

# Exploring the Underpinnings of Plea Bargaining: An In-Depth Policy Dimension Analysis

Abul Hassan Kashan<sup>1</sup>

Mr. Jehanzeb Khan Orakzai<sup>2</sup>



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## Abstract:

Plea bargaining (PB) is a legal process used to expedite the resolution of cases by allowing defendants to admit guilt in exchange for reduced sentences. In Pakistan, PB aims to address court backlogs and streamline justice. However, PB has notable drawbacks, such as potentially leading to disproportionately reduced sentences and encouraging repeat offenses. Additionally, PB can be biased, with not all defendants receiving equal opportunities for plea deals. This research evaluates both the benefits and drawbacks of PB, highlighting its potential to alleviate court delays and reduce costs while emphasizing the risks of unfair treatment and wrongful convictions. Recommendations include creating clear guidelines, enhancing transparency, providing training for legal professionals, reviewing sentencing criteria, and implementing technology for better monitoring. A comprehensive strategy is proposed to improve PB practices, ensuring justice is served fairly and effectively.

## Key words:

Plea Bargaining, Legal System, Judicial Fairness, Case Backlog, Sentencing Reform

<sup>1</sup> Currently posted as Deputy Director, National Accountability Bureau, Khyber Pakhtunkhwa, Peshawar

<sup>2</sup> Faculty Advisor

## *Introduction*

Plea bargaining (PB) can be an effective mechanism for quickly recovering stolen funds and resolving corruption cases. However, it comes with potential drawbacks. PB may lead to reduced sentences for individuals involved in corruption, which might seem disproportionate to the crimes committed. It could also incentivize individuals to engage in corrupt activities, knowing they might negotiate a favorable deal if apprehended. Additionally, selective prosecution or bias may occur, as not everyone may be offered the same PB deal. Therefore, it is crucial to evaluate both the advantages and disadvantages of PB to fully understand its implications.

## *Statement of the Problem*

Plea bargaining in the National Accountability Bureau (NAB) is often viewed as an unethical recovery method in Pakistan. The Accountability Bureau's failure to effectively educate the public about the significance and details of plea bargains has led to widespread skepticism. The general public, who are key stakeholders in the accountability process, does not approve of plea bargaining as the sole means of recovery under NAB law. Therefore, it is essential to evaluate both the advantages and disadvantages of plea bargaining to gain a comprehensive understanding of its implications.

## *Research Methodology*

This study employed qualitative, analytical, and descriptive research methods, gathering information from both primary and secondary sources. Primary sources included interviews with NAB prosecutors and officers, while secondary sources consisted of relevant laws, reports, policy documents from the government, articles, and other pertinent published material on the subject of policy gap analysis.

## *Scope of study*

This qualitative research will focus on the economic impacts of global warming in Pakistan from 2010 to 2022 through available secondary data. It will primarily consider the sectors of agriculture, water resources, housing infrastructure, and disaster management. The geographical scope of the study will cover Pakistan as a whole, with a focus on regional disparities in climate impact. The study will not delve into the broader social or environmental aspects of climate change, nor will it confine the insight to specific events occurring during the study period. Instead, it will aim to provide an in-depth

analysis of the economic ramifications of global warming for Pakistan and propose policy recommendations.

### *Significance of Research*

This research establishes a critical link with ongoing public policy debates surrounding climate change and economic development in Pakistan. It contributes by providing empirical evidence and comprehensive analysis to inform policy discussions, helping policymakers understand the economic consequences of global warming and guiding adaptation and mitigation strategies. This research holds significance in several aspects: It contributes to the growing body of knowledge on the economic impacts of global warming, particularly in the context of developing countries. It also provides policymakers with practical insights and policy recommendations to address the challenges posed by climate change. Furthermore, it serves as a foundation for future research on climate change and economic sustainability in Pakistan.

### *Literature review*

Christopher Slobogin, in his article "Plea Bargaining and the Substantive and Procedural Goals of Criminal Justice: From Retribution and Adversarialism to Preventive Justice and Hybrid-Inquisitorialism," has explored various dimensions of plea bargaining.

Alvi, M. (2016) in his article "Plea Bargain: A Serious Issue, Says Rabbani," focused on the ethical concerns surrounding plea bargaining.

Butt, A. M. (2020, December 9) in his article "Efficacy and Potency of NAB's Plea Bargain" described the complexities involved in plea bargaining.

The NAB Annual Report for the year 2022 provides detailed information on recoveries made under different categories since the year 2000 and also outlines the trial status of NAB cases.

### *Dimensions of the Problem*

There are two dimensions to plea bargaining: the legal dimension and the moral dimension.

The legal dimension of plea bargaining involves using legal processes to reduce or eliminate criminal charges against an accused in exchange for cooperation, such as providing evidence or testimony against other criminals. Legally, plea bargaining helps to reduce the cost of judicial proceedings while achieving a higher conviction rate of criminals.

Conversely, the moral dimension of plea bargaining addresses the ethical implications of the practice. Morally, plea bargaining may undermine principles of justice, fairness, and proportionality of punishment.

Additionally, it could incentivize individuals to commit crimes, knowing they might receive reduced sentences in exchange for cooperation (Alvi, 2016).

### Analysis of Present Situation

As the apex anti-corruption agency of Pakistan, NAB is tasked with eliminating corruption through a comprehensive approach involving awareness, prevention, and enforcement. The preamble of NAB states that the agency is also responsible for recovering looted amounts. NAB can recover amounts from accused individuals through several methods: a. Plea Bargain b. Voluntary Return c. Indirect Recoveries d. Recoveries in Convictions through Court Fines

The updated status of prosecution of cases in trial courts is as follows:

Sr.#	Particulars / Breakup	NAB (L)	NAB (K)	NAB (KP)	NAB (B)	NAB (R)	NAB (M)	NAB (Sk)	Total
1	References filed u/s 18(g) of NAO, 1999 (References contains carry forward / balance cases upgraded from Investigation)	4	7	2	6	3	4	4	30
2	Decided (Sr.3&4) (including previous cases)	22	15	4	11	8	13	5	78
3	Convictions u/s 10 of NAO, 1999	3	6	0	4	4	4	4	25
4	Acquittal	19	9	4	7	4	9	1	53
5	Plea Bargain (cases sent for trial)	0	7	0	0	1	0	0	8
6	PB & Disposed off <sup>1</sup> Individual PB; cases pending <sup>2</sup>	0	10	0	0	0	0	22	32
7	PB (under investigation matters, PBs approved by Court <sup>3</sup> )	6	9	0	0	2	31	0	48
8	Closed u/s 9(c) of NAO, 1999	1	0	0	0	0	2	0	3
9	Withdrawn u/s 31B	0	0	0	1	0	0	0	1
10	Quashed/Terminated	0	3	0	0	0	0	0	3
11	Abated	1	0	0	0	0	0	1	2
12	Merged	0	1	0	0	0	0	0	1
13	Transfer	0	8	0	0	0	0	0	8
	<b>Total cases decided<sup>4</sup> (including previous cases)</b>	<b>23</b>	<b>34</b>	<b>4</b>	<b>12</b>	<b>9</b>	<b>13</b>	<b>6</b>	<b>101</b>
14	<b>Return back to NAB*</b>	<b>94</b>	<b>10</b>	<b>141</b>	<b>57</b>	<b>96</b>	<b>67</b>	<b>4</b>	<b>469</b>

### Plea Bargain

Recoveries under plea bargaining are considered convictions under the law. The implications of plea bargaining have been discussed in preceding sections. All amounts recovered through plea bargaining are direct recoveries for NAB and are returned to the respective government, whether Federal or Provincial. It is important to note that the accused must deposit the full amount of the loss caused to the exchequer.

### Voluntary Return

Since its inception, NAB has recovered substantial amounts through voluntary return (VR). VR was typically used in cases where the evidence was weak, and the likelihood of success in Accountability Courts was low. Critics argued that VR might encourage corrupt elements to reoffend in the future, as it imposed no significant consequences on the accused. In 2016, the Supreme Court of Pakistan invalidated the Voluntary Return section, i.e., Section 25(a), in *Suo Moto Case No. 17 of 2016*. The exclusion of VR has notably impacted NAB's recoveries, as accused persons now avoid plea

bargaining due to the severe implications of Section 25(b) of NAO. It is important to mention that the accused must deposit the full amount of the loss caused to the exchequer.

#### **Indirect Recoveries**

Indirect recoveries refer to the amounts recovered by NAB where the accused are required to compensate the loss caused to the exchequer by depositing funds with the respective departments.

#### **Court Fine Recovery**

Court fines are imposed after the conclusion of a trial. The court fines the accused based on the loss caused and substantiated by NAB during the trial.

#### **International Legal & Policy Framework**

##### **Plea Bargaining in Australia, Canada, New Zealand, England, and the United States**

Plea bargaining in Australia is an informal process where the prosecuting authority and defense counsel negotiate charges and/or concessions related to sentencing. The aim is to reach a mutually acceptable agreement for the defendant to plead guilty.

In England and Wales, there is no formal process for plea bargaining. Prosecutors are generally not permitted to address the court on sentencing issues, which remain within the court's discretion. The Crown Prosecution Service (CPS) typically selects the charge, allowing for negotiations between counsel, with the CPS handling these discussions.

New Zealand lacks a formalized plea bargaining system. Prosecutors may be open to reducing charges after discussions with defense counsel, though this often depends on judicial style. Plea bargaining is carried out informally with no structured framework.

The United States has an extensive formal plea bargaining system, where the majority of criminal cases are resolved through this method. Plea bargaining can be structured with judicial oversight or occur privately between the prosecution and defense. The process is governed by a comprehensive set of procedural rules and has become institutionalized across the country.

##### **Plea Bargain in the United States**

Plea bargaining and guilty pleas are often viewed as incompatible with the foundational principles of American criminal justice. Plea bargaining frequently leads to punishments that are disproportionate to the severity of the crime, and guilty pleas can undermine procedural due process. To reconcile plea bargaining with the principles of criminal justice, it would require a fundamental shift in these principles. This would involve moving away from retribution as the primary focus of punishment and adopting a system where adjudication is more judicially supervised rather than adversarial.

The rationale behind plea bargaining is understandable, given the harsh sentences defendants face if they go to trial. This risk makes them more likely to plead guilty to obtain a reduced sentence, helping to avoid potentially lengthy and counterproductive incarceration. Additionally, trials can be

taxing for both judges and jurors; therefore, plea bargaining can expedite the process by allowing the defendant to admit guilt and thus provide immediate information about culpability.

However, even if retributive justice can be adjusted to work with plea bargaining, it acknowledges that desert—punishment proportional to the crime—is only one consideration among many. The practical reality is that most criminal cases are resolved through plea deals that do not align with individualized retribution, making proportionality a theoretical rather than practical goal. Some argue that judges could be trained to determine a just sentence if given access to relevant expert testimony. Nevertheless, it remains challenging to establish consistent and predictable patterns in sentencing.

Drug courts could serve as a model for integrating inquisitorial methods into plea bargaining. This would involve constraining the types of settlements possible and ensuring that they fit within a broader sentencing scheme focused on prevention rather than retribution. Although inquisitorial systems have their own issues, their potential benefits make them worth exploring, particularly given their relative success in Europe and their historical connection to American legal traditions.

#### **Plea Bargain under Section 25(b) of the NAO, 1999**

"Where, at any time after the authorization of an investigation, before or after the commencement of the trial or during the pendency of an appeal, the accused offers to return to NAB the assets or gains acquired through or as a consequence of any offense under this Ordinance, the Chairman, NAB, may, at his discretion, accept the offer after considering the facts and circumstances of the case. If the accused agrees to return the amount determined by the Chairman, NAB, the Chairman shall refer the case for approval by the Court or Appellate Court and for the release of the accused."

#### **Implications of Plea Bargain as Per Section 15 of NAO, 1999**

15. (a) Where an accused person is convicted of an offense under section 9 of this Ordinance, they shall immediately cease to hold any public office and shall be disqualified for a period of ten years, starting from the date of release after serving the sentence, from seeking or being elected, chosen, appointed, or nominated as a member or representative of any public body, statutory or local authority, or in the service of Pakistan or any Province.

Provided that any accused person who has availed the benefit of subsection (b) of section 25 shall also be deemed to have been convicted of an offense under this Ordinance. They shall immediately cease to hold any public office and shall be disqualified for a period of ten years, starting from the date they have discharged their liabilities related to the matter or transaction in question, from seeking or being elected, chosen, appointed, or nominated as a member or representative of any public body, statutory or local authority, or in the service of Pakistan or any Province.

### SWOT Analysis

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>• Saves time and money for the criminal justice system</li> <li>• Can result in a faster resolution and closure for everyone involved</li> <li>• Allows prosecutors to focus on more serious cases</li> <li>• Results in a guaranteed outcome and saves resources that would be used for a trial</li> </ul>	<ul style="list-style-type: none"> <li>• Could lead to innocent people pleading guilty to avoid a harsher sentence at trial</li> <li>• May incentivize police and prosecutors to overly charge defendants -</li> <li>• Can contribute to systemic inequality in the justice system as marginalized and low- income individuals may be pressured to take plea deals</li> <li>• Can result in unreasonably lenient or harsh sentences that do not reflect the severity of the crime</li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>• Provides an avenue to clear court congestion and reduce backlog - Can be used to encourage individuals to cooperate with law enforcement, as seen in exchange for information related to other crimes</li> <li>• Can be used to ensure that punishment is equally distributed, regardless of social status or background</li> <li>• Can be used to help address the high costs and inefficiencies of the justice system</li> </ul>	<ul style="list-style-type: none"> <li>• Can result in wrongful convictions if defendants plead guilty despite being innocent</li> <li>• Can perpetuate systemic injustice by placing uneven pressures on different socio- economic groups</li> <li>• Can create an imbalance of power between prosecutors and defense attorneys when defendants are not sufficiently educated about their legal rights</li> <li>• Can incentivize plea deals even in difficult cases, leading to an incorrect outcome due to a lack of legally sound evidence being presented.</li> </ul>

### Conclusion

Plea bargaining is a practice in Pakistan, as in many other countries, that allows defendants to admit to crimes in exchange for reduced sentences. While this practice has its advantages, it also raises significant concerns about fairness and justice within the legal system.

Advantages of plea bargaining in Pakistan include the potential reduction of

court case backlogs and the alleviation of delays in justice. By facilitating quicker resolutions, plea bargaining can reduce the number of cases that require lengthy trials, thereby saving time and resources in the legal system. However, disadvantages must also be considered. There is a risk that innocent defendants might plead guilty to avoid harsher penalties, and marginalized or low-income individuals might be pressured into accepting plea deals despite their innocence. These issues could lead to inequities and undermine the fairness of the justice system.

Therefore, while plea bargaining can be an effective tool for managing case volumes and reducing costs in Pakistan’s courts, it is essential to implement careful regulation to mitigate its potential drawbacks. Ensuring that plea bargaining does not lead to unjust outcomes or unfair treatment is crucial. A thorough evaluation of its benefits and limitations is necessary to uphold the integrity of the legal system and ensure that justice is served fairly for all parties involved.

### GAP Analysis

Aspect	Desired Situation	Existing Situation	Gap	Recommendations
Effective Recovery of Embezzled Funds	The plea bargain system should effectively recover embezzled funds.	The recovery through PB doesn't commensurate with the corruption level in the country,	Recovery is less than the desired level.	<ul style="list-style-type: none"> <li>• Effective detection of corruption.</li> <li>• Whistleblower policy.</li> <li>• Efficient investigation.</li> </ul>
Transparent and Fair Process	The plea bargain process should be transparent, fair, and in accordance with the rule of law.	Misconceptions about PB in the general public. Lack of transparency and disclosure.	The process of PB is not transparent.	<ul style="list-style-type: none"> <li>• Clear policy outlines.</li> <li>• Public disclosure of PB cases.</li> <li>• Public awareness regarding PB.</li> </ul>



<p><b>Deterrence of</b></p>	<p>The plea bargain system should contribute to deterring corruption.</p>	<p>Pakistan corruption index has deteriorated over the past years.</p>	<p>NAB has not been able to create desired deterrence against corruption.</p>	<ul style="list-style-type: none"> <li>• Make corruption costlier than the benefits.</li> <li>• Advertise achievement against corruption.</li> <li>• Create deterrence through internal control and effective detection of corruption.</li> </ul>
<p><b>Corruption</b></p>				
<p><b>Cooperation in Investigations</b></p>	<p>Individuals entering into plea bargains should provide valuable information.</p>	<p>Plea Bargain does not fetch the desired evidence in investigation.</p>	<p>Gap in cooperation by individuals entering into plea bargain.</p>	<ul style="list-style-type: none"> <li>• Amendments in law to make person entering PB as a competent witness.</li> <li>• More recovery of funds should not be the objective of PB.</li> <li>• Full disclosure of information and evidence mandatory for PB.</li> </ul>

### *Recommendations*

1. **Create Clear Guidelines:** The Pakistani government must develop clear guidelines regarding plea bargaining to prevent judicial misconduct and abuse of power. The guidelines should focus on regulating the practice by preventing discrimination against certain classes of defendants and ensuring that the rules apply to all hearings in the court system.
2. **Train Counsel:** Lawyers and judges should receive adequate training to manage plea bargaining effectively. They should possess the skills and knowledge needed to ensure that plea bargaining is conducted fairly and ethically, and that defendants are not subjected to undue pressure.
3. **Ensure Greater Transparency:** Pakistan's policy on plea bargaining should be more transparent about the deals made between prosecutors and defendants. This will help guarantee that both the

defendant and the court are aware of the agreed terms. There should be a detailed explanation of the conditions, terms, and any consequences if one party breaches the deal.

4. **Review the Sentencing Regime:** Pakistani courts must review the current sentencing criteria. If the punishment for lesser offenses is lenient, it may discourage plea bargaining. Lawmakers should consider introducing minimum and maximum sentencing guidelines. The goal should be to design a program that encourages individuals to plead guilty while maintaining a proper balance for justice and crime prevention.
5. **Implement Technology:** To regulate plea bargaining effectively, technology should be introduced to track the process from start to finish. Digitally collected data should be integrated with criminal tracking systems to monitor transactions and detect any misconduct or malicious behavior by the parties involved.
6. **Overall Strategy:** These recommendations reflect the need to adjust the current Pakistani system to maintain the integrity of the judiciary. By creating a clear system with rules, technology, and training, along with transparency and sentencing regulation, plea bargaining in Pakistan can address the backlog of cases while ensuring that justice is served impartially.

#### **Policy Recommendations:**

##### **Clear Guidelines and Regulations:**

**Objective:** Establish clear guidelines and regulations for plea bargaining in Pakistan.

**Rationale:** To prevent judicial misconduct, abuse of power, and ensure fair and consistent application of plea bargaining across all court hearings.

##### **Implementation:**

- Form a committee to draft comprehensive guidelines.
- Involve legal experts, representatives from the judiciary, and other stakeholders.
- Publish and disseminate the guidelines widely.

##### **Training Programs for Legal Professionals:**

**Objective:** Provide training for lawyers and judges to enhance their understanding of and competence in managing plea bargaining processes.

**Rationale:** To ensure that legal professionals handle plea bargaining ethically and fairly.

**Implementation:**

- Develop training modules in collaboration with legal institutions.
- Conduct regular workshops and seminars.
- Include case studies to illustrate best practices.

**Enhanced Transparency Measures:**

**Objective:** Improve transparency in the plea bargaining process.

**Rationale:** To dispel misconceptions and ensure public confidence.

**Implementation:**

- Require public disclosure of plea bargain cases.
- Establish a system for reporting and monitoring plea bargains.
- Conduct public awareness campaigns to educate the public about the plea bargaining process.

**Review and Amendment of Sentencing Regime:**

**Objective:** Review the current sentencing criteria and amend as necessary.

**Rationale:** To ensure that punishments are proportionate to offenses and encourage defendants to consider plea bargains.

**Implementation:**

- Form a sentencing review committee.
- Analyze the impact of existing sentencing guidelines.
- Propose amendments for a more balanced approach.

**Technological Integration:**

**Objective:** Implement technology to streamline and monitor the plea bargaining process.

**Rationale:** To enhance efficiency, transparency, and accountability.

**Implementation:**

- Introduce a digital tracking system for plea bargains.
- Use technology to document and store plea bargain details securely.
- Ensure accessibility and monitoring by relevant authorities.

**Recommended Option for Implementation:**

Considering the multifaceted nature of the issue, a comprehensive approach that incorporates **Clear Guidelines and Regulations (Option 1)** is recommended as the primary strategy. Clear guidelines lay the foundation for fair and consistent plea bargaining practices. Once established, these

guidelines can serve as a basis for other recommendations, such as training programs, transparency measures, and technological integration.

### **Implementation Strategy:**

#### **Establish a Committee:**

Form a committee comprising legal experts, representatives from the judiciary, and other stakeholders. This committee will be tasked with drafting comprehensive guidelines for plea bargaining.

#### **Public Consultation:**

- Conduct consultations with legal professionals, civil society, and the public.
- Gather input on the draft guidelines to ensure a comprehensive and inclusive framework.

#### **Publication and Training:**

- Publish the finalized guidelines and make them widely accessible.
- Initiate training programs for legal professionals based on the new guidelines.

#### **Monitoring Mechanism:**

- Implement a monitoring system to ensure adherence to the guidelines.
- Utilize technology to track and document plea bargaining cases.

#### **Continuous Evaluation:**

- Periodically evaluate the effectiveness of the guidelines.
- Make necessary adjustments based on feedback and evolving legal practices.

By adopting this comprehensive approach, Pakistan can enhance the integrity and fairness of its plea bargaining system, addressing the identified gaps and contributing to a more transparent and accountable legal process.

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