

**Amendment in the Illegal Dispossession  
Act, 2005**

**Report No.130**

## **AMENDMENT IN THE ILLEGAL DISPOSSESSION ACT, 2005**

The Secretariat of Law and Justice Commission of Pakistan (LJCP) received a proposed Bill “Illegal Dispossession Bill 2011” from Mr. Muhammad ShahidShafiq, Additional District and Sessions Judge,(ADJ) Malir, Karachi. The learned ADJ, suggested repeal of existing enactment i.e. “Illegal Dispossession Act 2005” and proposed an entirely new Bill with new provisions of law. The Secretariat critically examined the Bill and observed that the proposals of learned ADJ are not enough to meet the changing needs of the society. In proposed law the learned ADJ has suggested for establishment of special courts to deal with the disputes regarding illegal dispossession, such proposal is somehow not feasible as the current economical condition of the country is not favorable to establish new courts and to bear the expenses of its staff. While examining the proposal referred to above it was found that the existing “Illegal Dispossession Act, 2005” has certain flaws as the same does not contain any provision regarding false and frivolous complaints, therefore, some amendments with respect to definition clause and procedure of investigation in the Illegal Dispossession Act, 2005 are required to be made to bring the Law according to the changing needs of the society.

### **Object of enactment:**

The purpose and object behind enactment of Illegal Dispossession Act, 2005 is to curtail the growing offences of illegal dispossession and land grabbing. The legislature with intent to protect the rights of lawful owners to enjoy their peaceful possession and to convict the land grabbers has enforced the referred Act. The Illegal Dispossession Act, 2005 is a special enactment, enacted to discourage the land grabbers and to protect the rights of owners and the lawful occupants of the property as against the unauthorized and illegal acts of land grabbing. The applicability of the Act, 2005 is not confined to the offence of illegal dispossession if committed by land grabbers, qabza group or by any individual. The basic object of the Act is to provide deterrent punishments to the offenders and to provide speedy, effective and adequate remedy to the person who has been illegally dispossessed from his immoveable property Sub-

section 2 of section 3 of the Act prevents a person/owner from being illegally dispossessed and it also provides punishment for land grabbing, section 3 is reproduced here in below:-

**3. Prevention of illegal possession of property, etc.—**

**(1) No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owners or occupier of such property.**

**(2) Whoever contravenes the provisions of subsection (1) shall, without prejudice to any punishment to which he may be liable under any other law for the time being in force, be punishable with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with the provision of section 544A of the Code.**

Though according to the preamble of the Illegal Dispossession Act, 2005, the purpose of the Act was to give protection to lawful owners and occupiers of immovable properties from their illegal or forcible dispossession there from by the Property grabbers, however, under section 3 of said Act, it had been provided that no one would enter into or upon the property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owner or occupier of such property, Four eventualities i.e. "dispossession", "grab", "control", or "occupy" had been mentioned in section 3 of the Act by the legislature, showing that said Act had not been enacted only against the dispossession by the land grabbers or qabza group, but it deals with all class of persons even an individual can commit an act of land grabbing.

**Words “Property Grabber” and Property Grabbing”**

The Words “Property Grabber” and the act of “Property Grabbing” are not available in definition clause provided under section 2 of the Illegal Dispossession Act, 2005, however, the

intention of the legislature can be determined by reviewing section 3 of the Illegal Dispossession Act, 2005, the language of which provision is wide enough to cover the class of persons mentioned in the preamble. In order to ascertain the meaning of both the words “Property Grabber” and the act of “Property Grabbing” we have to understand the language of the Act in its true sense. Cardinal rule of construction of Acts of Parliament is that the words of the Act should be construed according to intention expressed in the Acts themselves. Law maker may have several purposes in mind when they enact a given law and the fact which can be taken into account in ascertaining intention of legislature is history of the Act, reason which led to passing of the Act, mischief which had to be cured, as well as cure proposed and also other provisions of the Act.

The Lahore High Court, in a case **Zahoor Ahmed etcvs The State (PLD 2007 Lahore 231)** while discussing the flaws and lacunas of the Illegal Dispossession Act 2005, has declared that the intention of the legislature while promulgating the referred enactment was to restrict its scope and applicability to illegal dispossession from immovable properties only by a particular class of persons who could qualify as property grabbers/qabza groups/land mafia. The Court held as follows:

***The Illegal Dispossession Act, 2005 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 Groups/land mafia, i.e. cases of disputes over possession of 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.”***

On the other hand the Supreme Court negates the holdings of the Lahore High Court, Lahore to the extent of the class of persons against whom the complaint under illegal

dispossession may be lodged. The Supreme Court in a case titled as **Mumtaz Hussain vs Dr. Nasir Khan and others (2010 SCMR 1254)**, held as follow:

**“Remedy under Illegal Dispossession Act, 2005, cannot be restricted only against Qabza group. If it is accepted that remedy under Illegal Dispossession Act, 2005, is available only against professional land grabbers, though Statute has not defined what is meant by ‘land grabbers’ or ‘Qabza group’ then a person, who illegally and unlawfully grabs or dispossesses or occupies property from a lawful owner for the first time, cannot be prosecuted under Illegal Dispossession Act, 2005, merely because there is no such previous history of him to call him a man professionally engaged in the activity of land grabbing.”**

According to the holdings of Supreme Court it has become crystal clear that the remedy available under the Illegal Dispossession Act is not restricted to Qabza Group only but the provisions of Illegal Dispossession Act, 2005, are applicable to persons who had taken possession which not having title thereto; secondly that he has taken possession by use of force; thirdly that he had taken over the property without due process of law.

In furtherance of all the above referred discussion it is also worth mentioning here that the Secretariat of Law and Justice Commission in its **Report No. 19 with title “Eradication of Qabza Group (Activities) Act, 1993** has already proposed an Act to protect the owners of immoveable properties from illegal possession or forcible dispossession by the Qabza Group. The present Illegal Dispossession Act, 2005 is almost on the same lines of such Report, however, in the present Illegal Dispossession Act, 2005 the expression Qabza Group, Property Grabbers and the act of Property Grabbing is no where defined, whereas, in the report of Secretariat in the proposed Act the expression “Qabza Group” and the offence of Illegal Dispossession are properly defined. According to Sub-section (e) of section 2 of proposed Eradication of Qabza Group (Activities) Act, 1993 the expression Qabza Group is defined as follows:

**(e) “Qabza group” means 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 manner otherwise than in due course of law.**

The perusal of above given proposed definition also reveals that if any person or group of persons by means of fraud, intimidation, duress or assault commits an act of illegal dispossession such person and the group of persons shall fall within the ambit of the definition of the “Qabza Group”. According to the proposed definition the scope of Qabza Group is not restricted to the habitual group of land grabbers, it clearly reflects that any individual committing the offence of illegal dispossession can also be a property grabber.

In light of the above said discussion and as per the holdings of Supreme Court in case titled as **Mumtaz Hussain vs Dr. Nasir Khan and others, (2010 SCMR 1254,)** to ascertain the proper meaning of the words “Property Grabber” and “Property Grabbing” or to understand the reason and object behind the commencement of the Illegal Dispossession Act, 2005, it is necessary to Introduce the words “Property Grabber” and “Property Grabbing” in the definition clause as provided in section 2 in order to bring the Act within the scope of its preamble and section 3 of Illegal Dispossession Act, 2005.

### **Investigation and Procedure under Section 5 of Illegal Dispossession Act, 2005**

Section 5 of the Illegal Dispossession Act, 2005 provides procedure for investigation upon receipt of a complaint. The referred section is reproduced herein bellow:

**Section 5- Investigation and procedure:—(1) Upon a Complaint the Court may direct the officer-in-charge of a police station to investigate and complete the investigation and forward the same within fifteen days to the Court:**

**Provide the Court may extend the time within which such reports is to be forwarded in case where good reasons are shown for not doing so within the time specified in this Sub-section.**

**(2) On taking cognizance of a case, the Court shall proceed with the trial from day to day and shall decide the case within sixty days and for any delay, sufficient reasons shall be recorded.**

**(3) The Court shall not adjourn the trial for any purpose unless such adjournment is, in its opinion, necessary in the interest of justice and no adjournment shall in any case be granted for more than seven days.**

The Lahore High Court, Lahore, in its Judgment **Zahoor Ahmed etc vs The State (PLD 2007 Lahore 231)** observed as follows:

**Section 5 of the Illegal Dispossession Act, 2005 contemplates investigation into the matter by the local police but the same does not provide for any involvement of the relevant revenue authorities in such matters. Experience shows that in most of the cases under the said Act it is the revenue authorities which appear to be more relevant than the police authorities and, thus, there is a pressing need to allow the trial courts to seek reports from or involve the relevant revenue authorities in the matter if a need is felt by them in that regard. It goes without saying that the police are ill-equipped to assist the trial courts in matters pertaining to title of the parties to the relevant property or its extent or in matters of actual boundaries of properties or their demarcation. High Court made recommendation to the Secretary, Federal Ministry of Law, Justice and Human Rights to attend to the above mentioned aspects of the Illegal Dispossession Act, 2005 and to suggest to the relevant quarters appropriate amendments in the said law. High Court further observed that through its private research it has been found that in the State of**

**Andhra Pradesh in India there is a law called the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (Act 12 of 1982) which deals with the issue somewhat identical to that dealt with by the Illegal Dispossession Act, 2005. The said Andhra Pradesh law is a comprehensive and exhaustive piece of legislation on the subject whereas the Illegal Dispossession Act, 2005 leaves much to be desired. High Court therefore suggested to the Federal Ministry of Law, Justice and Human Rights to examine the said Andhra Pradesh law and to suitably mould or recast the Illegal Dispossession Act, 2005 on the same pattern, if so advised. The Office of High Court was directed to send a copy of the judgment to the Secretary, Federal Ministry of Law, Justice and Human Rights for his information.”**

In its above referred judgment of the Lahore High Court, the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (Act 12 of 1982) has been taken into consideration whereas the proposed Bill of learned ADJ was prepared on the same lines of Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (Act 12 of 1982) which has also the provision for establishment of special courts for the cases filed under Illegal Dispossession, however, keeping in view the summary nature of the Act and the financial conditions of our country the proposal for establishment of special courts for illegal dispossession not seems to be suitable.

Furthermore, the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (Act 12 of 1982) also contain a provision to deal with the false and frivolous complaints, according to Sub-section 2A of section 8 of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, the Special Courts have been conferred with the power to reject the application if the same seems to be false or frivolous. Sub-Section 2A of section 8 of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 is given herein below for reference:

**“(2-A) If the Special Court is of the opinion that any case brought before it, is not a fit case to be taken cognizance of, it may return the same for presentation**

**before the Special Tribunal: Provided that if, in the opinion of the Special Court, any application filed before it is prima-facie frivolous or vexatious, it shall reject the same without any further enquiry”.**

In this regard as recommended by the Lahore High Court, section 5 of Illegal Dispossession Act, 2005, is also required to be amended with respect to the procedure of investigation to take cognizance of the offence wherein during investigation the court should also be empowered to gather all the evidence and to determine the question of entitlement of owner and order the concerned authority to produce the relevant record with respect to ownership of disputed property.

The language of section 5 of the Illegal Dispossession Act, 2005, reveals that the same only provide a summary procedure to take the cognizance of the offence, however, the same does not provide any involvement of concerned authorities to determine the question of actual ownership. Similarly, it also not confer any power to seek reports from concerned authorities with regard to the title of ownership and for proper demarcation of property. It is also to be discussed herewith that most of the times the complaint filed under Illegal Dispossession Act, 2005 carries the question of title/ownership, which can only be determined by application of civil laws, the police officer investigating the dispute under section 5 of the Illegal Dispossession Act, 2005 cannot be considered as capable enough to determine such type of intricate issue of civil nature, therefore, in order to determine the question of ownership and to assist the trial court to resolve the issue justifiably the Court is also required to gather the information from the concerned authorities by directing the authority to submit the proper record, to demarcate the property and to verify the record pertaining the ownership of the actual owner of the property in dispute. Further, in order to curtail the tendency of filing of false, frivolous and vexatious complaints the Court should also have power to dismiss the complaint and to impose compensation for false litigation or for misuse of the machinery of the Court. Presently in Illegal Dispossession Act, 2005 no provision existed for compensation to accused for false, frivolous or vexatious complaints. In so many cases it has been observed that the provisions of the Act

have been abused by filing of false complaints against rivals. In order to curtail the tendency of filing of false, frivolous and vexatious complaints the court should also have power to dismiss the complaint and to impose compensation for false litigation or for misuse of the machinery of the Court.

In light of the above narrated facts it is humbly suggested that in order to enhance the effectiveness of the Illegal Dispossession Act, 2005, section 2 is required to be amended by incorporating. Therein, the definitions of "Property Grabber" and "Property Grabbing" which will resolve the controversy regarding class of persons against whom the complaint under Illegal Dispossession Act, 2005 may be lodged. Furthermore, insertion of some useful Provisions in section 5 of the Illegal Dispossession Act, 2005, shall also enhance the scope of investigation.

In view of the above said discussion the following amendments are proposed in the Illegal Dispossession Act, 2005:

**2. Definitions. ....**

(a) .....(d) .....

**(f) "Property grabber" means a person or group of persons who commits land grabbing and includes any person who gives financial aid to any person for land grabbing, or who abets the doing of any of the above acts;**

**(g) "Property grabbing" means every activity of illegal or forcible grabbing of any immovable property by a person or group of persons.**

**5. Investigation and procedure:—**

(1) Upon a Complaint the Court **shall** direct the officer-in-charge of a police station to investigate and complete the investigation and forward the same within fifteen days to the Court.

(2) .....

(3) .....

**4) The Court shall also call the ownership record of the property, or shall also call a demarcation report of property in question from the concerned office.**

**Provided further that at any stage of Investigation or Trial if the Court find that the complaint has no substance and has been filed on false, frivolous or vexatious grounds, the Court shall dismiss the complaint with compensation as the Court may deem fit and proper.**

The abovementioned proposal was discussed in the meeting of Sub-Committee held on 08.10.2011 and the Sub-Committee agreed with the proposal with minor amendment. After due approval of the Sub-Committee the paper was placed in the meeting of Law and Justice Commission of Pakistan held on 19.05.2012 as agenda Item No. 3.

The Commission examined the proposal for amendment in section 2 for addition of sub- clauses **(f)** and **(g)** and amendment in sub-section 1 of section 5 for insertion of word “**shall**” for giving it a mandatory effect and addition of **Sub-section 4** along with a proviso; as already mentioned hereinabove.

Moreover, the Commission critically examined the addition of proposed definitions and dropped the proposed addition of the definitions of words “Property Grabbers” and “Property Grabbing” being unwarranted. The Commission also considered proposal for addition of sub-section 4 in section 5 of the Act and observed that it is the bounded duty of the police to investigate the case and submit report of investigation after taking into consideration the record of ownership of the property in question, therefore, the proposed amendment is unnecessary; however, the Commission agreed with the proposal to empowering the Courts to dismiss false claims with compensatory cost up to rupees five hundred thousand with the hope that such amendment would discourage the frivolous complaints.

The Commission further observed that though the provisions of Criminal Procedure Code are applicable to the proceedings under the Act; however, the remedy of appeal against the order of trial Court under the Act cannot be availed unless specifically provided in the said Act. Therefore, a provision related to appeal may be provided in the Illegal Dispossession Act, in light of Commission's recommendations for incorporating the provision of appeal in said Act. It is to be submitted here that such proposal for addition of provision of appeal in the Illegal Dispossession Act, 2005 has already been proposed by Law and Justice Commission of Pakistan in its Report No. 113.

In light of the above mentioned recommendations, the proposed amendments in section 5 of the Illegal Dispossession Act, 2005, were again placed before the Sub-committee for consideration, as follows:-

#### **5. Investigation and procedure:—**

(1) Upon a complaint the Court **shall** direct the officer-in-charge of a police station to investigate and complete the investigation and forward the same within fifteen days to the Court:

(2) .....

(3) .....

***“Provided that at any stage of Investigation or Trial if the court finds that the complaint has no substance and has been filed on false, frivolous or vexatious grounds, the court shall dismiss the complaint with compensatory cost up to rupees five hundred thousands”.***

The Sub-committee approved the proposal with slight modification to the effect that sub-section (1) of section 5 may be retained in its existing form while the proposed provision, providing for compensatory costs be added as new sub-section (4) after sub-section (3) which may also provide for a minimum threshold and that the issue of awarding costs, may be considered at the stage of

conclusion of trial. Consequently, the modified proposal is given as follows in the comparative table;

### COMPARATIVE TABLE

Existing Provision	Proposed by the Secretariat	Approved by the Sub-committee
<p><b>5 Investigation and procedure:--</b>            (1) Upon a Complaint the Court <u>may</u> direct the officer-in-charge of a police station to investigate and complete the investigation and forward the same within fifteen days to the Court:</p> <p>Provide the Court may extend the time within which such reports is to be forwarded in case where good reasons are shown for not doing so within the time specified in this Sub-section.</p> <p>(2) On taking cognizance of a case, the Court shall proceed with the trial from day to day and shall decide the case within sixty days and for any delay, sufficient reasons shall be recorded.</p> <p>(3) The Court shall not adjourn the trial for any purpose</p>	<p><b>5- Investigation and procedure:-- (1)</b> Upon a Complaint the Court <b>shall</b> direct the officer-in-charge of a police station to investigate and complete the investigation and forward the same within fifteen days to the Court:</p> <p style="text-align: center;">No change</p> <p style="text-align: center;">No change</p> <p style="text-align: center;">No change</p>	<p><b>5- Investigation and procedure:--(1)</b> Upon a Complaint the Court <u>may</u> direct the officer-in-charge of a police station to investigate and complete the investigation and forward the same within fifteen days to the Court:</p>

<p>unless such adjournment is, in its opinion, necessary in the interest of justice and no adjournment shall in any case be granted for more than seven days.</p>	<p><b><i>“Provided that at any stage of Investigation or Trial if the court find that the complaint has no substance and has been filed on false, frivolous or vexatious grounds, the court shall dismiss the complaint with compensatory cost up to rupees five hundred thousand”.</i></b></p>	<p><b><i>“(4) At the conclusion of the trial, if the complaint is found false, frivolous or vexatious, the Court may award compensatory cost which may extend to five hundred thousand rupees but shall not be less than ten thousand rupees.”</i></b></p>
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### **Commissions deliberations on 8<sup>th</sup> September, 2013**

The Commission discussed the proposed amendments and approved that the Court may, if the complaint is found false or vexatious, award compensatory cost upto five hundred thousand rupees to the other party.

Draft Bill for amendment of the law is hereby enclosed.

**A**

**BILL**

further to amend the Illegal Dispossession Act, 2005.

WHEREAS it is expedient to amend the Illegal Dispossession Act, 2005 (Act No. XI of 2005) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

**1. Short title and commencement.**— (1) This Act may be called the Illegal Dispossession (Amendment) Act, 2013.

(2) It shall come into force at once.

**2. Amendment to Section 5.**— After sub-section (3) of section 5 the following sub-section (4), may be inserted:-

***“(4) At the conclusion of the trial, if the complaint is found false, frivolous or vexatious, the Court may award compensatory cost which may extend to five hundred thousand rupees but shall not be less than ten thousand rupees.”***