LAW REFORM

Need for proper Malkhana management in criminal justice system

SHISHIR MANIR

A sub-inspector of police kept the seized counterfeit notes in the *Malkhana* as evidence in a case. After months of investigation, the officer started to prepare the charge-sheet for that case. As he went to the *Malkhana* to collect the fake notes to submit before the court, he found only some tiny torn pieces of those notes left by the rats after chewing them up.

This is a hypothetical representation of the evidence management system of our country. 'Property room' or 'evidence room' of police stations is commonly known as *Malkhana* in our subcontinent – which is a warehouse used to store seized items suspected to be connected to a crime. Valuable evidence is frequently stored in open roadsides, rooftops, makeshift tin-shed structures, corridors, or staircases in or near police stations. Often, cars worth crores are kept in dreadful conditions only to gather rust in dumping stations.

Evidence management is an integral part of the criminal justice system. While evidence plays a vital role in proving a case beyond reasonable doubt, the mismanaged or mishandled evidence results in evidentiary weakness in criminal cases. There are thousands of instances where the accused persons were acquitted for evidential infirmity.

The complexities of *Malkhana* management at police stations are manifold. Large volumes of evidence, absence of adequate spaces, and safe storage systems, protection and preservation of biological and/or DNA-related materials, and lack of training of *Malkhana* personnel are few major reasons responsible for *Malkhana* mismanagement.

The legal provisions regarding evidence management in Bangladesh remain ambiguous. Under section 165 of the Code of Criminal Procedure (CrPC) 1898, the Police can seize suspicious articles in course of an investigation. According to section 170(2) of the CrPC, when a Police-Officer seizes any property in connection with a case, he has to send the property to a magistrate along with the accused. Under section 516A of the CrPC, a court can make an appropriate order for the proper custody of such property during the trial. If the property is subject to speedy or natural decay, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise settled.

The Police Regulation Bengal (PRB) of 1943 deals with the custody of seized property, property room and its management. Regulation 525 of the PRB states, 'The Magistrate shall provide a secure room in every court to serve as a *Malkhana* in which all property sent to court and taken charge of by the Court Officer shall be kept.' The Regulation also specifies how any seized item related to any case, for example, jewellery, counterfeit currencies, documents, or weapons should be registered, managed, returned, or disposed of.

The Supreme Court of India, in *Union of India* v *Mohanlal and another* (2016), expressed dissatisfaction on the lack of proper *Malkhana* management systems. The Court directed the central government and the state governments to set up storage facilities for the exclusive storage of seized articles and conveyances duly equipped with vaults and a double locking system to prevent theft, pilferage, or replacement of seized items. The same court in an earlier case had observed that "[i]n any case, station house officers shall deposit case property in the concerned courts within a week of their seizure and the courts shall dispose them within a month."

Safe custody and proper disposal of seized articles in a *Malkhana* is crucial when it comes to the question of fair trial. Judicial precedents show that prosecution cases are often rendered doubtful in absence of proof of safe custody of seized articles. Such precedents set out by other countries in dealing with hazardous evidence management will come to aid when we plan to implement a proper system. Kolkata Police, for example, recently introduced *e-Malkhana* substituting their hundred-year-old *Malkhana* management system.

The news of mismanagement of *Malkhanas* in our police stations is frequent. However, proper guidance to address this issue is not as prevalent. An officer in charge of a *Malkhana* and other officials should be provided with specialised training in this respect. Every *Malkhana* should be renovated to meet the forensic and scientific requirements. Seized evidence should be labelled and stored properly to prevent any error, loss or damage. Labelling should include a description of the items, case numbers, date of seizure, the place from where it was seized, name of the police officer who seized the item, quantity of the item, etc. Modern identification technologies, like Bar Coding, Quick Response (QR) Code and Radio-Frequency Identification (RFID) tags should be used to identify and trace each seized item stored in the *Malkhana*.

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A separate locker facility should be made available for valuable items. Narcotics and explosive substances should be stored in a safe and secure facility. For biological evidence, separate refrigerated storage must be available at every *Malkhana*, or at least in every central *Malkhana*. Electronic evidence will also require a specific storage area. In cities with a shortage of space, Centralised Vehicle Yards may be set up for dumping impounded vehicles. Every *Malkhana* should be under round the clock CCTV surveillance.

Though the PRB 1943 contains detailed instructions on custody of seized property, in the current era, there is an urgent need to revisit the provisions in light of changes in the laws, forensics technology and judicial pronouncements and to frame a written policy and bring out a procedural manual. An appropriate evidence management system is vital to an effective criminal justice system and with some simple steps, we can bring big changes.

THE WRITER IS AN ADVOCATE, SUPREME COURT OF BANGLADESH.

FOR YOUR INFORMATION

Draft Air Pollution Control Rules

The Ministry of Environment, Forest and Climate Change recently shared the draft of the Air Pollution Control Rules, 2021. The Rules have been drafted as per the power conferred upon the Government under Section 20 of the Bangladesh Environment Conservation Act, 1995. As stated in the Preamble of the draft Rules, they have been formulated with the objective of preventing, controlling and reducing air pollution in order to protect the environment and public health.

The draft Rules lay down certain functions to be carried out by the Department of Environment (DoE) in order to address air pollution. Rule 4 requires the DoE to issue a National Air-Quality Management Plan which should include necessary guidance and plan of action for effective management of air emission from mobile, unspecific and specific sources; management of hazardous pollutants; clean and affordable energy technology; research on air pollution and its adverse impacts; information and knowledge management, awareness and education on air-quality; sustainable economic measures for air-quality management etc. As per rule 6, the Director General (DG) may issue circulars – upon approval of the Government – declaring a list of industries, plans or activities as extremely harmful to the environment, health, society, economy or culture and may determine the achievable standard of emission for such activities and the duration within which such standards should be achieved. The DG may also issue directions for the control of such activities and include within the Environment Clearance Certificate such specific measures to be undertaken, or conditions to be adhered to in order to control the emission standards. The DG may further require the responsible persons of such activities to submit to it for approval such control plans needed to regulate the emission. The DoE is directed to conduct countrywide air-quality observation in order to ensure that the standards and measures set under the Rules are implemented and based on its observations shall issue warnings and encourage the people to take protective measures against pollution.

The draft Rules also direct the Bangladesh Road Transport Authority or the Bangladesh Road Transport Corporation or other licensing authorities to ensure, during granting or renewal of license – such conditions of emission as has been set by the DoE. The role of the local government institutions has also been highlighted in the draft Rules.

A National Executive Council is to be established as per rule 15 for advising, directing and supervising all relevant governmental bodies in relation to their functions under the Rules.

Rules 19 and 20 lay down the provisions of offence and punishment. Failure to comply with the directions under the Rules, failure to comply with the standards laid down under the Rule, willful con-compliance with the directions made pursuant to the Rules are all deemed punishable offences. As rule 16 provides, compensation may also be provided by the DG as per section 7 of the 1995 Act for any harm caused to a person or group of people arising out of air pollution.

The draft Rules do a good job of laying down the range of functions to be undertaken by the DoE. It envisions collaboration across different public authorities which may require more detailed rules of procedure to be translated to practice. The draft Rules also highlight some of the gaps in the primary Act – many of the functions of the DoE or its DG are subject to government approval. The Rules also repeat the same redress mechanisms of the 1995 Act which leave in the hands of the DG the absolute discretion to provide compensation or allows for the institution of criminal proceedings.

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RIGHTS ADVOCACY

RIGHT TO PRIVACY IN THE DIGITAL AGE

SUMAYA TASMIM KHEYA

The topic of maintaining privacy over the internet has garnered attention after a writ petition was filed on August 25 this year, seeking directions to remove defamatory images, videos and reports from various platforms which infringe on the privacy of individuals, including college student Mosarat Jahan Munia and actress Pori Moni, among others. After the writ was filed, the Supreme Court lawyer stated, 'many reports, pictures and videos are being published on various platforms, including social media, targeting the character of individuals, specially women, violating personal privacy.'

This is not the first time a petition for direction in this regard has been filed with the High Court Division (HCD). The precedents present a scenario where BTRC's stance on privacy rights seems self-contradictory. In many cases, videos and images are taken down immediately without any fuss. However, the ordeal that the ordinary citizens have to trudge through reflects BTRC'S preferential approach in this regard. Their reluctance to adhere to guidelines and then letting the judiciary take the fall, borders on obstruction of justice. The court is getting bombarded with writs when the BTRC clearly has the power to prevent such events. It should not be a requirement for the HCD to give instructions every time such situations arise.

In a country where equality between the sexes is a constitutional right, the actions of administrative authorities should reflect that goal. But the actions, or rather the lack of action, on part of the BTRC, sets the narrative in the wrong direction. Their averseness to take down viral personal information is adding fuel to the fire of rampant misogyny on the internet. Because, as the lawyer put it, the women suffer the most damage when footage of their personal lives are put on display without their consent. These irrelevant footages are used as a tool for character assassination and to disregard whatever her claims are. In the case of college student Munia, videos of her personal life went viral after her death. Such an insignificant video was apparently enough for the public to blame her. After actress Pori Moni's rape allegation, the social media once again went up against her in a victim-blaming spree, digging up her personal life as an excuse to discard her statement. In these situations, BTRC'S inertia translates to turning a blind eye when these women are drowning in the wave of misogyny.

Victim blaming in cyber spaces turns into a vicious cycle when the government takes no steps to prevent such incidents. This proves that the fate of ordinary citizens, specially women, should no longer be placed in BTRC'S reluctant hands. After all, what use is the law of, if it is not uniformly applied? It is high time privacy rights in the digital age were developed. To counteract the negative impact social media has on the lives of the citizens, a Privacy Rights Act should be passed soon. The Digital Security Act can be amended too to ensure swift actions in regulating defamatory content over the internet. It is not too utopian of a notion that strict and fair application of these proposed provisions will ensure equal right to privacy for the citizens of Bangladesh.

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LAW OPINION

Clean feed TV channel ends unfair competition

M S SIDDIQUI

Clean feed refers to TV feed without any extra on-screen digital graphics or text in their broadcasts. Section 19(13) of the Cable Television Network Management Act 2006 prohibits the transmission of advertisement by foreign television channels in Bangladesh.

There is no opportunity for foreign televisions to broadcast any kind of advertisement in Bangladesh since 2006. It has been 15 years since the enactment of the law. Different governments since 2006 could not implement the law and failed to provide reasons for such non-implementation as well. The present government notified the distributors about the ban on foreign channels with regard to advertisements in April 2019. The government discussed this issue with the cable operators and agents many times and lately directed them to be compliant with the law by September 30, 2021.

The reason for this is the loss of government revenue. The government does not receive any revenue from the advertisements aired on foreign channels. According to the Minister for Information, Bangladesh had missed out Tk 2000 crores in investment due to un-regulated and free advertisements on foreign channels. Bangladesh is yet to assess the loss of market for local manufacturers and loss of revenue due to free promotion of foreign products.

There are two types of television channels in practice: one is the pay channel, where the viewers pay for watching some particular channels. The other type of channel is the free to air channels where viewership is free. Unfortunately, the channels are charging Bangladesh viewers for both pay and free channels. The subscribers are paying for the channels and the channels are earning money from advertisements which is illegal according to the aforementioned provision of the 2006 Act. The multinational and Indian companies were enjoying free promotion of their products in Bangladesh and the Bangladesh viewers were paying the cost of transmission as well.

The same channels provide the distributors of other countries with clean feed, i.e. no advertisement – they can do the same for Bangladesh. The distributors may also clean the feed by cutting off the advertisements. It should be noted that India does not allow any Bangladesh programme to display advertisements. As such, Bangladesh Television (BTV)

provides India with clean feed. Some programmes, such as *Ityadi*, which is very popular in India, are sent with advertisements but the Indian server cuts the advertisements off before broadcasting.

Indian TV stations provide Saudi Arabia and other Middle Eastern countries with clean feed. They broadcast only Middle Eastern advertisements there, even by dubbing into Arabic. The broadcasters must not give whatever feed they have to a big market like Bangladesh. A former Director General of BTV said that advertisements aired in Bangladesh by foreign channels are different from others. Viewers in Kolkata will not view these advertisements. It means these advertisements specifically target the viewers in Bangladesh.

Many foreign channels are being aired after paying for the advertisements in India. Such channels come to India without advertisements and are shown to Bangladesh filling the content with Indian advertisements there. Most Indian channels charge Bangladesh viewers but also feature advertisements.

Multinational companies (MNC) have thus never felt the need to use local television channels as a medium to reach out to Bangladeshi consumers and take advantage of investment in India for both Bangladeshi and Indian market. On the other hand, if a local brand has to acquire space in a market, it has to spend huge amount for branding and popularising their products in Bangladesh. Contrarily, an MNC that can broadcast its advertisements in foreign channels with more outreach, can target a wider audience.

Besides, the Clean Feed Policy will help expand the domestic advertising industry. It will require domestic advertisers to invest in more and thereby produce more commercials to fill the slots in channels with clean feeds.

Our neighbouring countries like India, Sri Lanka, Nepal, and Pakistan have already imposed restrictions on foreign TV channels without clean feed. Bangladesh has been quite late to implement the policy and is still facing resistance from local cable operators and other stakeholders. Undoubtedly, the government has taken a bold decision in implementing the Clean Feed Policy, and it is expected that this would facilitate a level playing field to both local and foreign manufacturers.

THE WRITER IS A LEGAL ECONOMIST.