AN ANALYSIS OF "NEGOTIATED JUSTICE" IN ACCOUNTABILITY LANDSCAPE: LESSONS FROM PAKISTAN

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Abstract. *This article explores the multifaceted landscape of accountability mechanisms in Pakistan, with a particular emphasis on the utilization of settlement procedures. Investigating the legal framework that governs these mechanisms, the study delves into their application within the country's justice system, specifically examining cases handled by institutions such as the National Accountability Bureau (NAB). The analysis dissects the advantages and drawbacks associated with captioned settlements, considering their role in expediting legal processes and potentially rehabilitating offenders. Through a comparative lens, the article contrasts the Pakistani approach with international best practices, identifying lessons learned and areas for potential improvement. Addressing ethical considerations and transparency concerns, the study evaluates the impact of these mechanisms on the broader goals of accountability, justice, and public trust in Pakistan's legal institutions. Furthermore, the article examines the challenges faced by accountability bodies in implementing these mechanisms effectively and proposes recommendations for overcoming hurdles and ensuring a more robust accountability framework. This article offers insights into the legal, ethical, and societal dimensions of such settlements It contributes to the ongoing discourse on the effectiveness and fairness of these tools in the pursuit of justice and accountability.*

Keywords: White-collar crime, Corruption, Anti-graft bodies, NAB, Accountability, Plea Bargains, Political Settlements

1. Introduction

Accountability settlements have become integral tools in the global fight against corruption. Contemporary research discusses both the organizational and political settlements while mentioning the accountability mechanism in developing countries (Lughmani et al., 2023). In this regard a rich data is available on the organizational side of the settlements but there is a considerable lacking in research towards the political side. It would be worth mentioning here that without discussing the political settlements one cannot understand the settlement scenario at a desired level. Such mechanisms

reportedly allow legal systems to efficiently resolve cases related to white collar crimes, recover misappropriated funds and promote compliance without the need for prolonged court battles. The use of settlements is prevalent in both developed and developing countries, reflecting their effectiveness in balancing the need for swift justice with the complexities of prosecuting economic crimes. There are the shortcomings related to the extensive use of settlements which again have been discussed in the literature on accountability.

Organizational settlements in modern jurisprudence and international legal systems has both positives and negatives (Lughmani, 2022). There is a need to be fully understood before criticizing an existing mechanism. These settlements often come with conditions, such as fines, compliance measures, and organizational reforms, which aim to prevent future misconduct. However, the discretionary nature of settlements and their perceived leniency can raise concerns about fairness and transparency. Critics argue that these mechanisms might allow powerful individuals or corporations to escape full accountability while forcing innocents by the way of coercion to enter into settlements (Bibas, 2004) just to gain conviction score for the Anti-Graft Bodies (A-GBs). Therefore, while accountability settlements play a crucial role in modern anti-corruption efforts, their implementation requires careful oversight to maintain public trust and ensure effective contribution to the broader goal of justice and integrity in governance.

Plea bargaining dates back to the *Salem Witch Trials* of 1692, when suspected witches were given the choice to either admit guilt to spare their lives, or refute the accusations and risk execution (Adams, 2008). This early form of plea-bargaining risked innocent individuals confessing to crimes they did not commit (Brooks, 2011). Initially disapproved by appellate courts (Alschuler, 1979), plea bargaining gained acceptance after World War II (Vogel, 1999) and became routine in American courts by the early 20thcentury (Meyer, 2017).

Plea bargaining involves agreements between corporations or individuals and the prosecuting authority to settle cases of white-collar crimes such as money laundering, scams, and tax evasion (Russell, 2011). The guilty plea has been used in the legal tradition of Common Law for centuries (Alschuler, 1979) including countries like Great Britain and the United States (Mather, 1979). Article 36 of United Nations Convention against Corruption (UNCAC) presents plea bargaining as a corruption prevention model (Nelson and Santoso, 2020), where the accused pleads guilty in exchange for concessions (Kisekka, 2020). Plea bargain in today's world is used to resolve majority of the cases (Rauxloh, 2012) and even the court considered (Brady v. United States, 1970) this mechanism being "inherent in the criminal law and its administration" (Alschuler, 1979). The criminal justice system at United

States is considered as a system of pleas and not that of trials (Litpak, 2012) while in the case of National Accountability Ordinance (NAO) in Pakistan, one could easily render it as '*regulation of pleas.*

2. Settlements under Accountability Regulations in Pakistan

Settlements include both organizational and political ones. The former are basically driven from the criminal justice system. Here the defendant gives off his right to free trial and pleads guilty; leaving both the parties better off. It is an agreement between prosecution and defendant where he/ she get concession from prosecution (Kishan, 2018) on certain conditions (table 1).

Table 1: *Types of Plea Bargain in Criminal Justice System*

#	Type	Description
1	Sentence bargaining	The defendant pleads guilty to a lesser sentence than prescribed.
2	Charge bargaining	The defendant pleads guilty to a lesser charge framed on him.
3	Fact bargaining	The defendant pleads guilty on condition that some facts which incriminate him are to be deleted in the trial.
4	Count bargaining	The bargaining is about the head or count of charge.

Source: Adopted from Kishan (2018)

In Pakistan, both these settlements have been adopted by different political and military regimes. The most famous amongst the organizational settlements are the plea bargain and voluntary returns though both were contested and apex court issued strict directions for the modification/rectification of accountability law i.e. NAO, 1999. These settlements were made applicable during mid and late-nineties while *Ehtesab* Act and NAO were enacted respectively.

The accountability scenario remained muddy and unclear after the promulgation of NAO, 1999. The preamble of NAO elaborates the rationale which is to punish the guilty and facilitate the recovery of the looted public money or ill-gotten wealth. The settlement concept in Pakistan under an accountability law was introduced to quickly achieve the desired outcome. The powers vested in the Chairman NAB to facilitate an early settlement were discussed at length by the Honourable Supreme Court of Pakistan during the *Asfandyar Wali case* (PLD 2001 SC 607).

The NAB was provided with extra-ordinary powers where certain 'perceived' lacunas in the earlier laws were addressed to provide this institution with a strong legal backing. In this article, authors discuss only the

provisions related to the settlements. The voluntary return and plea bargain allow an accused to pay back the embezzled amount while avoiding criminal liability and prosecution. The Section 25 of NAO, 1999 defines both the Voluntary Return [commonly known as VR] and Plea Bargain in sub-section 'a' and 'b' respectively, as:

(a) "Notwithstanding anything contained in section 15 or in any other law for the time being in force, where a holder of public office or any other person, prior to the authorization of investigation against him, voluntarily comes forward and offers to return the assets or gains acquired or made by him in the course, or as the consequence, of any offence under this Ordinance, the Chairman NAB may accept such offer and after determination of the amount due from such person and its deposit with the NAB discharge such person from all his liability in respect of the matter or transaction in issue: Provided that the matter is not *sub judice* in any court of law".

(b) "Where at any time after the authorization of investigation, before or after the commencement of the trial or during the pendency of an appeal, the accused offers to return to the NAB the assets or gains acquired or made by him in the course, or as a consequence, of any offence under this Ordinance, the Chairman, NAB, may, in his discretion, after taking into consideration the facts and circumstances of the case, accept the offer on such terms and conditions as he may consider necessary, and if the accused agrees to return to the NAB the amount determined by the Chairman, NAB, the Chairman, NAB, shall refer the case for the approval of the Court, or as the case may be, the Appellate Court and for the release of the accused".

As discussed earlier and while looking into the history of accountability efforts in Pakistan; these modes adopted for the settlements are discussed in following paras:

a. The organisational settlements

In Pakistan, Voluntary Return was first introduced in the *Ehtesab* Act of 1997 (TI, 2018). Later, both VR and plea bargain provisions were incorporated into the NAO, 1999, enabling the accused to return ill-gotten wealth in exchange for freedom while limiting certain legal and political rights (Khan, 2016). Under VR, as approved by the Chairman NAB during the inquiry stage, an accused can repay the embezzled amount and avoid criminal liability (Khawar, 2019). The application of these provisions is perceived as discretionary and selective, which, given the current climate of prevalent kickbacks and the use of accountability as a tool for control, raises legitimate concerns about potential misuse of discretion (Choudhry, 2019). However, the A-GB contends that the settlement amount is determined solely by a

committee of experts. Yet, there is a notable contradiction regarding the recovery of looted wealth, as annual report 2017 of the A-GB reveals that only 6 percent of recoveries since 1999 have been through plea bargains (Khawar, 2019).

The Supreme Court of Pakistan banned VR altogether and passed a verdict that the officers entering into plea bargain will not get any promotion etc. This way, the officials/ accused opting for VR or plea bargain on the instance of NAB simply get caught in the hot waters.

b. The political settlements

The political settlements cover two aspects. These include promulgation of special laws to provide immunity to the culprits and amendments suggested in prevailing accountability laws by the parties in treasury and opposition benches.

i. Promulgating laws to provide amnesty to the corrupt

The National Reconciliation Ordinance (NRO)enacted by President Musharraf on October 5, 2007, stands as a pivotal moment in Pakistan's anti-corruption landscape. This legislation granted immunity to politicians and bureaucrats accused of corruption, money laundering, and other offenses, spanning from January 1, 1986, to October 12, 1999.This period marked the time between two martial law regimes in Pakistan. It significantly undermined anti-corruption efforts, leading to a legitimacy crisis in Pakistan's history.

On December 16, 2009, the Supreme Court of Pakistan (SCP) declared the NRO unconstitutional and without lawful authority, significantly undermining its legitimacy. Despite this, approximately eight thousand individuals had already benefited from its provisions. During subsequent governments, investigations against ruling coalition leaders were halted, and the only arrests were prompted by *suo moto* notices by Chief Justice of Pakistan (CJP). This pattern persisted in subsequent regimes, with convictions remaining scarce.

The NRO's controversial nature weakened the NAO's authority (Ahmed, 2013) and cast doubt on Pakistan's commitment to anti-corruption, especially as it was enacted shortly after ratifying the UNCAC (Transparency International Pakistan, 2014, p. 161). The NRO effectively legalized corrupt practices, benefiting politicians, bureaucrats, and even armed services personnel accused of corruption. The NRO significantly impeded accountability efforts, fostering political settlements and exacerbating legitimacy crises within Pakistan's anti-corruption endeavours.

ii. Amendments in accountability laws

Lughmani *et al.* (2022) discussed the amendments made in the NAO in detail. In 2016, a bill for The National Accountability (Amendment) Act sought to limit NAB's jurisdiction to federal government departments and recommended establishing provincial accountability bureaus. The plea-bargaining process was criticized for its fairness in this bill. In 2017, the President promulgated the National Accountability (Amendment) Ordinance to declare VR and plea bargain beneficiaries (public officials and politicians) as disqualified for life and mandated NAB to the transfer of amount deposited under Sub-Section (2) to the Federal or provincial governments or the concerned body or institution within 30 days of such deposit. The National Accountability (Amendment) Act 2019 proposed amendments and omissions in various sections of NAO 1999. In the statement of objects and reasons [draft bill], the jurisdiction regarding limits was discussed including alignment of the concept of VR and plea bargain with modern jurisprudence of the Superior Courts etc.

On September 15, 2023, CJP while heading a three-judge bench rejected the controversial NAB law. The law had previously granted immunity to political figures in major corruption cases under the coalition government through National Accountability (Second Amendment) Bill 2022. The verdict made the petition against NAB amendments valid, reopening closed corruption cases below Rs. 500 million. It declared the plea bargain clause and *benami* property clauses illegal. The ruling impacted several prominent political figures, whose cases got reopened.

3. Increasing use of settlements in the context of NAB investigations

It has been argued that NAO 1999 has distinct strategies to control corruption (Lughmani *et al.* 2022). In this regard, Lughmani (2022) mentioned Sections 10(a) and 25 of the Ordinance, where the former considers a corrupt practice a very serious offence with the imposition of harsh punishment. At the same time, the later relieves the accused completely (with lenient or no punishment) on returning a portion of stolen money, thus looking at a corrupt act as a minor crime. Under President General Musharraf's rule, most cases were prosecuted under section 10(a), with the highest trial conviction rate in Pakistan's history, which declined by using section 25, while observing changes in the power corridors. Such dependence on political pressures caused irreparable damage to the overall deterrence (Ali, 2018). Figure 1 shows the percentage of organizational settlements made under different regimes from 1999 till 2018.It is obvious from the chart that with the change of each regime percentage of settlements is going towards a higher trend.

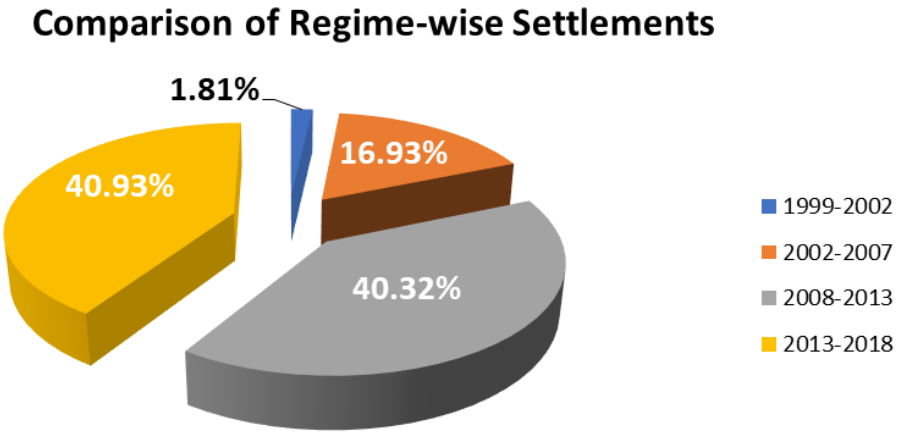

Figure 1: Comparison of settlements under different regimes (Ali, 2018)

If we consider one perspective, the increasing use of plea bargains in the context of NAB investigations marks a strategic shift in addressing corruption and accountability in Pakistan. Plea bargains have become a prominent tool for NAB, allowing for the resolution of cases through negotiated agreements. This approach not only expedites legal proceedings but also aids in recovering ill-gotten gains (Lughmani, 2022). While defending the plea bargain clause, the NAB contends that the 'shaming factor' deters corruption, but in the same breath, the accused opting VR surrenders just a fraction of looted assets, not only skipping conviction but also avoids any stigma of being 'the corrupt', thus strengthening the belief in the power of looted wealth (Samad, 2008).

The increasing reliance on plea bargains raises important questions about transparency, fairness, and the potential for misuse. Striking a balance between expediency and the principles of justice is crucial for maintaining public trust in the accountability process. As this trend continues, it is imperative to closely examine the impact of plea bargains on the overall effectiveness and integrity of NAB investigations.

4. Glimpses of pros and cons of [organizational] settlements

In an international scenario, settlements in accountability systems offer several advantages and disadvantages. Below table provides a comprehensive look at both sides.

Table 2: *Pros and Cons of Accountability Settlements*

Pros	**Efficiency in Case Resolution**	**Financial Recovery**	**Deterrence**	**Flexibility**	**Encourages Cooperation**
Outcomes	Time-Saving Resource Allocation	Immediate Restitution Asset Recovery	Preventive Measure Partial Accountability	Tailored Agreements Victim Compensation	Incentivizes Admissions Facilitates Investigations

Cons	**Perceived Leniency**	**Inconsistent Application**	**Risk of Coercion**	**Partial Accountability**	**Financial Focus**
Outcomes	Reduced Penalties Public Perception	Discretionary Use Selective Enforcement	Pressure on Accused Legal and Ethical Concerns	Incomplete Justice Insufficient Deterrence	Monetary Emphasis Short-Term Gain

In case of an underdeveloped country like Pakistan, there are divergent opinions or common perception about the provision of the settlements. Based on the international parameters and local context, positives and negative aspects of settlements are explained in the following sub-sections.

a. Positives

Settlements offer several advantages, including the rapid recovery of misappropriated funds, forfeiture of assets obtained illegally, reduction of case backlogs, and encouragement of cooperation from offenders. It reduces the cases burden and expedite the resolution of cases when position of prosecution is weak (Holten & Lamar, 1991) especially in White-Collar crimes. It saved the resources by reducing the cost on trials. Here both the parties as risk of potential defeat and take some benefit (Holten & Lamar,1991). The victims of big scams simply need compensation and do not care whether the culprit is hanged or not. In the absence of VR and plea bargain, a weaker prosecution cannot get that money back from the culprits (Lughmani, 2022). It deters the potential offenders making a fear of swift return of the ill-gotten funds or assets. Here the offenders cannot entirely escape the consequences of their acts and face at least some form of accountability making a partial conviction. In exchange of reduced penalties, offenders taking it as an incentive, willingly admit their guilt and even provide details helpful for further investigations.

It is a common perception that NAB retains a percentage of money or assets recovered during plea bargain. The NAB considers this perception as untrue mentioning that there are no receipts for the bribes and the media exaggerates while defining the amount or simply uses common jargon like '*karoron ka ghabban*' [trans. from Urdu: Embezzlement of millions of rupees]. When NAB conducts a regular investigation, it detects evidence to make calculations. The NAB cannot reduce the amount once determined. The

Chairman NAB has the authority to impose up to fifteen percent service charges. That will go into NAB's account, distributed as a bonus among employees (Lughmani, 2022).

People ask NAB about the beneficiaries of the process, recovery percentage and amount deposited in the treasury which is kept confidential. Secrecy in plea bargaining infringes on the constitutional right to information, potentially impacting citizens' lives and the economic condition of the country (Syed, 2020). In order to build public trust such figures on white-collar crime cases should be available online. Senior public officials are in favour of plea bargain but opposed the presence of VR as the culprit becomes innocent by simply giving some amount back in the later (Lughmani, 2022). There are cases that people entered into VR multiple times by paying millions of rupees and due to internal support, astonishingly; they got promoted to next grades in service. Here, Lughmani (2022) has a difference of opinion:

> "When NAB enters into plea bargain with someone, they do not have sufficient evidence against him which could help in conviction. Secondly, even after a conviction, there are no chances to get money back. That is why this section of plea bargain is included to extract looted money from the corrupt and deposit same in government treasury". (p. 245)

He also shared an interesting incident regarding plea bargain:

> "NAB demanded three hundred million rupees from a culprit willing to pay eighty million rupees. The deal could not be finalized, and the culprit got out on bail and *went abroad*. What does NAB get? The process is so cumbersome that if you are stuck at NAB, rest assured that it will take ten years at the accountability court, High Court and Supreme Court. *If a person is of an age of sixty years, he will get expired in ten years. There is no section fitting on a dead person*, so the rest of the deceased's family will enjoy it. So you should have accepted what he was offering. He could have been a convict, too; that is why I say it is a good concept, saving A-GB's and the courts' time, efforts and money, and the government can finally get something back. People call it a wrong concept without any reason". (Lughmani, 2022, p. 246) (Emphasis added)

There are questions on how a corrupt public official could be spared by just receiving a portion of the 'looted money'. It could be an issue of applicability of a good concept prevailing in America and European countries. When an official is paying, he/she pleads guilty as Voluntary Return occurs at the inquiry stage when a person pays back the looted money and is free to go

without conviction. When the inquiry goes into investigation, if the official is willing to pay the looted money, it will be called a plea bargain, and the person is assumed to be convicted. This bargain could only keep him out of jail when he is convicted. Otherwise, all the points are those which apply to a convict. He cannot get a loan or hold any public office for 10 years and his official job, pension and benefits gone for good (Lughmani, 2022).

b. Shortcomings

The guilty plea system as called as 'system of negotiated justice' does have certain disadvantages experienced in its implementation as mentioned in "The plea-bargaining Controversy" by Smith (1987). A-GBs have a capacity issue in implementing the plea-bargaining procedure (Nelson and Santoso, 2020). Critics argue that the deterrent effect of punishment gets undermined (Rauxloh, 2012) by influential perpetrators to evade legal sanctions especially the habitual ones to negotiate more favourable, lighter sentences being insufficient punishment for the white-collar crimes. It is also considered being a coercive process in policy debate (Alschuler, 1979; Smith, 1987; Kishan, 2018) raising a challenge to the right to a fair hearing.

A plea bargain agreement in Pakistan has many shortcomings in its present form, like '*providing a way out to corrupt*' and '*coercing the innocent into an agreement*'. Pakistan adopted 'plea bargain' from international best practices, having merits and demerits in different policy contexts. There is a danger that sometimes a good guy gets stuck who otherwise would be acquitted in case of a contest. Many people in Pakistan accept this option due to their family, especially to save children's engagements in eastern culture, also fearing arrests, jail, and non-availability of the option of bail. It has negative impacts too, as even on acquittal after payment the stigma is there and he/ she will be pointed out as '*NAB Zadda*' (Lughmani and Abdullah, 2023).

The idea of Plea Bargain would not look fair in both cases; when some mishap or corruption is proved on a person or when the person is innocent and feels pressured to accept settlements. In the first case he should be punished as per prevailing laws while in the later there is a potential of coercion. It seems unfair to bargain with a culprit, meaning there is a lack of trust in the judicial system in sentencing the corrupt or a lack of capacity in the investigation to dig out the evidence. It also undermines the public trust on the system being perceived as too lenient on corruption. Plea bargaining is undesirable when the rules of public policy are violated. Here, Lughmani (2022) remarked:

> "…VR and PB must not prevail because getting thirty rupees out of looted hundred rupees means a direct loss of seventy rupees to the nation. If it is in the hands of a single person, why is not there a one-hundred-percent chance of recovery or punishment? For financial corruption, the punishment should be served, whatever it is, with full

> recovery. It is the nation's money and should be recovered by any means. You may abolish the physical punishment, but the looted money should be recovered" (p. 245).

The provision of VR was considered to be violative of Article 25 of the Constitution, which is about "equality of the citizens". It was debated that at least an exemplary punishment should be given to the wrongdoer, a lesson learnt for all. There are times when innocent public officials avoided VR and opted for jail instead of being convicted as corrupt. Though VR saves a person from stigma and court cases etc., but there were circumstances when just to save respect and dignity, innocent officials have to sell their assets at nominal prices to avail VR. This way, settlements do have opportunity costs.

There is a case of vagueness or ambiguity in the interpretation of the accountability law itself. People/public officials were put into darkness regarding the consequences of VR. The accused officials instead of travelling down to NAB offices in capital cities, spending thousands of rupees on boarding and lodging or getting humiliated thought VR could give them freedom for all hassles. When Supreme Court asked to start departmental inquiries against the officials who did VR, these people entered into a problem that opted for VR just to get their neck out of it being innocent in the first place. Lughmani (2022) shared his opinion:

> "There is an issue of the wrong interpretation of the NAO. The NAB forced people to enter into VR, being the safest way out of the blame. Later Supreme Court passed a judgement to remove such officers from the service since they have pleaded guilty by returning the amount, so they are not eligible to be public officials. It is constantly confusing for public sector officials". (p. 245)

The conviction rate at Anti-Corruption Establishments (ACE) and NAB is zero and five percent, respectively, which should be considered by the authorities. Usually, people pay in case the amount is small just to get them out of the mess. They opt for a plea bargain to avoid the huge cost of hiring a lawyer. This act of theirs made it worst for the others making things suspicious. The prosecutorial discretion, extrajudicial nature (Bar-Gill & Ayal, 2006) and selective enforcement of the settlements raise concerns about fairness and equity of the process. As offenders are not held accountable for their actions it gives a sense of incomplete justice where lighter penalties decrease deterrence. It seems that there is an overemphasis on financial recovery deliberately neglecting institutional reforms and long-term systematic changes.

5. Institutionalized corruption: The Metaphor of '*dukaan*' [Shop]

The system of negotiated justice does have the probability of corrupt practices. There might be a role of laws and the legal framework running the anti-graft bodies, including the NAO, in spreading corruption. As mentioned in the previous paragraphs, one possible option is the settlement system, i.e., the plea bargain and VR. The lack of institutional autonomy within the NAB, known to habitual offenders, creates a situation where the benefits to an offender outweigh the associated costs. It is important to discuss this aspect so that the missing link could also come to light when discussing the anti-corruption regime. Ali (2020) questions the role of the NAO in the NAB's shortcomings. He suggests that certain sections were selectively applied based on the incumbent government's will, using the agency as a tool to maintain political power. This practice has inflicted irreparable damage to the organization's deterrent reputation.

The 'habitual' or 'systemically' corrupt officials are not afraid of the current accountability system. NAB has (actually) started a '*dukaan*' [trans. from Urdu: commercial shop] to bargain or started collecting '*chanda*' [trans. from Urdu: charity funds]. It has been observed that a person is informed about his involvement in some suspicious matter having a worth of millions of rupees. Now the calculations are made to get extortion money in lieu of clearing his name. The revelation emerged during personal hearings mandated by the Supreme Court, aimed at understanding the reasons behind the benefitting of fifteen hundred individuals in Khyber Pakhtunkhwa from VR. Notably, a particular revenue staff member paid only five hundred rupees as part of the VR scheme. The NAB came down to '*dukaandarri*' [trans. from Urdu: running a commercial business] (Lughmani, 2022).

These bodies actually guide the corrupt person in a way that they wait for the best moment unless the culprit has built property through illegal money. Then they start probing to blackmail in the absence of a mechanism for their own accountability. In such like circumstance, should we presume everybody at A-GBs as an angel and not a blackmailer? People are afraid to talk about the actual financial, moral and ethical corruption of A-GBs just to avoid an anonymous letter containing any bullshit, taking at least a couple of years for the accused to clear his name after an arrest. It means either you stay silent or bear the consequences. This stance gets a support by the fact that every police officer above the rank of Superintendent wants to become the director of Anti-Corruption Establishment (ACE) just to enjoy hidden benefits. It is evident that working departments keep ACE's share in the commission. There were stories that senior officers on deputation in A-GBs were arrested and millions of rupees were recovered. A-GB is the most 'lucrative' posting in the system. The persons responsible for detecting and curbing corruption are involved in corrupt practices. They arrest a person not to provide benefit to the exchequer;

instead, they get the benefit out of it. The matter is set aside, just by paying something.

Authors came across a joke in the provincial civil secretariat about the formation of the ACE which elaborates that now they (government) have to form another department to check ACE's corruption. You formed A-GBs to curb corruption; they instead are getting fed. If you form another institute above it, then they will start feeding it. A-GBs threaten people to start an inquiry and settle the same on getting something in return. They are paving the way for corruption, keeping contacts and '*relations*' with the complainants, moving applications against 'big fish' through their front men and then get a deal to tear away complaints and settle the matter. In this regard, Lughmani (2022) rendered the Plea Bargain as a cause of corruption:

> "The biggest corruption is that they enter into 'plea bargain' with a culprit. …Just deposit a fixed amount against billions, and you are clean. There is presumed commission of the NAB's staff in the case of plea bargain. If someone wants to commit corruption, then it (plea bargain) accelerates corruption instead of curtailing it…. if he got saved with a big chunk at his disposal, then it is not a big deal". (p. 255)

The concept offers corrupt individuals perverse incentives to act in cases with *prima facie* evidence and a high likelihood of conviction. The Supreme Court of Pakistan (SCP) labelled it "institutionalized corruption" for legitimizing corrupt practices (Hussain, 2018; Lughmani, 2022). People are busy there in same corrupt practices as they know the estimate what they have to pay to NAB. It is in the psyche and '*jibilat*' (instincts) of the 'habitual corrupt' to take risks in lieu of huge profit margins. (Imagine)…the punishment of beheading could not stop the smuggling of drugs to Saudi Arabia. While mentioning plea bargain as a motivating factor to commit corruption, Lughmani (2022) added:

> "All these things (VR and PB) are the motivating factors to commit corruption. If I am caught for corruption, I will give NAB some percentage under plea bargain and enjoy the rest of the amount. It means NAB is motivating me to commit corruption, to earn so much that if another dishonest comes after me…. The person who does not have the money to pay gets the '*ragrhah*' (brunts) in A-GB". (p. 255)

The most important concern is the A-GBs' accountability. There is possible wickedness 'inside' on the part of the investigation officer during VR and PB as he can report on his own will. The A-GBs are believed to be tainted with corruption (Samad, 2008) and political meddling. Literature reveals that anti-corruption initiatives have been involved in the corrupt networks instead

of battling corruption (Ittner, 2009; Mungiu-Pippidi, 2006). Officials of Federal Investigation Agency (FIA) implicated in human trafficking were beneficiaries of the NRO, leading to their subsequent dismissal as per the Supreme Court of Pakistan's ruling on the matter (Aziz &Bakhtiar, 2012). Anti-corruption agencies (ACAs) in Pakistan are described as part of an "illicit rent-generating apparatus," fostering endemic corruption (Aziz & Bakhtiar, 2012). NAB retains a percentage of recovered funds as a service charge, creating a vested interest in the process. The agency's out-of-court settlements are seen as corrupt practices that reduce the deterrence effect by colluding with offenders to avoid imprisonment (NACS, 2002). The lack of transparency in determining plea amounts has been criticized (Samad, 2008). Complaints allege NAB engages in kickbacks and under-the-table deals to manipulate political allegiances, a practice criticized by the apex courts (Khan *et al.*, 2004). In 2016, the Supreme Court barred NAB from accepting voluntary returns (VR) through a *suo moto* notice. In a 2017 judgment, the Court held that NAB facilitated corruption by promoting its VR scheme (Lughmani *et al.*, 2023).

6. The notion of 'Coercion' in accountability settlements

The contemporary literature lacks mitigating the element of coercion in accountability settlements. The judges in the International Criminal Tribunal of Yugoslavia devise the minimum pre-conditions for a plea bargain as mentioned in the table below.

Table 3: *Minimum Pre-Conditions for a Plea Bargain*

#	Pre-conditions
1	Must be voluntary to be made by an accused having sound mind
2	Must be informed with accused having the knowledge of charge levied upon
3	Must not be vague

Source: Scharf (2004, pp. 1076–1078)

The settlement provisions of the NAO also have faced significant criticism. Lawmakers from opposition parties, while reviewing Section 25 of the NAO, argued that the Ordinance was misused for political re-engineering. They claimed that the establishment of the EC and NAB was intended for political manipulation, with NAB allegedly harassing politicians to coerce them into joining a state-backed political party. Successive governments have reportedly used NAB as a tool for political purposes (Lughmani, 2022). This has led to concerns about victimization within these institutions. A notable example is the Khyber Pakhtunkhwa *Ehtesab* Commission (KPEC), where allegations of victimization were substantiated as courts later exonerated individuals. Critics argue this practice contradicts the principle of justice, punishing many innocents to catch a single culprit (Lughmani, 2022).

It was discussed that in certain circumstances, the accused were pressurized to get into a plea bargain who accepted it out of fear to save their dignity; otherwise, there were chances for acquittal in case they had opted for contesting the lawsuit. The apex court barred the Chairman NAB or the Governor State Bank of Pakistan from using their position and power to coerce the parties involved in discussions to settle. It is admitted that settlements being done at the investigation or inquiry stage greatly reduce the burden upon courts. Still, such compromises should be subject to the ultimate approval of the Accountability Court. Supreme Court mandated that Section 25 of the Ordinance be properly amended.

As discussed above, the 'habitual corrupt' people are not frightened, having the clarity of mind and money to enter into a plea bargain (Lughmani & Abdullah, 2023). Innocent person feels most deterred that his only asset, i.e., the respect, will get auctioned. The public sector has become too complex, having multiple accountabilities. Lughmani (2022) highlighted several limitations of public sector departments in implementing accountability measures, including:

> "Departments do not have any other competency, neither recovery nor the plea bargain except writing to the ACE, which itself is not that much an effective body and is involved in bribery. Independent bodies are required for the mega corruption cases, but these should be transparent with no 'Pick and Choose' policy to arrest someone and leave another on the same issue. These should not be 'selective' and follow the uniform application of the law" (p. 221).

He further elaborated:

> "There were also differences in the context as there was no concept of VR and Plea Bargain in *Ehtesab* Commission (EC). Then EC had no widespread applicability while having jurisdiction to the provincial public officials only. At the same time, the NAB laws apply to every Pakistani even on a '*rehrhi waala*' [trans. from Urdu: street vendor]" (Lughmani, 2022, p. 226).

A-GBs harass public officials to get statements and force them to enter into agreements like VR (abolished by SC) or the plea bargain. Even the higher courts mentioned such happenings in their orders. The discretionary powers exercised by the Chairman NAB along with the lack of independent prosecution, make the use of the settlement option more risky and complicated while increasing the risk of misuse by coercing innocent individuals into pleading guilty (Khawar, 2019).

The NAB law has become a sore point for the bureaucracy, i.e., the blurred line between corruption and irregularities (unless deliberate having material benefit) where this ambiguity has made bureaucrats subject to the whims of NAB officials. The high-handedness of the A-GBs with the suspects/ accused and violations of the fundamental rights of the citizens in the hands of these bodies was discussed in contemporary literature. Hussain (2018) elaborates that people are administered with shameful treatment while kept detained for months to break nerves to extract a confession and make them enter into a plea bargain. It demonstrates how the NAB operates outside the realm of the Rule of Law in Pakistan, without being subject to accountability for the blood on the agency's hands (Kamran, 2020) as people took their lives just to avoid A-GBs' maltreatment and becoming a part of character assassination campaigns.

7. Discussion

Settlements in accountability systems provide a practical approach to managing corruption cases, balancing the need for efficient resolution and financial recovery with the demand for justice and deterrence. However, their success depends on transparent, consistent application and careful oversight to ensure they do not undermine public trust or allow offenders to escape full accountability. Internationally, this provision is used to clear case backlogs and save the cost of prosecution. Still, Pakistan is creating a negative public perception due to its wrong usage of the A-GB.

The investigation and prosecution at A-GBs in Pakistan is not independent as well as lacks international standards. The fear of coercion while dealing white collar crimes is always there. There are equal chances that an innocent facing investigation might get forced to enter into a settlement in an otherwise weak case making him/ her a convict in the eyes of law as well as the public at large. It is quite costly to get an access to justice especially in white collar crimes so on one hand a privileged offender can easily bear the cost of an experienced learned counsel while on the other hand same cannot be afforded be a common innocent person. This way the settlement could possibly be made for the former in a better mode without getting any stigmatization.

The presence of both plea bargain and VR was debatable for both should not prevail. Now with the ban on VR by the apex court, NAB still can use the option of plea bargain to let a person go with clean hands even with sufficient evidence. In our view the A-GB can frame charges against someone to get him convicted; otherwise, in absence of sufficient evidence, they should let him go as discussed by apex court in famous '*Asfandyar Wali*' case".

However, in current circumstances, while keeping in view the investigative capacity of A-GBs and nature of the white-collar crimes, it would be quite unwise to eliminate the system of plea bargain as it will definitely overwhelm the judicial system but reforms are very much needed to limit discretion in an

extra-judicial settlement. A standard needs to be set for all offenders which will definitely prevent the ones with an elite status to exploit or manipulate the justice system and evade due punishment. This will definitely create deterrence for the potential even habitual white-collar offenders.

As NAB continues to navigate the evolving landscape of accountability, the increasing reliance on plea bargains prompts a critical examination of their efficacy and ethical implications within the Pakistani legal framework. Further research and analysis are needed to comprehensively understand the impact of this trend on the broader goals of accountability and justice in the country.

8. Conclusion

In conclusion, tackling corruption in Pakistan is a complex and long-term challenge that requires a multifaceted approach. Reforms in governance, legal frameworks, and cultural attitudes towards corruption are essential measures. Moreover, strengthening the capacity and independence of anti-corruption agencies and ensuring political will to fight corruption are crucial steps toward mitigating this pervasive issue.

While considering the weaknesses, the parliament should review the provision of a plea bargain to implement it only through an independent prosecution to help create a transparent accountability regime. Plea bargaining can add to cost-effectiveness by streamlining monetary recoveries and minimizing court time required for detailed litigation. The accused will also be benefitted by getting involved in the case resolution knowing the risks and rewards of the cooperation. A-GB needs to establish rules of business to gain the public trust in the systems. Regularly updating public records of settlements, publishing detailed plea bargain agreements, and periodically reviewing guidelines are essential measures for reinforcing the credibility of plea bargains and maximizing their deterrent effect.

The discretionary powers related to settlement as vested in a single designation should be curtailed immediately. The option of plea bargain should only be exercised for the approver(s) getting his/her confession to pave the ways to prosecute the main accused in corruption. The high-handedness of the A-GBs with the suspects/ accused while coercing him/ her to enter into settlements should not be tolerated and immediately investigated to keep trust of the people intact with the prevailing systems.

NAB should act fairly and transparently in plea-bargaining, ensuring financial deals reflect the seriousness of the offense without consenting to lesser amounts than due. An independent body within NAB should decide plea terms on a case-by-case basis, preventing unilateral decisions. Comprehensive rules valuing legal rights should be established, and official letters should

initiate negotiations. Coercion must be avoided, and transparency maintained with detailed records and clear communication. All plea agreements must be written, signed by both parties, and presented to the court for approval.

The policy makers in consultation with stakeholders including researchers, anti-corruption experts, civil society and national and provincial bar councils need to suggest rather bring in reforms addressing system disparities and develop guidelines for the process to cater white-collar crimes in a justifiable manner. Reforms should also focus on not to keep the identities of the offenders/ convicts and the details of the bargain confidential from general public to make the process transparent. This way the offender/ convicts cannot regain their social status after getting into a plea bargain which will aid in creating deterrence in future.

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