laws, Suit Filings and Litigation, to name a few. As a key member of the senior management at AXIS BANK, that has over 1,400 branches in India and abroad, Gopalakrishnan works closely with the business department to ensure that the decisions taken are a "blend of business interest and legal interest."

Gopalakrishnan is also a noted speaker in several national and international conferences and is a visiting faculty for several institutions on Banking Laws, M&As, and Tax Laws. In a free-wheeling interview with LegalEra, Gopalakrishnan talks of his early years as a lawyer, the need to revamp the legal education system in India and the challenges of the banking sector

1. What brought you into the legal profession, and in the hindsight do you think your love for English Literature helped you become a more perceptive lawyer?

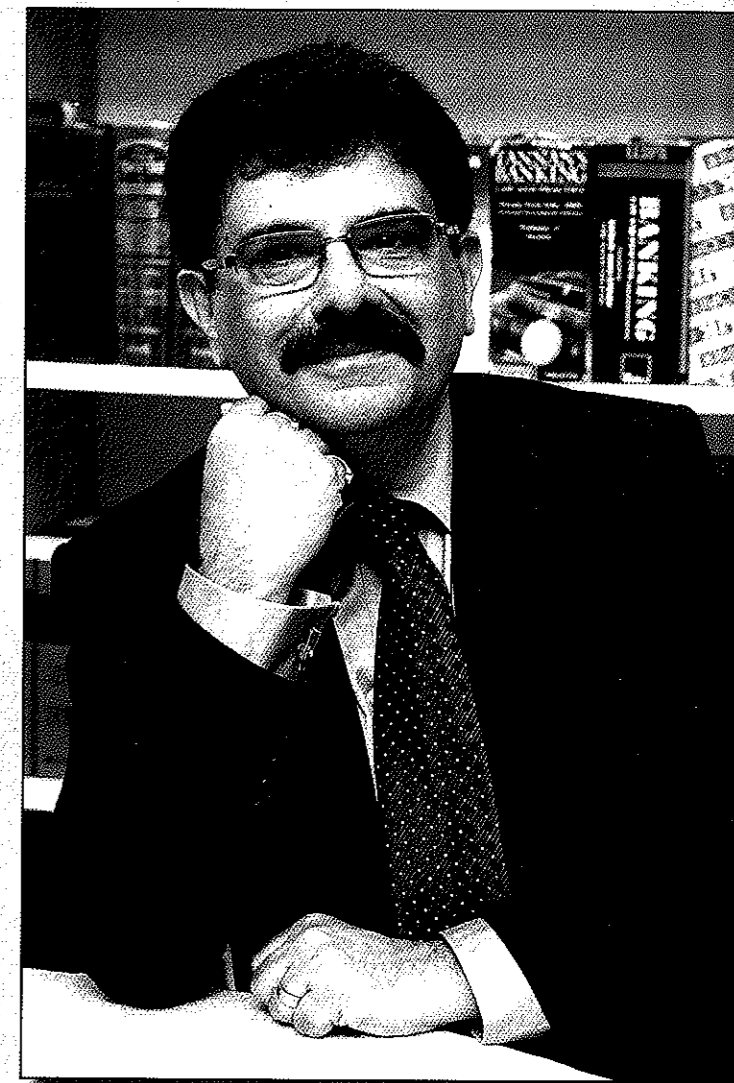
As a child, my first desire was to become a pilot and thereafter, I wanted to become a college lecturer/professor, that too in English literature. Shakespeare always fascinated me. However, my father, who was a lawyer, was dead against the idea. Per force, he wanted me to go in a professional course and therefore, I had reluctantly joined Law. Later, Criminal Law fascinated me. Thereafter, I took a deep interest in Tax and Corporate Law and started my career under the guidance of my father, who was my senior and *guru*. I owe my growth to him, since it was he who mentored me into becoming a lawyer.

English Language, as in India, is widely used in courts, especially in higher courts and for all commercial transactions. Being a commercial lawyer and a corporate lawyer, I feel the grasp of the language has helped me in good drafting and communication.

"While we are producing a lot of in-house lawyers, both for law firms as well as for institutions, we are not giving a chance or producing any lawyer i.e. corporate lawyer who can argue a case before a Tribunal or High Court or Supreme Court and explain the complexities of a transaction to the Presiding Officers and Judges. This, at present, is left to a General Counsel, who argues cases in the court."

2. You started practicing commercial law much before the wave of economic liberalization set in. How do you think the legal landscape (particularly with respect to corporate law) has changed over the last two decades in India?

I started practice of commercial law when there was no liberalization. The opening up of the economy in 1991 brought in tremendous scope for practicing commercial law, and each day with the liberalization and the economy adopting global practices, new developments happen in the said field. I should confess that every day I am learning new things and it also keeps me on my toes since I need to be aware of all the changes which happen on a day to day basis. The scenario now is exciting and challenging but also competitive.



3. *Legal profession today is more demanding and competitive than ever before. Do you think our legal education system is equipped to prepare young lawyers to deal with the challenges or what more should be done to make legal education all encompassing?*

Today's legal education needs enough revamping. It is producing more of 'glorified legal clerks' because everyone wants to be either an in-house lawyer or a corporate lawyer. Very few people I have interacted want to face the challenge of battling it out in the court.

While we are producing a lot of in-house lawyers, both for law firms as well as for institutions, we are not giving a chance or producing any lawyer i.e. corporate lawyer who can argue a case before a Tribunal or High Court or Supreme Court and explain the complexities of a transaction to the Presiding Officers and Judges. This, at present, is left to a General Counsel, who argues cases in the court.

My first hand experience is that as an in-house counsel, I had to take exceptional pains to make a General Counsel practicing in the court to understand the complexities of the commercial transactions.

Therefore, my suggestion is that there should be two sets of lawyers or the option should be given on a fairly early stage for the law students who really want to practice in a court and it is they alone made eligible for getting Sanad. Those who do not want to practice and spend their life as a corporate lawyer, they should be given that option and they should be given a different certification.

Today, we also have one more major issue to deal with. In the absence of good corporate lawyers practicing in the Bar, it is extremely difficult to find a good Judge who understands the intricacies of corporate law. Therefore, I foresee a situation where 10 years down the line, we may not get good Judges in the Bench, who would know the corporate law.

I also welcome the Bar Counsel examination because that will allow young lawyers wanting to practice, to take up the examination, while others who are not interested would give it a slip.

5. *Due to the recent judgment of the Allahabad High Court on land acquisitions in Noida, banks have been caught in a fix. What is the way out of this legal tangle for the banking sector while preserving its own interests and those of the borrowers?*

Acquiring land in India from the farmers for industrial purpose has become a political issue. There are no clear-cut guidelines as on date. It is also to be noted that in most of the cases, the Government steps into the role of acquiring the land which is not a correct step. The Government cannot act as a "dalal" for the industries. Often, when developers acquire land for housing developmental purpose, the reason for acquiring the land and the details of proposed development is not made known to the farmers and this agitates the farmers who have sold land. We hope and trust things will change with the introduction and passing of the new Land Acquisition Bill in Parliament.

The Allahabad High Court Judgment was something which was not expected by the banks and therefore, the banks, in consultation with the Regulator, will have to work out a formula where everybody is in a win-win situation.

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4. *Talking of the banking sector that is battling rising NPAs, as the legal head of a leading bank, how do you ensure that the bank's interests are secured to the maximum extent possible?*

The question of battling Non Performing Assets (NPAs) for Indian banks is historical. A large number of NPAs were created because of the socio and political scenario in the country.

The Government has passed a law namely the SARFAESI Act to counter this problem. I would say that it is effective at least to the extent of 50 percent and the balance 50 percent can be made effective if the lower judiciary and the DRTs are strictly warned and punished for interfering in the process of recovery on flimsy grounds.

However, as an in-house counsel, while drafting Loan Agreements, we need to ensure that to the extent possible, we plug all the loop holes. I should, of course, state that there is no foolproof agreement under the law. I feel that if the legislature, judiciary and the regulator complement each other and if they are serious in attacking NPA problems, they can do so.

The sub-prime mortgage crisis has not affected India to the extent it has affected various countries. This is for the reason that in India, owning a house is anybody's dream and besides, the cultural values of our people from Kashmir to Kanyakumari do not allow someone to surrender his house to the bank especially, for non-payment of the dues. Data shows that during this sub-prime crisis, India witnessed growth in mortgage backed lending.

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6. *The micro-finance sector has come under scrutiny from several quarters. What are the legal aspects of this lending pattern and your own views?*

In India, banks are forced to lend to the socio economically weaker sections in order to achieve regulatory targets. The story of the microfinance sector blew up with the working of SKS Microfinance getting exposed. In my view, the microfinance sector has to be strictly regulated and monitored and there should always be a cap on the interest which they can charge from the actual borrowers. The Bill introduced in Parliament and also by various states, I feel, though in the right direction, may have to be fine-tuned to ensure that the system works. A rigid law may even kill this institution. The control has to be with an organization, to whom MFIs should be made accountable.



7. *The country's infrastructure sector is witnessing a boom and banks are lending in a big way. How does your department ensure that the interests of the banks are preserved even as it lends hugely for the developmental needs of the country.*

As far as our Bank or any in-house counsel is concerned, infrastructure financing is a challenge because return flows from the same is only after a long period. While drafting the documents, this has to be always kept in mind. However, it is also to be kept in mind that these infrastructure projects are part and parcel of nation building exercise and it will benefit a new generation. In the absence of any major dispute, no institution can, as on date, confirm or deny whether the documents executed by banks or infrastructure development institution have withstood the test of law and/or is a fine document.

There is another set of problem which arises in infrastructure financing. Whenever there is a public private participation (PPP), the Government which joins with the private parties, always has a big boss attitude and likes to tilt the document in their favor. All infrastructure financing institutions are facing problems on this issue, especially in road projects.

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8. *What are your thoughts on the evolving role and importance of in-house counsel in today's challenging corporate environment?*

The role of in-house counsel is always important. He is a person who has to protect the interest of the institution. Therefore, he always has to be alert and proactive. Every in-house counsel always faces a conflict with the business departments. The business department always has a tendency to look at the in-house counsel as a spoiler of their dreams. Therefore, in my experience, I always ensure that any decision taken as an in-house counsel has to be a blend of business interest and legal interest.

This puts into a big question i.e. in my opinion any in-house counsel has also to be a good risk manager. He has to evaluate the risk involved in any decision which he makes when he wants to blend his decision to ensure that the business department also gains. The capacity of taking the risk differs from each in-house counsel to another.

In short, in-house counsel cannot be a person who shoos away all the proposals brought in by the business department as non-legalistic. My mantra and my success always depended on my risk taking abilities.

"I should confess that I have, in my mind, at all times the issues related to my institution which needs a legal resolution. I am always available for all the branch heads, departmental heads, circle heads 24x7 for consultation and discussion."

9. *How do you strike work-life balance, and how significant is it for professionals today?*

I should confess that I have, in my mind, at all times the issues related to my institution which needs legal resolution. I am always available for all the branch heads, departmental heads, circle heads 24x7 for consultation and discussion. Technology has allowed me to interact with them irrespective of the distance of the parties. Technology today has made boundaries disappear.

However, when I am at home, I find solace in reading or listening to music. I like all kinds of music but I am inclined to classical music, both Karnataki and Hindustani and also old songs. I strike balance by shredding Avatar of in-house counsel when I reach home and donning a new role as a husband, father and friend and at that point of time, I completely forget about the fact that I am an in-house counsel of an institution. I also go for morning walks or jogging and if nothing is there, I re-arrange things at home. Basically, when the ego or the mask which you carry in the office is taken off when you reach home, you can strike a good balance.

From L to R: Mrs. Raji Krishnan along with daughter, Lakshmi Krishnan Nair, and Son in Law Rahul R. Nair, IPS with B. Gopalkrishnan

