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More law, more crime? The Pitfalls of Pakistan's Illegal Dispossession Act 2005

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## I. Introduction

In the field of international environmental law and development, the term “land-grabbing” refers to the large-scale acquisition of agricultural land in developing countries by multi-national corporations or governments intent to secure their long-term food supplies. In Pakistan, the term refers to something more prosaic but equally pernicious, namely the theft of private and public land by criminal gangs. Not a day goes by without a newspaper reporting cases of alleged land grabbing or violent crimes connected with property disputes and the theft of land. In Pakistan, the term land grabbing is invariably connected with the activities of what is variously referred to as the land mafia, land grabbers and Qabza groups. The latter word is from the Urdu language meaning “occupying” albeit with the connotation of an occupation by force or deceit.

Land grabbing by Qabza groups covers a range of illegal activities from the outright occupation of land by force to more subtle means, such as the filing of baseless civil cases claiming ownership rights to a property. With civil litigation slow and inefficient, the true owners of the property can either fight the case in court and lose their ability to sell it during the pendency of the civil suit or pay a sum of money to the blackmailer in order for the case to be withdrawn.

Land grabbing is not listed as a separate offence in official crime statistics but has acquired notoriety as a crime that not only affects a large number of people but also the state itself, given that many of the properties illegally “grabbed” are owned by the state. Thus, a recent newspaper article titled “Menace of Land Grabbing” [The Express Tribune 28 April 2018] describes the illegal encroachment in the town of Johi in the province of Sindh where “*land grabbers have taken over almost all prime lands of the town. Among the encroached land is the irrigation’s department land, car garage and surrounding land of Mukhtiar Office Johi and freshwater ponds. They haven’t even spared historical places such as an ancient Hindu temple.*”

The scourge of land grabbing and the violence that goes with it has even registered in the UK, where the Home Office issued a “Country Policy and Information Note Pakistan: Land Disputes” [January 2017], in order to enable case-workers to evaluate claims for political asylum based on the fear of persecution as a result of a land dispute. The USAID Country Profile “Pakistan – Property Rights & Resource Governance” points out that “*Squatting and land-grabbing are common in Pakistan. [...] Pakistan*

*is also home to individuals and groups known as the Land Mafia who illegally take possession of land or claim ownership of land and dispossess true owners through legal or extra-legal means.”*

In Pakistan’s capital Islamabad, the ever-growing number of mosques reflects the impotence of the Capital Development Authority [“CDA”] to enforce planning laws as well as the rise of Qabza groups. According to the CDA’s director of Urban Planning *“mosque building is nothing more than a method of land grabbing.”* [Hull, p. 474] Overseas Pakistani’s are reluctant to buy land in Pakistan because they are *“often absentee landlords and thus especially vulnerable to illegal dispossession.”* [Ewing, p. 536] Land-grabbing has even been linked to the practice of bigamy among landowners in South Asia *“to keep different women, often on different lots of land in order to defend the land from land-grabbers.”* [Holden, 228]

Newspapers, human rights’ reports and even the Supreme Court of Pakistan itself suggest that state functionaries are often reluctant to initiate legal proceedings against land grabbers either as a result of corruption or of apathy. In the unreported judgement of *Gulshan Bibi and others vs. Muhammad Sadiq and others* [Civil Petition No. 41 of 2008 and Civil Appeal No. 2054 of 20017 & 1208 of 2015, date of hearing: 15 June 2016] the Supreme Court explained the phenomenon as:

*The terms ‘land grabbers’ or ‘Qabza Group’ or ‘Qabza Mafia’ in ordinary parlance refer to a distinct class of offenders who usurp property of others in an organized manner. They mostly target unoccupied or deserted urban properties belonging to the Federal Government, the Provincial Governments, Municipal authorities, autonomous or semi-autonomous bodies, Trusts or Waqfs and at times even properties belonging to private persons. By resorting to various forms of fraud and forgery the professional land grabbers or Qabza Mafia first get the targeted property transferred in the official records in the name of a person of their confidence and then create third party interest thereon. In doing so the face of the professional land grabbers or Qabza Group remains hidden. They indulge in land grabbing through their proxy so that the real beneficiary of land grabbing could not be identified. With every new act of illegal dispossession the face of the proxy keeps changing.*

Rina Saeed Khan in a newspaper article entitled *“When Land Grabber Rule”* [The Express Tribune, 28 January 2014] writes that *“The reason that land mafias get away with their illegal activities is because of the patronage of powerful politicians and government officials — it really is as simple as that. The land mafia is a nexus comprising politicians, criminals, property dealers and corrupt government officials”*.

Pakistan’s legal system seems incapable of offering any meaningful relief to the victims of land grabbing, be it private citizens or indeed the state. Estimates suggest that land disputes make up between 50% to 75% of cases brought before civil courts with up to 1 million cases pending and awaiting final adjudication. USAID Country Profile *“Pakistan – Property Rights & Resource Governance”* identifies as major causes of land disputes *“inaccurate or fraudulent land records, erroneous boundary descriptions that create overlapping claims, and multiple registrations to the same land by different*

*parties” and states that “Credible evidence of land rights is often nearly impossible to obtain.”*

The scourge of land grabbing was supposed to be stemmed by the enactment of the Illegal Dispossession Act, 2005. This act, in nine short sections, created an offence of illegal land grabbing, punishable with up to ten years’ imprisonment, and allowed the trial court to return the property to its rightful owner. Promising in its Preamble to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession therefrom by the property grabbers, the Illegal Dispossession Act 2005 was meant to direct the full force of the criminal law against the land mafia. An accelerated trial, stiff punishments and easy access – criminal complaints could be filed directly in the criminal court rather than a police station – would finally provide victims of Qabza groups the means to fight back.

This article charts the implementation and the (mis)-use of the Illegal Dispossession Act 2005 through the lens of reported judgements of the five high courts and the Supreme Court of Pakistan over the past 13 years. What has been the effect of the creation of a new offence of land-grabbing? In what type of situations is the new law invoked and who are its beneficiaries? Is the Illegal Dispossession Act 2005 an answer to the claim that irregular and inadequate legislation causes excessive litigation which buries courts under a “mountain of cases”? [Siddique, p. 378] Has the law fulfilled its objectives?

## II. The Illegal Dispossession Act 2005

In Pakistan’s legal history, the Illegal Dispossession Act 2005 [“2005 Act”] is not the first attempt to control disputes over land. The Indian Penal Code 1860, now called the Pakistan Penal Code 1860 [“PPC”], contains a finely tuned cadence of criminal offences all concerned with the unlawful entering of someone else’s property. Starting with the offence of criminal trespass (section 441)<sup>1</sup>, house trespass (section 442)<sup>2</sup>,

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<sup>1</sup> Section 441 PPC “*Criminal trespass: Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".*”

<sup>2</sup> Section 442 PPC “*House-trespass: Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass". Explanation: The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house trespass.*”

lurking house trespass (section 443)<sup>3</sup>, lurking house trespass by night (section 444)<sup>4</sup> the list ended with section 445, the offence of house breaking:

*A person is said to commit "house-breaking" who commits house trespass if he effects his entrance into the house or-any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:*

*First: If he enters or quits through a passage made by himself, or by any abettor of the house- trespass, in order to the committing of the house-trespass.*

*Secondly: If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.*

*Thirdly: If he enters or quits through any passage which he or any abettor of the house trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be-opened.*

*Fourthly: If he enters or quits by opening any lock in order to the committing of the house- trespass, or in order to the quitting of the house after a house-trespass.*

*Fifthly: if he effects his entrance or departure by using criminal force of committing an assault, or by threatening any person with assault.*

*Sixthly: If he enters or quits any passage which he knows to have been fastened against such entrance or departure, and to. have been fastened by himself or by an abettor of the house-trespass.*

*Explanation: Any out-house or building occupied with a house, and between, which and such house there is an immediate internal communication, is part of the house within the meaning of this section.*

These criminal offences are followed by 19 separate sections, from sections 446 to 462 PPC, providing for punishments ranging from fines to imprisonment, depending on the circumstances and other criminal acts accompanying them. For example, section 457 PPC which provides a punishment of a maximum of 14 years' imprisonment for committing the offence "*Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment*" with an intention to commit the offence of theft.

Between 1949 and 2013, there were only 25 reported cases under Section 441 "Criminal Trespass", the most general of these offences, with the majority being successful

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<sup>3</sup> Section 443 PPC "*Lurking House-trespass: Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".*"

<sup>4</sup> Section 444 PPC "*Lurking house-trespass by night: Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit 'lurking house-trespass by night'.*"

appeals against convictions on the ground that the prosecution could not prove a criminal intent to commit the criminal trespass. Thus the prosecution's failure to prove criminal intent resulted in acquittal in *Abdul Razzaq v. S.H.O.* [2008 PCr.LJ 812]. Further, the fact that the property in question was subject to a civil dispute between co-sharers resulted in an acquittal for the offence of criminal trespass in the case of *Malik Muhammad Zameer v. Shamim Akhtar* [2006 PCr.LJ 539]. The offences under sections 443 and 444, respectively lurking house-trespass and lurking house-trespass by night, on the other hand appear in a large number of reported judgements, all concerned with more serious offences such as rape or murder committed in the course trespassing on the victim's property.<sup>5</sup>

In addition to criminal offences to prevent the illegal occupation of land, a dedicated provision for the recovery of land in civil proceedings was included as section 9 of the Specific Relief Act, 1877, a colonial, British-Indian statute which continues to apply in Pakistan: "*If any person is dispossessed without his consent of immovable property otherwise than in due course of the law, he or any other person claiming through him, may by suit recover possession thereof, notwithstanding any other title that may be set up in such suit.*" Again, there are only few reported decisions under this section, with many cases concerned with the dismissal of civil petitions under section 9 because the land in question was within the exclusive jurisdiction of the Revenue Courts established under provincial tenancy acts such as the Khyber Pukhtunkhwa Tenancy Act, 1950.<sup>6</sup> Case law also reveals the long delays inherent in civil proceedings and as such preventing this provision from giving meaningful relief. *Mst Qasima Begum vs. Abdullah through Legal Heirs and others* [2013 CLC 191] can be referred to by way of illustration. In 1963 one Mr Haji Akhtar had purchased a plot of land from the Allama Usmani Cooperative Housing Society Limited in Nazimabad, Karachi. Subsequently, one Mr Abdullah "*[...] forcibly occupied the said plot and raised unauthorized construction thereon and on being approached to vacate the same, he refused to do so and hence the suit in question had to be filed by the said Haji Akhtar Hussain in the year 1967 on the basis of the refusal of the defendant to vacate and hand over the vacant possession of the suit plot to the plaintiff on 11-8-1965.*" By 1990 both Mr Abdullah, the defendant, and Mr Haji Akhtar, the plaintiff, had passed away and their legal heirs were joined to the civil suit. 45 years later, after several rounds of litigation before the lower courts, the dispute was finally decided by the Sindh High Court in 2010, holding that whilst the plaintiffs in principle would have had a remedy to regain the property under section 9 of the Specific Relief Act 1877, they had failed to prove neither title nor possession of the disputed property and had failed to implead the Cooperative Housing Society as a third party, the latter now being time-barred. In addition, their ancestor Mr Haji Akhtar's claim of ownership of the plot had not been made on oath and was therefore inadmissible.<sup>7</sup>

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<sup>5</sup> According to the Pakistanlawsite database, there were over 150 reported cases involving section 443 and 444 PPC between 1951 and 2018: [www.pakistanlawsite.com](http://www.pakistanlawsite.com), last visited 1 May 2018.

<sup>6</sup> See for instance *Muhammad Saeed vs. Abdur Rahim* [PLD 2015 Peshawar 94].

<sup>7</sup> Civil cases affected by long delays are reported gleefully by newspapers whenever the topic of the large number of pending cases in Pakistan's courts comes up, which it does frequently. For instance, in January 2018 *The News* reported that the Supreme Court had announced a verdict in a 100-year-old property inheritance that had started in the court of Rajasthan, India, in 1918 [*The News*, 31 January 2018].

As part of the colonial legacy of laws, Pakistan also inherited section 145 of the British Indian, and now Pakistan, Code of Criminal Procedure, 1898, which empowers a magistrate as part of his preventive jurisdiction to intervene in property disputes which are likely to cause the “breach of the peace.” The lack of reported decisions suggests that this provision is rarely, if ever, used.

Section 19 and of the Presidency Small Courts Act 1882, introduced to reduce the case-load of the high courts and to provide a simplified procedure for civil suits valued below Rs 2000, excluded from their jurisdiction suits for the recovery of immovable property as well as suits for the determination of any other right to or interest in immovable property but made an exception was made with regard to suits involving tenancies. Chapter VII the Presidency Small Courts Act 1882 contained a dedicated provision allowing a landlord to apply for the removal of tenant whose tenancy had been “determined or withdrawn.” On the tenant’s refusal to vacate the property, the landlord could apply for a summons calling upon him to show cause why he should not be compelled to deliver up the property. If the tenant failed to show that he was in lawful occupation, the bailiff could be ordered to remove him from the property. Anticipating the possibility that the newly introduced law could be abused, an applicant for a summons who in fact had not been entitled to do so was not only deemed to be a trespasser against the occupant but the wronged tenant could also apply for compensation and costs in the same set of proceedings.

In independent Pakistan, several additional laws were passed to recover public land illegally encroached or appropriated. The Central Government Lands and Buildings (Recovery of Possession) Ordinance, 1965 and the West Pakistan Autonomous Bodies Immovable Property (Ejectment of Unauthorized Occupants) Ordinance, 1965 allow for the eviction of unauthorised occupants of any land or building owned by respectively the central government or autonomous bodies, such as a university, as the well as the demolition and removal of illegal buildings and structures. Several laws, such as the Punjab Autonomous Bodies Immovable Property (Ejectment of Unauthorised Occupants) Ordinance, 1965, provide the same remedies to provincial governments. The law reports record only few cases under any of these statutes and ordinances, indicating that the state is slow to use these remedies in order to remove encroachments from public land. One of the handful of reported judgements is the case *Hasam Ud Din vs. Quetta Metropolitan Corporation* [2016 SCMR 1433] which was concerned with the Quetta Municipal Corporation’s decision to increase the rent payable by tenants of shops owned by the Corporation. The tenants’ attempt to resist paying the increase, which had lasted for the past 16 years, was unsuccessful with the Supreme Court holding that failure to make payment of the accumulated arrears would entitle the Corporation to seek their removal under the provisions of the Baluchistan Autonomous Bodies Immovable Property (Ejectment of Unauthorised Occupants) Ordinance, 1965.

In 2002, during the military regime of General Musharraf, Chief Executive and President of Pakistan between 1999 and 2002, the government promulgated the Small Claims and Minor Offences Courts Ordinance, 2002 in an attempt to provide an

inexpensive and expeditious disposal of small claims and offences. The jurisdiction of the Small Claims and Minor Offences courts extends to several suits concerned with rights over immovable property, listed in Part I of Schedule I of the Ordinance, including suits for separate possession of joint immovable property through partition or otherwise, for redemption of mortgage property, for enforcement of easement rights, for rendition of accounts of joint property and suits to restrain waste and remove nuisances. Finally, in section 13, the Ordinance included “Suit for compensation for wrongful taking or damaging movable or immovable property”. Limited in their jurisdiction to civil disputes valued at no more than Rs 100,000.-, the Ordinance would not apply to the majority of suits concerning rights in immovable property.

In 1993, the Law and Justice Commission of Pakistan examined the problem of land-grabbing in a report entitled “Eradication of ‘Qabza’ Group Activities”. The Report identifies the modus operandi of land-grabbing, namely criminal groups with established links to the police and revenue officials, describing them as ranging from *“taking unauthorised/illegal possession of someone’s property to blackmailing and intimidating the owners of property, preparing forged documents and filing fictitious suits for laying claim to such property.”* The services of these so-called Qabza groups were available for hire and *“in certain localities these groups operate not underground or under any cover but openly and visibly”* because they *“have the blessings of high and mighty and are often backed by powerful social, political and bureaucratic elite”*. This backing makes it *“impossible for the law enforcing agencies to nab them.”* The legal system fails to protect the victims of Qabza groups because *“litigation is costly, tedious and slow.”* As a result, victims of Qabza groups *“almost invariably prefer an out-of-the-court compromise, meekly surrendering to the demands of these groups.”* With the victims left without any remedy, there was a threat of *“lawlessness, nay anarchy”* which undermined the rule of law, eroded the right of an individual to the protection of the law and violated the constitutionally guaranteed right to property. The Law and Justice Commission appended to its report a draft law entitled the “Eradication of ‘Qabza’ Group Activities Act, 1993”. Its principal features were the creation of a criminal offence “illegal dispossession” by a qabza group, group, defined as *“a person or group of persons committing an act of illegal possession of or illegal dispossession from property by means of fraud, intimidation, duress, assault or in any other manner otherwise than in due course of law.”* The trial court was to decide any case under the act within thirty days and no adjournment was to be granted for more than two working days. The trial court was also to be empowered to grant interim relief by putting the owner into possession of his property or to attach the property until *“final determination of the rights of the parties.”*

It took another twelve years for the proposals of the Law and Justice Commission to be implemented. The Illegal Dispossession Act, 2005 shares with its still born 1993 predecessor several features: it creates an offence of ‘land-grabbing’, authorises the trial court to order police investigations and to restore the property to the lawful owners both as interim-relief during the pendency of the trial and at its conclusion. In order to ensure a speedy trial, any proceedings must be concluded within 60 days and no adjournment can be granted for more than seven days. Unlike the 1993 draft law, the 2005 Act omits the term ‘Qabza’ altogether.

The constituent parts of the 2005 Act appear deceptively simple, following the conventional structure of a Pakistani statute, with a preamble, definitions of terms, the definition of the offence itself, its classification as “non-cognisable offence” and the court’s power of arrest of the accused, a section dedicated to investigation and procedure followed by three sections dedicated to interim powers of the trial court to make orders with regard to the disputed property during the pendency of the proceedings. As it turned out, for a social evil as complex and pervasive as land grabbing, the 2005 Act proved too simple.

The Preamble of the Illegal Dispossession Act 2005 Act sets out its objective as “*An Act to curb the activities of the property grabbers. Whereas it is expedient to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession therefrom by the property grabbers.*” With the overall objective defined as curbing the activities of “property grabbers”, in the 2005 Act itself, the definition of the new criminal offence of “*illegal dispossession of property*” lacks any reference to “property grabbers”, with sub-section 3 (1) defining the offence as follows: “*No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any unlawful authority to do so with the intention to dispossess, grab, control or occupy the property from owner or occupier of such property.*” Punishable by a maximum of ten years of imprisonment and with a fine, sub-section 3(2) also adds that the offender can be sentenced to compensate the victim. A further definition of the crime of illegal dispossession was introduced by the Illegal Dispossession (Amendment) Act, 2016 which added a new sub-section (3) providing that “*Whoever forcibly and wrongfully dispossesses any owner or occupier of any property and his act does not fall within sub-section (1), shall be punished with imprisonment which may extend to three years or with fine or with both and also be liable to compensate the victim [...]*”. The addition of the offence of forcibly and wrongfully dispossessing the owner or occupier is wider than the original offence because the prosecution does not need to prove that this act had been carried out with the intention “*to dispossess, grab, control or occupy the property.*” Section 4 makes the offence non-cognizable, meaning that it can be tried by the Court of Session, the most senior criminal trial court, only on a complaint filed by the complainant directly in the court. In contrast, a complaint involving a cognizable offence can only be filed in a police station in the form of a First Information Report. Section 5 provides for a speedy trial, namely that “*the Court shall proceed with the trial from day to day and shall decide the case within sixty days*” and requires the court, upon receiving a complaint, to direct the officer-in-charge of a police station to investigate and to forward the completed investigation to the court within fifteen days.

Section 6 gives the court the power to attach the property if it is “*satisfied that none of the persons are in possession immediately before the commission of the offence.*” Section 7 provides for the granting of interim relief “*If during the trial the Court is satisfied that a person is found prima facie to be not in lawful possession, the Court shall, as interim relief direct him to put the owner of the occupier as the case may be, in possession.*” On the conclusion of the trial, “*if the Court finds that an owner or occupier was illegally dispossessed or property was grabbed in contravention of section 3 the court may restore the property to the owner or occupier.*”

In an attempt to curb the trend of bringing unfounded complaints of illegal dispossession a new sub-section 3 (4) provides that if on conclusion of the trial the

complaint is found to be false, frivolous or vexatious, the court may award compensatory cost to the wrongfully accused which may extend to five hundred thousand Rupees, about \$5,000 at March 2018 exchange rates.

Finally, the Illegal Dispossession (Amendment) Act, 2016 added a new section 8A which provides that any conviction is appealable to the High Court.

As will be seen in the following sections, the 2005 Act had a rocky reception by Pakistan's higher judiciary. High courts and the Supreme Court produced a string of at times contradictory judgements. Veering from wide to narrow definitions of the crime of illegal dispossession, requiring but also refusing to prove that the crime had been committed by "land-grabbers", reading into the 2005 Act a right to appeal, and pondering on the question whether any pending civil litigation over the property in question would make any criminal proceedings of illegal dispossession impossible, these judgements showed Pakistan's high judiciary divided and uncertain. Common to all of the reported decisions is one factor, namely the popularity of the use of the 2005 Act. As of 2018, just short of 350 judgements have been reported, all of them as appeals against decisions by sessions courts, i.e. the criminal trial courts. Whilst crime statistics do not contain any disaggregated information on the offence of illegal dispossession, the high number of appeals strongly suggests that 2005 Act has not been a quickly forgotten addition to the statutes book but has been put to active use.

### III. The Illegal Possession Act 2005 in Practice

#### a. A Law against the Land Mafia?

The Lahore High Court was the first of the five high courts that decided an appeal against a conviction under the Illegal Dispossession Act, 2005. In *Zahoor Ahmad v. The State* [PLD 2007 Lah 23] Justice Asif Saeed Khan Khosa was deeply unimpressed with the very fact the 2005 Act had been passed, anticipating many of the problems and difficulties that have affected the application of the 2005 Act. Firstly, Justice Khosa pointed out that there were already a number of laws dealing with the issue of illegal dispossession and "*Illegal dispossession from property is not uncommon or unusual but what is more rare and infrequent is a mistaken or misguided dispossession of some existing laws by a new law from a field that stands legitimately occupied by the existing laws.*" [at para. 2] Secondly, Justice Khosa examined the history of the 2005 Act, highlighting that it was not the finest example of legislative draftmanship [at p. 247] and holding that it "*is restricted in its scope and applicability to only those cases where a dispossession from immovable property has allegedly come about through the hands of a class or a group of persons who have the credentials or antecedents of being property grabbers/Qabza Group/ land mafia and the said Act does not apply to the run of the mill cases of alleged dispossessions from immovable properties by ordinary persons [...].*" [at para. 5]

After reviewing the debates in both the National Assembly and the Senate, Justice Khosa found that the expression "*property grabbers*" used in the Illegal Dispossession Act, 2005 "*stands for Qabza Groups and land mafia and for individuals who without any lawful or justifiable claim to an immovable property grab the same by force or deceitful means through an organized and calculated methodology or stratagem.*" [at para. 5]

In that case, Justice Khosa found that the complainant had used the Illegal Dispossession Act, 2005 against the petitioner only to “*circumvent the normal civil proceedings pending in the matter and to bring the weight of the criminal law to bear upon the petitioners so as to short-circuit the issue.*” [at para. 5]

Without holding any part of the 2005 Act expressly unconstitutional, the Lahore High Court nevertheless remarked that the absence of a right to appeal was un-Islamic and liable to be struck down on this ground. In a final show of disapproval, Justice Khosa referred to the Indian Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, advising the Federal Ministry of Law, Justice and Human Rights to use it as a model for amending the 2005 Act. The reference to an Indian law was picked up by the Indian Press, with the Hindustan Times reporting on the judgment under the headline “*Pak court tells Govt to study Indian law*”.<sup>8</sup>

Such was the concern of the 2005 Act being misused in order to short-cut civil litigation, that the Lahore High Court framed a Guidance Note which restricted the use of the 2005 Act to instances of illegal dispossession by the “land mafia”. The Guidance Note provides that a Court of Session can only take cognizance of a case under the 2005 Act “*if some material exists showing involvement of the persons complained against in some previous activity connected with illegal dispossession from immovable property or the complaint demonstrates an organized and calculated effort by some persons operating individually or in groups to grab by force or deceit property to which they have no lawful, ostensible or justifiable claim.*” The Guidance Note also clarifies that the 2005 Act:

*...does not apply to run of the mill cases of alleged dispossession from immovable properties by ordinary persons having no credentials or antecedents of being property grabbers/Qabza Group/land mafia, i.e. cases of disputes over immovable properties between co-owners or co-sharers, between landlords and tenants, between persons claiming possession on the basis of inheritance, between persons vying for possession on the basis of competing title documents, contractual agreements or revenue record or cases with a background of an on-going private dispute over the relevant property.*

The Peshawar High Court followed the ruling of the Lahore and applied a narrow interpretation to the ambit and effect of the 2005 Act by limiting its application to cases connected to illegal dispossession by the land mafia. In *Jan Pervez v. Fazal Hussain* [PLD 2007 Pesh 179] a party to an on-going civil litigation concerning the ownership of a plot of land managed to get the matter dealt with under the penal provisions of the 2005 Act. The other party filed an application in the Peshawar High Court for the quashing of these criminal proceedings. The Peshawar High Court held that civil cases which were pending at the time of the enactment of the 2005 Act could not be made subject of the provisions of the new legislation. Doing so would amount to the

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<sup>8</sup> Hindustan Times, 20/01/2017, at [www.hindustantimes.com/storyPage/Print/200920.aspx](http://www.hindustantimes.com/storyPage/Print/200920.aspx), accessed 9 July 2014.

imposition of retrospective punishment in breach of Article 12 of the Constitution 1973<sup>9</sup>. Justice Dost Muhammad Khan held:

*section 3 [of the 2005 Act] has provided expressions “to grab, to control or to occupy” which is a clear manifestation of the intent of the Law makers in curbing the illegal activities of the land grabbing mafia which had assumed a monstrous character in the last more than two decades thus, the new law shall not be pressed into service by the Courts in ordinary cases of dispossession or recovery of possession which squarely fall within the ambit of civil disputes and can be effectively regulated and the grievance can be redressed under section 9 or 8 of the Specific Relief Act. [at para. 11]*

A number of high court followed the narrow interpretation adopted by the Lahore High Court. In *Yafas v. The State* [PLD 2007 Peshawar 123] the Peshawar High Court held that the 2005 Act had laid down an expeditious and strict procedure:

*...with a purpose to discourage attempts of illegal dispossession and to restore the propriety confidence, and possession, to owners within the minimum possible time and to discourage the land grabbers by deterrent punishment. However, such a special statute with special mechanism can neither be applied to all the cases of trespass and dispossession not the power of the civil court and the revenue court has been withdrawn through the said legislation. [at para. 10]*

In *Syed Naseem Ahmed v. Mst. Huma Noor* [2009 PCrLJ 134] the Karachi High Court held that on the facts of the case no nexus to property-grabbers had been established and that therefore the 2005 Act did not apply. Justice Syed Rizvi, however, went further than just dismissing the case, by finding that there had been an encroachment and that the encroacher should “pay at least double amount of the land encroached by him to the respondent against the market prize [...] otherwise the concerned department shall demolish the construction raised by the applicant on the respondent’s plot.” [at para. 11]

#### b. A Law against Illegal Dispossession?

At the level of the Supreme Court the restrictive approach adopted by the high courts of Lahore and Peshawar found no support. In *Rahim Tahir v. Ahmed Jan* [PLD 2007 SC 423], the Supreme Court applied the provisions of the 2005 Act without any negative remarks or censure to a case not concerned with the grabbing of any land by a criminal gang but with a civil dispute over the effectiveness of a lease agreement. The Supreme Court found that the lease agreement was legally flawed and not effective and therefore the occupation of the land by the accused was illegal. It did not matter that the illegal occupation had commenced two years before the Illegal Dispossession Act 2005 had come into force since “*The purpose of this special law was to protect the*

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<sup>9</sup> Article 12 (1) of Constitution of Pakistan 1973 provides that “No law shall authorize the punishment of a person for (a) an act or omission that was not punishable by law at the time of the act or omission. [...]”

*right of possession of lawful owners and not to perpetuate the possession of illegal occupants.”* [at para. 8] No link to the land mafia had to be established for the Illegal Dispossession Act 2005 to apply.

Similarly, in 2009, in *Muhammad Akram v. Muhammad Yousaf* [2009 SCMR 1066] the Supreme Court decided an appeal against a judgement of the High Court of Lahore which in a dispute over the illegal occupation of a residential plot of land had found in favour of a complainant-owner. The Supreme Court confirmed that the 2005 Act was applicable to all cases of illegal occupation of land and not just to incidents of land-grabbing by criminal gangs.

The expansive interpretation at the level of the Supreme Court was only briefly interrupted when a three-member bench expressly overruled the dictum in *Rahim Tahir* that the 2005 Act could have retrospective application. In *Dr Muhammad Sardar v. Edward Henry Louis* [PLD 2009 SC 404] the Supreme Court decided that “[*Rahim Tahir*] did not lay down the correct law to the extent of retrospective application of the Act, 2005. [...] There is nothing to indicate that the Act of 2005 was intended to have any retrospective operation.”

Ten months later, in *Mumtaz Hussain v. Dr Nasir Khan* [2010 SCMR 1254] the Supreme Court changed its mind and returned to the precedent set in *Rahim Tahir*, holding that the 2005 Act applied also to cases of illegal dispossession which occurred before the 2005 Act had come into force. The Supreme Court reasoned that the offence of illegal dispossession had already existed in the form of criminal trespass and therefore “*appears to be an aggravated form of the offence under section 441, PPC.*” [at para. 16] The only exception to the retrospective application of the 2005 Act concerned cases where civil litigation over the property was already pending before a court.

In *Shahabuddin vs. The State* [PLD 2010 SC 725] the Supreme Court again refused to restrict the offence of illegal possession to those identified as members of the land mafia, holding that:

*So far as the contention of the learned counsel that the Act, 2005 is meant for the land grabbers, whereas the petitioner is not a land grabber, is concerned, this argument is also not available to him for the reason that he had failed to prove his lawful ownership over the property in dispute. More so, the Act, 2005 is a special enactment, promulgated to discourage the land grabbers and to protect the rights of owner and lawful occupants of the property as against the unauthorized and illegal occupants.* [at para. 8]

In *Mumtaz Hussain v. Dr Nasir Khan* [2010 SCMR 1254] the Supreme Court addressed one of the remaining hindrances to the ready use of the 2005 Act, namely the determination of the title to the property between the accused and the complainant. A court could not find an accused guilty of property grabbing without determining with a degree of certainty whether or not he had not acquired a right, or indeed title, over the property in question. For a criminal court, such a determination would be difficult, especially given the tight time-limit of 60 days within which the trial had to be completed and the fact that the only inquiry into the facts of the case was to be carried by the police. The Supreme Court dismissed these concerns and held that the trial court

was only required “to simply form an opinion as to whether prima facie any party is coming within the ambit of definition mentioned in section 3 of the Act” and “In the present type of proceedings, the question required to be resolved is the possession and dispossession etc. within the meaning of section 3 of the Act, as the parties have not, nor can come for adjudication of their title in the property.” [at paras. 12 and 13]

In five judgements, starting with *Rahim Tahir* in 2007, the Supreme Court had effectively, albeit never expressly, overruled the judgement of the Lahore High Court in *Zahoor Ahmad* as well as the other high court decisions that had followed its reasoning. As a result, from 2008 the law reports begin to fill up with reported decisions from the five provincial high courts based on an expansive interpretation of the 2005 Act. In *Alia Hussain v. Syed Ziauddin* [PLD 2008 Quetta 27], a widow with three children had left her house in Quetta in order to live in Karachi. In her absence, it was alleged, the accused had forcibly occupied the house. The accused produced documents to bolster his claim that he had purchased the property but these were judged to be forgeries. The widow was given interim possession and the Quetta High Court ordered that both criminal and civil proceedings should continue in parallel. There was no evidence to suggest that the accused had been a property-grabber.

In *Abdul Rehman v. Muhammad Shaid Qureshi* [PLD 2009 Karachi 117] the Karachi High Court found that despite no case of land-grabbing by land-grabbers having been made out but that the case should nevertheless proceed under the 2005 Act:

*...in view of the judgement of the Hon’ble Supreme Court in the case of Rahim Tahir (supra) in which it has been held that the provision of the Illegal Dispossession Act are applicable in all cases of dispossession except the case which was pending before any other form at the time of the promulgation of the Act of 2005. [at para. 7]*

In *Anjuman Jilani v. Mst Feroza Jilani* [2008 YLR 2095] the Peshawar High Court was faced with an intra-family dispute over the inheritance of a house in the course of which the son had removed his widowed mother from the disputed property and also her residence. The mother filed a criminal complaint under the 2005 Act against her son. The trial court found the son guilty and sentenced him to one year of rigorous imprisonment. His appeal against the conviction was refused by the Peshawar High Court on the ground that:

*The contention of the appellant, that the provisions of the Illegal Dispossession Act, 2005 were not applicable to the facts and circumstances of the case, is without any substance as the provisions of the Act were not only applicable to the land grabbers and land mafia but were also applicable to the forcible dispossession of a person from his lawful possession as held in the cases of Rahim Tahir PLD 2007 SC 423. [...]. [at para. 8]*

In *Shahabuddin v. The State* [2010 PCr.LJ 422] the Karachi High Court brushed aside even the fact that civil litigation had been pending when the complaint under the 2005 Act was lodged, holding that:

*I do not think that this is a material point. Anybody who files a civil suit whether before an act of illegal dispossession or after an of illegal dispossession, cannot wipe away his offence of illegal dispossession. If it is held that if a suit is filed before dispossession complaint would not be maintainable all that a careful offender will have to do is to file suit and therefore indulge in the act of dispossession and thus do not with impunity. The law cannot be allowed to be defeated by such subterfuges. Therefore, in a case of illegal dispossession pendency of suit will have no bearing whatsoever. [at para. 32]*

The conviction was up-held but the sentence reduced from ten to three years' imprisonment on the ground that *"It was a naked plot of land. It was not a case of dispossession of someone from his home and hearth. It was not a case of person who was alleged to be a professional land grabber and in any case there is no evidence of any such previous criminal activity of the accused."* [at para. 34]

### c. A Law against the Land Mafia!

In the course of 2011, the Supreme Court changed direction. None of the reported judgements of the high courts and the Supreme Court had contained a single instance of property having been grabbed by a Qabza Group or the land mafia. Instead, the majority of cases were concerned with incidents of encroachments, disputes over titles or demarcations of land or fights over inheritances between members of the same family. With the floodgates fully opened, the Supreme Court now attempted to stem the tide of litigation. Ignoring the precedent set by five judgements, in *Muhammad Afzal v. Saeedullah Khan* [2011 SCMR 1137] the Supreme Court declared that the 2005 Act did, after all, not have retrospective effect and as a result did not apply to cases of dispossession that had occurred before the 2005 Act had come into force. Justice Asif Khosa of the Supreme Court, who in 2007 had been the author of the *Zahoor Ahmad* decision of the Lahore High Court [PLD 2007 Lah 231], held that in the light of the 2009 judgement of the Supreme Court in *Muhammad Safar* that *"the penal provisions contained in the Illegal Dispossession Act, 2005 could not be given retrospective effect."* [at para. 2] No mention was made of the *Mumtaz Hussain* decision of 2011 which had decided the opposite.

Towards the end of 2011, the Supreme Court completed the second step of its retreat. In *Waqar Ali v. The State* [PLD 2011 SC 181] the purchaser of a parcel of open land found that following the production of demarcation report by the revenue department, his neighbour was in the *"illegal possession"* of parts of his land. Rather than commencing civil proceedings, the purchaser filed a complaint under section 3 of the Illegal Dispossession Act, 2005. The trial court found that the complaint was prima facie maintainable and took cognizance of the case. The accused appealed first to the High Court of Peshawar and then to the Supreme Court to have the case against him quashed. In the High Court his writ petition was refused on the ground that the trial court's order was not a final one and therefore could not be challenged under its constitutional jurisdiction. The accused turned to the Supreme Court for help. Reviewing the facts of the case, Justice Jawwad Khawaja found that on the basis of the complaint filed by the purchaser it was apparent this *"is a dispute of a purely civil nature between the parties as to the exact location of their respective pieces parcels of land."* [at para. 8] Before the trial court could take cognizance of a case under the 2005

Act, the judge had to satisfy himself that the “*complaint disclose the existence of both, an unlawful act (actus reas] and criminal intent (mens rea].*” [at para. 8] Evidence of guilty intention was required before proceedings under the 2005 Act could be commenced. Justice Khawaja observed:

*In a very important sense a Court empowered to take cognizance of an offence under the Act, is required to act as a sieve and to filter out those complaints which do not disclose the requisite criminal intent. Courts which have been authorised to try cases under the Act thus have a responsibility to see that the persons named in the complaint have a case to answer, before they are summoned to face trial. This course, unfortunately, has not been followed in the present case. As a result the appellants unnecessarily, have had to face trouble, expense and disruption in their lives. In this process the time and scarce resources of the Court have also been wasted and its docket burdened without cause. [...] The provisions of this Act, in our opinion, have to be interpreted in line with established jurisprudence on criminal law. This will ensure that the process of law is not abused through the filing of vexatious complaints. Courts are also duty bound to scrutinize complaints and, if necessary, examine complaints, to protect hapless victims of false complaints or complaints which do not show the existence of all necessary elements of an alleged offence. [at paras. 13, 14]*

In *Habibullah v. Abdul Manan* [2012 SCMR 153] the Supreme Court restricted the scope of the 2005 Act. Further. Chief Justice Ijaz Ahmed Choudhry found that the dispute which had given rise to criminal proceedings under the 2005 Act was between two individuals over immovable property: “[..] *it is established that the said law is applicable only to these accused persons who have the credentials or antecedents of Qabza Group and are involved in illegal activities and belong to the gang of land grabbers or land mafia.*” [at para. 8] Justice Chaudhry acquitted the three accused, finding that the trial court “*had illegally connected the appellants with the offence falling under section 3 of the Illegal Dispossession Act which has been made for special purposes and for special objects and had wrongly sentenced the appellants.*” [at para. 9]

Such were the concerns about the potential of the 2005 Act being abused that in 2013, Pakistan’s Law and Justice Commission recommended the imposition of compensatory cost on the complainants who misuse the process of law by filing false and frivolous applications under the 2005 Act. [The Nation, 09/09/2013]

At the level of the high courts, the filtering of cases to those concerned with the land mafia and prima facie criminal intent to commit the crime of illegal dispossession, as ordered by the Supreme Court, can be observed. In *Muhammad Fareed v. The State* [2013 YLR 133] the Karachi High Court was able to state that:

*It is settled law that a complaint under the Illegal Dispossession Act, 2005 cannot be entertained where the matter of possession of the relevant property is being regulated by a civil or revenue court. The Illegal Possession Act is restricted in its scope and applicability to only those cases where a dispossession from immovable property has allegedly come about, through the hands [...] of property grabbers/Qabza Groups/land mafia. [at para. 15]*

In *Abdul Baqi v. Attaullah* [2013 P Cr. L J 787] the Quetta High Court found that the dispute was purely civil in nature and therefore not governed by the 2005 Act. Similarly in *Shahid Hakeem v. Altaf Hussain Agha* [2013 P Cr L J 188] the same high court acquitted the accused on the ground that the dispute involved an encroachment and trespass but that there was no evidence of an “*intention of grabbing the property.*” [at para. 8] In *Muhammad Hayat Khan v. The State* [2014 YLR 390] the petitioner succeeded with his plea to have his conviction and sentence to three years’ imprisonment overturned. The Lahore High Court held that the

*“Complainant had not produced evidence, oral or documentary to establish that the petitioner had credential or antecedents of being a land grabber” and that the trial court had “illegally connected the petitioner with the offence of falling under sections 3 and 4 of the Illegal Dispossession Act, 2005 which has been made for special purposes and for special objects and has wrongly sentenced the petitioner.”* [at para. 14]

#### f. A Law against Illegal Dispossession!

The Supreme Court’s retreat to a more restrictive and narrow interpretation of the 2005 Act resulted in two diametrically opposed interpretations of the 2005 Act within the country’s apex court – with the Supreme Court holding in *Bashir Ahmad vs Additional Sessions Judge* [PLD 2010 SC 661] and *Habibullah vs. Abdul Manan* [2012 SCMR 1533] that only those proven to be members of the land grabbing mafia could be prosecuted under the 2005 Act and holding the opposite in *Muhammad Akram v. Muhammad Yousaf* [2009 SCMR 1066], *Mumtaz Hussain vs. Dr Nasi Khan* [2010 SCMR 1066] and *Shahabuddin vs. The State* [PLD 2010 SC 725].

The uncertainty persisted until 2016, when a five-member bench of the Supreme Court headed by the Chief Justice of Pakistan, Mr Justice Anwar Zaheer Jamali, in the unreported case of *Gulshan Bibi and others vs. Muhammad Sadiq and others* [Civil Petition No. 41 of 2008 and Civil Appeal No. 2054 of 2017 & 1208 of 2015, date of hearing: 15 June 2016] held that the definition of the offence of illegal dispossession in section 3 of the 2005 Act was not restricted to any particular category of persons and “*thus without any distinction any person who illegally dispossesses, grabs, controls or occupies property of lawful owner or occupier shall be liable for prosecution under the provisions of the Illegal Dispossession Act, 2005.*” Judgements which had held otherwise were not good law.

A few months later, in the case of *Shaikh Muhammad Naseem vs. Farida Gul* [2016 SCMR 1931], the Supreme Court also resolved the judicial controversy of whether any pending civil litigation would act as bar to the commencement of criminal proceedings under the 2005 Act, as had been held by the Lahore High Court in *Zahoor Ahmed* [PLD 2007 Lahore 23] and the Supreme Court in *Bashir Ahmed* [PLD 2010 SC 661]. According to the Supreme Court any act which entails both civil and criminal liability could be tried under both kinds of proceedings because:

*No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property and then seek to thwart*

*the criminal proceedings initiated against him under the Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in a court of law. [at para. 5]*

Whilst the Supreme Court settled the question of law, the issue of abuse of the law had not disappeared. With the restrictions on the use of the 2005 Act, namely a requirement to prove a nexus to criminal gangs in the form of land grabbers or the land mafia and a bar on criminal proceedings for illegal dispossession in the face of pending civil proceedings concerning the same property, now removed, any civil dispute concerning landed property could potentially be turned into a criminal prosecution. After all, the existence of a civil dispute as of necessity has to establish some form of “illegality” on the part of one of the parties to the dispute which disentitles them from having rights over the property. As such there was the possibility that any civil dispute over rights to or in immovable property could be converted into a criminal complaint under the 2005 Act, with drastic consequences for those at the receiving end of the criminal proceedings.

Judicial discomfort with the consequences of the clear and unambiguous binding precedent set by the Supreme Court in *Shaikh Muhammad Naseem vs. Farida Gul* [2016 SCMR 1931], is evident in several recent reported judgements. In *Khudai Dad vs. Rahimuddin* [2017 MLD 1143] the High Court of Baluchistan had to decide whether a criminal prosecution for illegal dispossession could be launched in addition to a pending civil litigation between co-sharers of land, with the complainant alleging that the accused had “*illegally and unlawfully constructed a wall measuring 280 feet in length and 5 feet in height*” on the disputed property. Observing that the object and spirit of the 2005 Act was to curb the activities of land grabbers and after referring to the overruled Supreme Court decision in *Bashir Ahmed* [PLD 2010 SC 661], the Baluchistan High Court held:

*For what has been discussed above, we hold that a civil dispute cannot be allowed to be converted into a criminal case for implicating co-sharers of the land in question as this would be misuse of the provisions of the Act of 2005, because regarding the civil disputes or the dispute amongst the co-sharers, the civil Court is a competent forum to resolve the said issue, after recording of evidence.*

Ignoring the binding precedent of *Shaikh Muhammad Naseem vs. Farida Gul* [2016 SCMR 1931], the Baluchistan High Court’s decision must be viewed as an act of judicial defiance in order to prevent an abuse of the law, namely to convert civil proceedings between parties into a criminal case.

In *Usman Ali vs. Additional Sessions Judge, Toba Tek Singh and 9 others* [2017 P Cr. LJ] the Lahore High Court was also faced with an attempt to add a criminal prosecution under the 2005 Act to an on-going civil litigation between co-sharers of agricultural land. Here also, the Lahore High Court ignored binding precedent and instead relied on the over-ruled Supreme Court judgement in *Bashir Ahmed* [PLD 2010 SC 661] in order to rule that “*it is settled law that co-sharers do not fall into the category of land grabbers/Qabza groups*” and that:

*Therefore, the case being of civil nature, the provisions of Illegal Dispossession Act, 2005, are not attracted to the facts of the case because the same is restricted to class or group of persons, who have antecedents of being property grabbers/qabza groups and the said Act is not applicable to the cases involving disputes over possession of immovable property. [at para. 7]*

In *Allah Rakho vs. The State* [2017 YLR Note 409], the Karachi High Court also ignored the precedent set by six decisions of the Supreme Court, stressing that in order for a criminal complaint to be accepted by the Court of Session, the complainant must show “*an organized and calculated effort by some persons operating individually or in groups to grab by force or deceit property to which they have no lawful, ostensible or justifiable claim.*” [at para 9]

#### d. Blind Spots

There is one group of occupants of land who, irrespective of expansive or restrictive interpretations of the 2005 Act, were excluded from its ambit ever since its enactment, namely the residents of slums and ‘katchi abadis’, i.e. informal settlements. The case of *Muhammad Arshad v. Sultan Muree* [2008 MLD 1654] can be referred to by way of example. The case concerned a Mr Arshad, a seller of auto parts, who had been forcibly evicted from his shop by what appeared to be property-grabbers. Mr Arshad adduced evidence in the form electricity bills, telephone bills, income tax and shop tax to the effect that he had been running the shop at that location for the past 15 years. However, his attempt to regain possession of his shop failed because “*admittedly, the appellant is not the owner of the property in dispute as admittedly the property in dispute is situated in an katchi abadi and he himself is the land grabber over a government land, as such his possession over government land in any way could not be termed to be lawful possession over the property in question.*” [at para. 8]. The same conclusion was reached in *Nazir Ahmad v. Asif and 4 others* [PLD 2008 Karachi 94] where the victim of an illegal dispossession had been residing in his house for the past 40 years. The Karachi High Court held that “*The Fatima Jinnah Colony is admittedly a Katchi Abadi and the applicant himself has occupied the land as a land-grabber. The land-grabbers have no right to approach the courts to protect their rights.*” [at para. 7]

Neither could the 2005 Act be pressed into service in order to remove illegal occupiers from public land. In *Naseer Ahmed v. Additional District and Sessions Judge, Jhelum* [2008 P Cr. L J 1124] the complainant had accused the respondent of “*blocking a thoroughfare abutting the house of the complainant.*” Given that there was no dispossession of the complainant himself, his complaint was rejected.

#### IV. Conclusion

The passage and reception of the Illegal Dispossession Act 2005 offers a cautionary tale of the dangers of over-simplification, of the deceptive lure of quick legal fixes to complex social problems and the risk that more law does not always mean less crime.

Introduced into a badly functioning criminal justice system the Illegal Dispossession Act 2005 seemed to offer a simple way to cut the proverbial knot of an ever increasing

number of reported instances of land-grabbing by creating an offence of illegal dispossession that would allow the victim to reclaim his property quickly whilst also punishing the criminals. The latter would in turn act as a deterrent, given that jail sentences could extend to 10 years, and ultimately result in a reduction of the crime of illegal dispossession itself.

In the case of the Illegal Dispossession Act 2005 this simple rationale underlying the function of a criminal offence remained unfulfilled. Indeed, it is arguable that more law lead to more rather than less crime because the only vaguely defined offence of illegal dispossession fitted a wide range of civil disputes over competing or overlapping claims to rights in immovable property which until 2005 had not been treated as criminal offences. Seeing civil disputes turned into criminal offences did not appeal to a number of judges of Pakistan's higher judiciary as can be discerned from the reported judgments which adopted a narrow definition of the offence of illegal dispossession, limiting it to cases where a link to land grabbers or the land mafia could be established. Other judges took the opposite view, arguing in their judgements that such a narrow interpretation would render the 2005 Act impotent because establishing a link to the land mafia would be difficult if not impossible. Whilst the terms land mafia and Qabza groups suggest an organised criminal underworld, the reality of land grabbing manifests itself in not such neat a formation. Land grabbing represents a phenomenon than an organisation with crime not necessarily its modus operandi. The land-grabber filing of a frivolous civil claim to blackmail the owner of a property to pay a ransom for the suit to be withdrawn takes advantage of the deficiencies in the administration of civil justice rather than committing a criminal offence. The buyer of a house built on land that had been grabbed form the public exchequer might have knowledge of that fact but nevertheless decided to take the risk of obtaining a title that might later be challenged. Is he as guilty of illegal dispossession as the person who had grabbed the land in the first place, often through bribing public servants?

When faced with cases that did not fit the stated purpose of the Illegal Dispossession Act 2005, namely to curb the activities of property grabbers, other high court and Supreme Court judges refused to concede that the new offence of illegal dispossession was incapable of addressing the social evil of land grabbing. Any act of dispossession, even if it presented itself in the form of an on-going civil dispute, could be brought under the purview of the 2005 Act. Whilst this approach has ensured convictions, the case law itself casts doubts over the merit of these convictions. After all, a civil dispute, however misconceived, does normally not amount to a crime. Judges have ample means to deter parties from bringing frivolous suits, including the imposition of costs orders and simply throwing the case out. Now addressed by an express provision of the 2005 Act, added in 2017, allowing a court to impose costs and to pay compensation to the party wrongfully accused of illegal dispossession, it seems nevertheless inadequate as a means of protection against an unfounded prosecution.

In its wide interpretation, the 2005 Act risks becoming a source of injustice and of miscarriages of justice, putting people into jail who had not committed any crime. It also has the potential of being used by the very people against whom the law is meant to act, namely the property grabbers themselves. There is nothing apart from the possibility of having to pay costs and compensation that would prevent a property grabber from using the Illegal Dispossession 2005 to threaten an owner of property and

to force him to give in to his demands. This risk affects especially those who are poor and who might be less able to prove their title to or interest in land. For them, the threat of a criminal prosecution quickly becomes existential: with no access to expensive lawyers and no connections to powerful networks of patronage, they have no effective means to fight a criminal case, in particular if the crime itself is only vaguely defined. The use of criminal law to intimidate owners of property has been highlighted in the context of wrongful accusations of blasphemy against members of Pakistan's non-Muslim communities as means to settle property disputes in favour of the Muslim accuser.

In creating a new criminal offence to curb illegal land grabbing, the Illegal Dispossession Act 2005 can also be viewed as another example of Pakistan's fascination with criminal law, punishments and the rule by law rather than of law. The application of the Anti-Terrorism Act 1997 for seemingly minor and at least prima facie not terrorism related offences can serve as an example. As reported by the Dawn Newspaper on 5 May 2018<sup>1</sup>, an anti-terrorism court in the city of Multan sentenced a man to 18 years of imprisonment because he had thrown - in a fit of anger and frustration because his case concerning an alleged robbery had been pending for nine months - one of his sandals at the judge.

The case-law also offers the sobering conclusion that in its stated aim to curb the activities of the property grabbers, the 2005 Act has performed poorly. In none of the reported cases has it been possible to establish a connection to the nebulous land mafia preying on public and private land. One reason for this failure is the fact that acts of illegal dispossession are built on the foundations of other crimes: bribing of public servants, intimidation and removal of occupants of land with weakly documented titles, the building of mosques as a first step in the establishment of an illegal housing projects and such like. Illegal dispossession by land grabbers represents a bundle of distinct offences and has to be treated as such, given that the composition of each bundle will vary depending on the actual act of dispossession. A stronger, better resourced and de-politicised enforcement of anti-corruption laws, an improved system for the recording of land titles, a more efficient court system and more consistent enforcement of existing laws protecting the owner of property against trespass and encroachment would make the addition of new, vaguely defined crime of illegal dispossession redundant.

Finally, and arguably most worryingly, the case law examined in this article also reveals disagreement if not conflict within the high courts and indeed even Pakistan's apex court. Diametrically opposed decisions are allowed to co-exist, the rules of judicial precedence are ignored and benches of varying sizes zigzag across the legal landscape without much consistency and clarity. All of this in an area of law that affects the most fundamental rights of people, namely taking away their liberty and reputation as well as their political rights. With Pakistan's Supreme Court ever more urgently asserting its right and duty to protect the constitutionally guaranteed fundamental rights of the citizen against violation by the state, it must be seen as problematic that in its own decisions concerning the application of the Illegal Dispossession Act 2005 it might be doing just that.

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