sense of deliberateness. The Supreme Court took sharp notice of it and held that:

> "[I]t would be a colourable exercise of power on the part of the Executive to continue an ordinance with substantially the same provisions beyond the period limited by the Constitution, by adopting the methodology of re-promulgation. It is settled law that a Constitutional authority cannot do indirectly what it is not permitted to do directly. If there is a Constitutional provision inhibiting the Constitutional authority from doing an act, such provision cannot be allowed to be defeated by adoption of any subterfuge. That would be clearly a fraud on the Constitutional provision."
>
> "Such a stratagem would be repugnant to the Constitutional scheme, as it would enable the Executive to transgress its Constitutional limitation…." "There must not be ordinance raj in the country."

According to the Constitutional provisions, the Executive is always answerable to the Legislature and if there is any misuse or abuse of the legislative power by the Executive, the Legislature can always pass a resolution disapproving the ordinance or can pass a vote of no confidence in the Executive. There is in the theory of Constitutional law a complete control of the Legislature over the Executive. The safeguard against misuse or abuse of power by the Executive would dwindle in efficacy and value accordingly if the legislative control over the Executive diminishes and the Executive begins to dominate the Legislature. The Supreme Court has rightly pointed out that

> "…'The Constitution has therefore provided safety-valves to meet extraordinary situations. They have an imperious garb and a repressive content but they are designed to save, not destroy, democracy. The fault, if any, is not in making of the Constitution but in the working of it.' "

Therefore, impervious use of any power creates despotism which tends to thwart basic human decency, dignity, discipline and rule of law. Ordinance-making power, a rare and unique power under the Constitution of India, essentially to meet urgent situations should only be used conscientiously and diligently only in emergent circumstances where there is no other legislative alternative.

It is clear from the above analysis that the legislative power of making ordinances is being misused at times by the Executive. This is by no means a healthy trend. It should be kept in line with the Doctrine of Separation of Powers, which is a basic feature of the Constitution of India and while issuing ordinances, the Executive is not supposed to usurp the function of the Legislature.

LAW OF PLEA BARGAINING IN INDIA – AN OVER VIEW

By

–E. RAVI KUMAR, B.Com., L.L.M.,
Osmania University, Hyderabad, A.P.
Erramravi25@gmail.com

Abstract

Indian Criminal Justice System has been ineffective in providing speedy and economical justice. Because Courts are fully burdened with astronomical cases, and the trial life span is inordinately long and the expenditure is very high. Subsequently majority of cases are arising from criminal jurisdiction and the rate of conviction is very

low. Plea Bargaining fostered by the Indian Legislature is actually the sperm child of the West. The concept has been very much alive in the American Legal System in the 19th century itself. Plea Bargaining is so common in the American system that every minute a case is disposed of in the American Criminal Court by way of guilty plea. England, Wales, Australia and Victoria also recognizes plea bargaining. Every time we turn on to an American Cinema, we come across this concept.

Nani Palkhiwala opined that: "*Justice in common parlance is considered as blind but in India it is lame too and hobbles on crutches*".

Plea Bargaining – Meaning

"Plead Guilty and ensure Lesser Sentence" is the shortest possible meaning of Plea Bargaining.

Plea Bargaining can be defined as "Pre-Trial negotiations between the accused and the prosecution during which the accused agrees to plead guilty in exchange for certain concessions by the prosecution". It gives criminal defendants the opportunity to avoid sitting through a trial risking and conviction on the original more serious charge.

Plea Bargaining can be of three types :

1. Charge Bargaining.
2. Sentence Bargaining.
3. Fact Bargaining.

Charge Bargaining is a common and widely known form of plea. It involves a negotiation of the specific charges or crimes that the defendant will face at trial. Usually, in return for a plea of guilty to a lesser charge, a prosecutor will dismiss the higher or other charge.

Sentence bargaining involves the agreement to a plea of guilty in return for a lighter sentence. It saves the prosecution the necessity of going through trial and proving its case. It provides the defendant with an opportunity for a lighter sentence.

Fact Bargaining is least used a prosecutor in which the prosecutor agrees not to reveal any aggravating factual circumstances to the Court because that would lead to a mandatory minimum sentence or to a more severe sentence under sentencing guidelines.

Plea Bargaining – Legal Provisions under Indian Law

The Law Commission of India, in its 142nd report recommended to the Government of India this concept of the Doctrine of Plea Bargaining.

Plea bargaining has emerged and gained acceptance in the legal community only in recent decades. The Criminal Law (Amendment) Bill, 2003 which was introduced in the Parliament attracted enormous public debate. Despite this huge hue and cry, the Government found it acceptable and finally Sections 265-A to 265-L of Chapter XXIA have been added in the Code of Criminal Procedure, 1973 so as to apply the plea bargaining.

Plea Bargaining – Judicial Response

The Supreme Court was very much against the concept of Plea Bargaining before its introduction. In *State of Uttar Pradesh vs. Chandrika*, the Supreme Court of India held that it is settled law that the Court cannot dispose the criminal cases on the basis of Plea Bargaining. The Court has to decide the cases on the basis of merit and beyond the all reasonable doubts. If the accused confesses his guilt, even then appropriate sentence is required to be implemented. The Court further held in the same case that, mere acceptance or admission of the guilt should not be a ground for reduction of sentence, nor can the accused bargain with the Court that as he is pleading guilty his sentence should be reduced.

The Division Bench of Gujarat High Court in *State of Gujarat v. Natwar Harchanji Thakor*, observed that, the very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and delay in disposal in the administration of law and justice, fundamental reforms are inevitable.

Applicability of Plea Bargaining

Plea Bargaining is applicable only in respect of those offences for which punishment of imprisonment is upto period of 7 years. It does not apply where such offence affects the socio-economic condition of the country or has been committed against women or committed against a child below the age of 14 years.

The application for plea bargaining should be filed by the accused voluntarily before the Court which is trying the offence. The complainant and the accused are then given time by the Court to work out satisfactory disposition of the case. The Court may reduce the sentence to 1/4th if the accused pleads guilty. There shall be no appeal in the case where judgment has been pronounced by the Court on the basis of plea bargaining.

Advantages of Plea Bargaining

(1) Significant feature of method of Plea Bargaining is that it helps the Court and State to manage the case loads. It reduces the work load of the prosecutors enabling them to prepare for gravest case by leaving the effortless and petty offences to settle through plea bargaining.

(2) It is also a factor in reforming the offender by accepting the responsibility for their actions and by submitting them voluntarily before law, without having an expensive and time consuming trial.

(3) From the angle of victim also, plea bargaining is a better substitute for his ultimate relief, as he can avoid a lengthy Court process to see the accused, be convicted. The system gives a greater relief to a large number of under trials lodged in various jails of the country and helps to reduce the long pendency in the Court.

(4) A second view treats plea bargaining, not primarily as a sentencing device, but as a form of dispute resolution. Some plea bargaining advocates maintain that it is desirable to afford the accused and the State of opinion of compromising factual and legal disputes. They observe that if a plea agreement did not improve the positions of both the accused and the State, one party or other would insist upon a trial.

Disadvantages of Plea Bargaining

(1) First, the prosecution has the power to present accused with unconscionable pressure. Though, procedure pleas as voluntary, there are every chances of being practically coerced. The prosecution has the incentive to maximize the benefit of pleading guilty in the weakest cases.

(2) Plea Bargaining undercuts the requirement of proof beyond reasonable doubt and that plea negotiation is substantially more likely than trial to result in the conviction of innocent.

(3) Plea Bargaining result in unjust sentencing. This practice turns the accused's fate on a single tactical decision which they say is irrelevant to desert, deterrence, or any other proper objective of criminal proceedings. Some critics maintain that plea bargaining results in unwarranted leniency for offenders and that it promotes a cynical view of the legal process.

(4) Through plea bargaining, a prosecutor can avoid much of the hard work of preparing cases for trial and for trying them. In addition, prosecutors can use plea bargaining to create seemingly impressive conviction rates.

Conclusion

Plea Bargaining in India has moved from being pronounced illegal, unConstitutional and immoral to a great messiah for the criminal justice system and a welcome and inevitable change. Plea Bargaining is indeed a welcome change, but only as long as one considers the chief aim of the criminal justice system to be swift and inexpensive resolution of cases.

To conclude, plea bargaining is undoubtedly, a disputed concept. Few people have welcomed it while others have abandoned it. It is true that plea bargaining speeds up case load disposition, but it does that in an unConstitutional manner. But perhaps we have no other choice but to adopt this technique. The criminal Courts are too overburdened to allow each and every case to go on trial. Only time will tell if the introduction of this new concept is justified or not. Hence, in my opinion, it is better to implement the concept of Doctrine of Plea Bargaining broadly in Indian Judiciary so as to decrease the lakhs of pending cases in Indian Courts but it should be applicable to only those offences which are punished not more than 3 years.

References :

(1) Law Commission of India – 142nd report.

(2) Kelkar - Code of Criminal Procedure, 1973.

SECULARISM UNDER INDIAN CONSTITUTION – A CRITICAL STUDY

By

–E. RAVI KUMAR, B.Com., L.L.M.,
Osmania University, Hyderabad, A.P.
Erramravi25@gmail.com

Introduction

The word "secular" is like the word religion is among it the richest of all words in its range of meanings. The term secularism has been expanded by certain writers to include formidable list of objects in the contemporary scene these objects include scientific humanism, nationalism, materialism, agnosticism and positivism, intellectualism, rationalism, existentialism and philosophy, nationalism and totalitarianism democratic faith and communism, utopian idealism, optimism and the ideal of progress, moralism, ethical renationalism and nihilism the industrial revolution and its divorce from nature, modern education is separation from religion, historical method when applied to the biblical revelation massathism and the depersonalization of man.

In the 19th century, in Great Britain George Jacob Holyoake, started a separate organized movement and coined the word secularism. Holyoke insisted from the very start that the relation of secularism to religion were to be mutually exclusive rather than hostile. The movement was a success because it presented an opportunity to curtail the oppressive control of religion and later on