

KHYBER PAKHTUNKHWA JUDICIAL ACADEMY

One Day Workshop on

Tamper Evident Bags: A Step Forward to Preserve Evidence

10th July, 2023

Concept Note

Theme	Workshop on Use of Tamper Evident Bag (TEBs) for safe custody of case property in criminal cases.
Participants	Relevant stakeholders, that is, the Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa, the Peshawar High Court, the Khyber Pakhtunkhwa Police, the Directorate of Prosecution, the District Judiciary, Forensic Experts and Lawyers
No of Participants	30
Method	Interactive, Participatory
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Introduction

The right to a fair trial is at the heart of human rights protection.¹ The Constitution of Islamic Republic of Pakistan guarantees right to fair trial and due process in criminal cases.² In criminal cases, compromising the integrity, preservation, safe custody and sanctity of evidence jeopardises right to fair trial and just decision of the entire case leading to lack of trust of litigant public in justice system. The law requires safe and

¹ D. Robertson, A Dictionary of Human Rights (Routledge 2004), 86 and N. Jayawickrama, The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence (CUP 2017), 493 Ref: A. Clooney and P. Webb The Right to A Fair Trial in International Law, (OUP 2022), 122

² Article 10-A, the Constitution of Islamic Republic of Pakistan, 1973

proper custody of evidence / case property during investigation, protection during transmission and preservation of case property till disposal of the case.³ In substantial number of criminal cases, superior courts have considered improper measures for safe custody, transmission and production as fatal in proof of criminal charges.⁴ Therefore, preservation of evidence is a must for providing level playing field to both, the prosecution and the defence.

Currently, conservative and redundant measures are still employed in Pakistan for preservation and safe custody of case properties in criminal cases, e.g. recovered prohibited substances, articles and narcotics are packed in parcels made up of cloth and sealed with wax.⁵ These are prone to tampering.

Tamper Evident Bags (TEBs) are used in many jurisdictions (e.g. United Kingdom) for safe custody and preservation of evidence.⁶ Even, these have been used in Pakistan by the Election Commission of Pakistan. Use of Tamper Evident Bags (TEBs) may offer a viable solution to the problem of safe preservation of case properties in criminal cases.

District Judiciary Swabi suggested use of TEBs in Criminal Cases. The Peshawar High Court forwarded the proposal with opinions of the Lahore and Islamabad High Courts. A consultative session with all the concerned was recommended. The Khyber Pakhtunkhwa Judicial Academy solicited views of the Khyber Pakhtunkhwa Police and the Directorate of Prosecution, Government of Khyber Pakhtunkhwa regarding the

³ Sections 170, 173 & 516-A of the Code of Criminal Procedure, Ss. 33, 34-B & 45 of the Khyber Pakhtunkhwa Control of Narcotics Substances Act, 2019, the Control of Narcotic Substances (Government Analysts) Rules, 2001, and Rules 22 – 27 of the Police Rules

⁴ Precedents reported in 2021 SCMR 415, 2021 SCMR 363, 2019 SCMR 2004, 2019 SCMR 1300, 2019 SCMR 608, 2015 SCMR 1002, 2018 SCMR 2039 and 2012 SCMR 2012 form part of the jurisprudence on the subject

⁵ Rules 22.16 and 25.58, the Police Rules, 1934

⁶ For instance TEBs are used by the Home Department of United Kingdom and the Election Commission of Pakistan

proposal, who endorsed the idea. Similarly, both the Lahore and the Islamabad High Courts have also supported the proposal, in principle.

Methodology

A consultative workshop for relevant stakeholders will be arranged by the Khyber Pakhtunkhwa Judicial Academy Peshawar to discuss and identify areas in the relevant laws and rules, including the Police Rules, 1934 requiring amendments or modifications for introduction of Tamper Evident Bags (TEBs) as standard means for preservation of case property in criminal cases.

Participants

Participants of the workshop will include justice sector stakeholders, that is, judicial officers, officers of the Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa, the Peshawar High Court, the Khyber Pakhtunkhwa Police, the Directorate of Prosecution, Forensic Science Laboratory and lawyers with a view for a meaningful discussion from diverse perspectives and recommendations as way forward.

Legal Mandate

Khyber Pakhtunkhwa Judicial Academy has the statutory mandate to provide training to all justice sector stakeholders, to hold conferences, seminars, lectures, workshops and symposia in matters relating to administration of justice and law and to establish liaison with research institutions, universities and other bodies including the Federal Judicial Academy, towards the cause of administration of justice under section 4 of the Khyber Pakhtunkhwa Judicial Academy Act, 2012.

Objectives

The workshop is arranged with the objective to;

- a. Chalk out ways and means to protect the case property/evidence by ensuring safety and safe custody of the recovered articles.
- b. To address issues faced by all the concerned regarding preservation of evidence by introducing Tamper Evident Bags (TEBs).
- c. Bring further transparency in criminal justice system.

Outcomes

The expected outcomes of the activity are as follows:

- i. Resolution of issues relating to safety of case properties being faced by courts;
- ii. Recommendations of reforms for protection of case property through TEBs; and
- iii. Further strengthening of public trust in the criminal justice system by bringing in transparency.

Recommended Reading

- The Pakistan Penal Code, 1860
- The Code of Criminal Procedure, 1898
- The Qanun e Shahadat Order, 1984
- The Control of Narcotics Substances Act, 1997
- The Control of Narcotics Substances (Govt Analysts) Rules, 2001
- The Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019
- The Khyber Pakhtunkhwa Police Act, 2017
- The Police Order, 2002
- The Police Rules, 1934