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# **CRITICAL EXAMINATION OF TEST IDENTIFICATION PARADE IN THE NATION USE**

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## **ABSTRACT**

*A test identification parade is used to gauge the witness's credibility and ability to identify it'd people. The test is typically not necessary to identify the accused if all the witnesses know the accused and can recognise the accused in moonlight and lantern light. A test identification parade is primarily intended to validate and strengthen the witness's already persuasive testimony given in court. It can be used as corroborated evidence in a court of law if the proper steps are taken. If the witness is unable to identify the accused and can only do so by looking at him, the Test cannot be regarded as having been conducted in the case. Ahmad bin Salam v. State of Andhra Pradesh case, as they were all lined up, the witness in this case was able to recognise the attacker who struck the victim.*

*Unquestionably, the test identification parade has corroborative value, and since it no longer serves as substantial evidence, its use as such is no longer required. According to a statement made in the case of State of Himachal Pradesh v. Lekh Raj, "Test identification is considered a safe principle of judiciousness for authentication of the sworn testimony of various evidentiary value people appearing as witnesses in court with regards to the character of the accused," as is further explained in more detail in the cases section of the paper. It may yet turn out to be something special. There are exceptions to this general rule, such as when the court finds a particular witness compelling whose testimony it can rely on without this or another type of corroboration.*

## **Provisions of the Indian Evidence Act and the Code of Criminal Procedure**

Section 54a of the Code of Criminal Procedure grants the procedure to send the suspect for a test identification parade in order to facilitate this process even though it is not a required step in the process. This enables both the identification of the accused and the admission of evidence in court. Section 54A allows the person suspected of being the subject of the test to be sent for the test when the appropriate court has the authority to do so by directing the subject or the police officer to take the necessary action.

Article 20(3) of the Indian Constitution, which is the test identification parade does not violate the principle that no one should be forced to testify against themselves, and taking part in the parade does not constitute testifying.

A conviction cannot be established solely based on the test identification parade, nor can the parade that was conducted during the investigation be regarded as significant, supporting evidence. To find the defendant guilty, the court must instead name the witness. Furthermore, there isn't really any added value if the same person is recognized in both the parade and the court.

### **Whether or not it is necessary, a test identification parade is necessary.**

When Required: Test identification is used when the accused's identity is in doubt and is required if the victim has never met the accused before the incident. If the victim reasonably saw the offender and tells the investigating officer they can identify them, a test identification parade is held in those circumstances. When the victim is the victim of a crime, frequently, victims can see the offender and later recognise him thanks to various factors like body type, height, etc. The parade should also, whenever possible, be held in front of a magistrate and as close to the crowd as possible when it is not needed. Test identification is not required if the witness and the defendant are friends and live nearby. The motivation for test identification is to confirm and evaluate the reliability of that proof. It is typically believed to be a safe rule of authenticity to look for earlier identification procedures to support a witness' testimony when they testify in court to identify an accused person who is a stranger to them. This authenticity rule has some exceptions, which are noted.

For instance, the investigation may be changed without any party having the right to object or

request a test identification parade if the court finds additional evidence that it can trust. Test identification parades are not to be considered substantial evidence as that term is defined in Section 162 of the Act, and failure to do so would not affect the outcome of any legal proceedings. the legal admissibility of evidence. However, in some situations, it might be accepted despite the lack of supporting data. The test identification parade was deemed to have value and serve the purpose by the supreme court in Heera v. State of Rajasthan.

## **IDENTIFICATION PARADE TESTING PROCEDURE AND PRECAUTIONS:**

*Procedures:* In order to prevent the victim from forgetting the specifics, the parade must be held as soon as the suspect is taken into custody. The magistrate should be present when an identification parade is held as part of a test, along with the police. Both in court and during the trial's identification parade, the identifier must be able to identify the test subjects. Parade identification is not regarded as reliable evidence by the law. The victim or identifier must have seen the suspect for a sizable period of time in order to later identify him, the area must be well-lit, the accused should not have known the witness or victim prior to committing the crime, and the FIR must be filed with all pertinent information.

The police should leave the area after making the necessary preparations so that the subject's identifier can do its job. There shouldn't be any police present besides the magistrate and identifier. In a test identification parade, a similar person, such as the accused, must be kept with them at a ratio of no more than one to five and no more than one to ten. Witnesses are not permitted to be present during the test identification parade and must stay away from the parade's location. The accused must adjust position after each witness identification.

## **THE CREDIBILITY TEST:**

### **The reliability of the identifier's claim to have identified**

An identification parade test's reliability varies from case to case and situation to situation. The victim or identifier can still clearly remember the perpetrator because of time, the gravity of the criminal's actions, and such traumatic experiences. The time of day the act was committed, the location, and the number of participants are all taken into account. If it had occurred in broad

daylight and a public space, the victim might have been able to recognise the offender without a doubt. Among other things, it matters if the perpetrators covered their faces.

People's faces and other body parts were covered when they According to the court, when an identification is deemed inappropriate because the identifier cannot identify the subject or when there is a significant amount of time between the commission of an act and the test identification parade, it is decided whether or not the parade should be held based on the specifics of the case. Ramanbhai Naranbhai Patel was assaulted in broad daylight in *Ramanbhai Naranbhai Patel v. State of Gujarat*, and the court reasoned that since this increased the likelihood that witnesses would recall and be able to identify the offender, the conviction was based on the outcomes of an identification parade.

## **IDENTIFICATION TEST HOLDING PARADE DELAY AND IRREGULARITY:**

The parade must be conducted in accordance with the suggested procedure. when the suspect is taken into custody, but on occasion due to erroneous reasons, the inability to get the identifier, and perhaps even a magistrate. The investigating officer kept writing to the magistrate in the case of *Muralilal Jivaram Sharma v. State of Maharashtra*[vii] despite the two-month delay and the magistrate's absence due to court-related obligations. The parade was valid, though, and was taken into account. The test identification parade's authenticity or truthfulness, however, is diminished if it is executed slowly. Unusual rulings are also wrong unless the court accepts their justifications. The test identification parade should be held as soon as possible, if necessary.

## **A CRITICAL ANALYSIS OF TEN CASES DECIDED BY THE SUPREME COURT**

*Bihar State v. Raju Manjhi* the verdict in this historic case was given by Honorable Mr. Justices N. V. Ramana and Mohan M. Shantanagoudar. The lower court from which the appeal was made was the High Court of Patna. The truth is that ten to twelve individuals between the ages of twenty and twenty-six broke into Kamdeo Singh's house one night in 1999 and stole goods. After receiving a complaint, the police opened an inquiry. The injured were taken to a hospital after the locations of their injuries were determined. It was alleged that the lower courts carried on the

investigation and stuck to the plot of the film after questioning numerous witnesses. During the trial identification parade, any identification was accepted. The prosecution's case against the accused is not necessarily false, despite what the witnesses claim. The identification test is only conducted to help the investigation officer conduct their work more efficiently. After the identification parade, the investigation stage is attained. Nothing in the Criminal Procedure Code (CrPC) gives the investigating agency the right to hold a hearing or the accused the right to ask for a trial. Because these parades are not regarded as substantive evidence, they are essentially governed by Section 162 of the CrPC. The identification evidence would not be inadmissible in court if there had not been a test identification parade. It should be up to the courts to make decisions regarding issues involving such identification. *Rajesh Govind Jogesh v. State of Maharashtra*

Sections 302, 504, and 34 of the IPC have been allegedly violated by the appellants. They are thought to have murdered the late Joy Kutty in Mumbai's Vashi district. The appellants were found guilty of violating IPC sections 302 and 34 by the sessions judge. One of the appellants contested the verdict, claiming that the identification of the convicts was done improperly because it didn't follow the established process. The appellants' request for a hearing on their appeal was denied by the high court.

The respondents saw Joy Kutty running along the highway following what they believe to have been an attack on him by the appellants using swords and helicopters. He was taken to the hospital, but later declared dead. The presence of swords and a chop saw has led the sessions court to conclude that this is a murder case. The High Court upheld the Sessions Court's decision.

Rajesh Govind Jogesh, one of the appellants, has insisted time and time again that there is no evidence to support his involvement in the crime. He has argued that the test identification was invalid because no one who resembled the appellant was present at the parade for his identification, which took place after the designated allotment of time. Long hair, a beard, and other distinguishing features on the second appellant did not resemble those of the first.<sup>1</sup>

# EVIDENTIAL VALUE OF TEST IDENTIFICATION PARADE

The parade used during the investigation cannot be regarded as significant, important evidence, nor can a conviction be obtained solely on the basis of the test identification parade; a witness must be identified in court in order to be found guilty. Additionally, it doesn't really add any value if the same person is recognised in both the parade and the court. The goal of a Test Identification Parade (hereinafter referred to as the "TIP") is to first persuade the investigating authority—before referring the case to the court for trial—that the arrested person, who had previously been unknown to the witness, was actually one of those who committed the crime; and secondly, to persuade the court that the arrested person was in fact one of those who committed the crime. The accused who was held accountable is actually the offender.

## **Provisions of the Indian Evidence Act and the Code of Criminal Procedure**

The Code of Criminal Procedure, 1973's Section 54A, granted the process to send the suspect for a test identification parade in order to facilitate this process even though it is not a required step in the criminal justice system. The Indian Evidence Act, 1872, Section 9, allows both the identification of the accused and the admission of evidence in court.

Section 54A allows the person suspected to be sent for an identification parade when the appropriate court has the authority to do so by ordering that person or the police officer take part in the parade. the required procedure.

Article 20(3) of the Indian Constitution of 1949, which prohibits forcing someone to testify against themselves, is not broken by test identification parades. Participating in a test identification parade is not the same as testifying.

When it comes to the requirements of Article 20(3) of the Constitution of India, 1950, giving a thumbprint, footprint, palm- or fingerprint sample, handwriting sample, or exposing parts of the body for identification purposes does not qualify as "to be a witness." *State of Punjab v. Ramesh Kumar*, AIR (1993), *SCC Kathi Kalu Oghad v. State of Bombay*, AIR (1961). *Cri. L.J* determined that since the witnesses were already present, there was no need for an identification parade. who

had attacked them was known. In other words, holding TIP is not necessary if all of the evidence in a case proves the accused's guilt beyond a reasonable doubt. TIP is not always a requirement for success.

### Price of TIP

Test Recognition Proof While testimony in court counts as substantive evidence, a parade does not. The Magistrate who oversaw the test parade, however, provided evidence that the witness recognised the accused at the parade, which was corroborated by the trial judge's comments, when the witness recognised the accused at the parade but not in court. The witness's actions during the trial, which showed that he was terrified and unable to recognise the accused, were sufficient to find the defendant guilty. *Dana Yadav v. State of Bihar*, AIR 2002 SCC

In contrast to the identification of the accused made during a test identification parade, which is only primary evidence and can only be used to support the identification of the accused made in court by a witness, the identification of the accused made in court is substantive evidence.

It's also crucial to keep in mind that having a TIP is not necessary. In cases where the witnesses knew the accused well and the incident was widely reported in, it was determined that the absence of a TIP was not fatal to the prosecution. case. The Supreme Court outlined the circumstances in which an identification parade may be necessary in *Jadunath Singh v. State of U.P. AIR (1970) SCC*. The court noted that "Of course, if the prosecution fails to hold an identification parade on the plea that the witnesses already knew the accused well and it transpires in the court of trial that the witnesses did not previously know the accused, the prosecution would run the risk of losing its case." If there is any doubt, we think the prosecution should hold an identification parade.

In *State of Maharashtra v. Rajesh Govind Jagesha*, AIR (1999) SCC, an identification parade was held five weeks after the arrest—this is an excessively long amount of time.<sup>ii</sup>

The accused's explanation for the delay was unreliable. The argument that a Magistrate in a city like Bombay might not be available was rejected, even though the investigating agency was not required to obtain the parade's conduct from a specific Magistrate. It was decided to give the accused the benefit of the doubt.

Since the identification parades are a component of the investigation phase, the Code of Criminal Procedure does not contain any clauses requiring the investigating agency to hold one or granting the accused the right to request one. Because they don't count as substantial evidence, these parades are essentially governed by Section 162 of the Code of Criminal Procedure. There wouldn't be a test identification parade if it did not rule the identification evidence inadmissible in court. The fact-finding courts should decide how much weight to give to such identification.

## PROCEDURE AND HOLDING PRECAUTIONS FOR PARADE

**Procedures:** In order to prevent the victim from forgetting the specifics, the parade must be held as soon as the suspect is taken into custody. The magistrate should be present when an identification parade is held as part of a test, along with the police. The identifier should be able to identify both in the test identification parade and in court because parade identification is not considered legal substantial evidence. The FIR must be filed with all pertinent information in mind, the victim or identifier must have witnessed the crime, and the accused should not have known the witness or victim prior to committing the offence. In a well-lit area, observe the person for a while so that you can later identify him.

**Photographic identification:** According to Section 22 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ("TADA"), "where a person has been declared a proclaimed offender in a terrorist case, the evidence regarding his identification by witnesses on the basis of his photograph shall have the same value as the evidence of the test identification parade."

The Supreme Court heard arguments in *Kartar Singh v. State of Punjab*, AIR (1994) SCC, challenging the constitutionality of Section 22 of the TADA. The Honourable Supreme Court of India ruled that Article 21's standards for fairness and reasonableness were violated by Section 22 of the TADA.

**IDENTIFICATION BY VOICE:** In the trial for the charge of murder conspiracy in *Mohan Singh v. State of Bihar*, AIR (2011) SCC, the witness overheard the defendant yelling at the victim for money and later recognised the defendant by the defendant's voice. Even prior to the incident, the witness had some level of familiarity with the defendant. The court regarded the witness' testimony identifying the defendant by voice as trustworthy evidence.

The police should leave the area after making the necessary preparations so that the subject's identifier can do its job. There shouldn't be any police present besides the magistrate and identifier. The essential component is A person who is similar to the accused must be kept next to the accused in a test identification parade in a ratio of no more than one to five and no more than one to ten. Witnesses are not permitted to be present during the test identification parade and must stay away from the parade's location. The accused must adjust position after each witness identification.

### **The TIP process**

A crime is reported to the police. There may have been some specific descriptions of the suspect. In any case, the police conduct their inquiry and detain the alleged offender. In order for officers to identify the complainant among a group of people with similar skin tones and statures, the complainant is then taken to the police station. If the complainant recognises the witness, the police will know he is telling the truth and that they are on the right track.

The magistrate in charge of the Test Identification Parade (TIP) is instructed to make two photocopies of the report while still under his direct supervision and to give one to the IO with instructions that the report's contents be should be kept a secret up until a charge sheet filed in accordance with Section 173 of the Cr.P.C., 1973. The magistrate is required to keep the second photocopy as a "confidential" record in a sealed cover in case it needs to be used again.

For the Test Identification Parade to be properly conducted, designated areas must be provided in each prison in the state. These spaces must have a side window that provides a visual barrier between the witness and the magistrate and the parade participants on the one hand. The witness and the magistrate shouldn't be visible to those waiting in queue, but the suspect and the dummies should be easy to see. The location of the suspect and the dummies must be secure. Additionally, there should be room for them to change clothes, and the area should be well-lit.

The magistrate is required to testify in court about the various precautions the magistrate took to ensure that the witness correctly identified the concerned accused or suspect at the TIP without assistance from the police after the witness recognises the accused during the TIP conducted before the magistrate. The trial judge's comments about the witness's demeanor, which show that the witness was terrified and was unable to speak, support the magistrate who conducted the TIP's evidence that the witness did so at the TIP if the witness correctly and unmistakably identifies the

accused at the TIP but not in court. It would be relevant and sufficient to convict the accused if they were unrecognisable at the trial and could not be identified. It is a measure of credibility.

Credibility of the identifier's identity in comparison to the identity used for the test parade, the truth varies from circumstance to circumstance and case to case. At this time, when a criminal engages in behavior that matches the severity of the incident and results in such upsetting events, it gives the victim or identifier a permanent mark in their minds, indicating that they remember the who unmistakably carried out the act. Even the hour when the act was done, the place every action, every person, and every element are involved. If performed throughout the day, it is visible in the open. Considerations include whether the suspects had their faces covered, whether there was enough lighting for the victim to clearly identify the suspect, and other variables. When a person's face or other body parts are hidden, the identifier is unable to recognise the person, or a significant amount of time has passed between the act's commission and the test identification parade, the identification is not deemed appropriate. According to the courts, this decision is made in light of the particular circumstances surrounding the case. In the case of *Raman Bhai Narayan Bhai Patel v. State of Gujarat* (AIR (1999) SCC), the assault happened in broad daylight, and the court stated that when it happened in broad daylight, it could be considered a criminal offence.

A Test Identification Parade was used to assess conviction on the basis of identification to see if witnesses could quickly and accurately recall and identify the person who had committed the act. In the case of *Dana Yadav v. State of Bihar* (AIR (2002) SCC), the Hon'ble Supreme Court of India unequivocally declared that identification of the accused should not ordinarily be relied upon if the name of the accused is neither mentioned in the First Information Report nor stated to the police. TIP's sole objective is to provide the court with support.

In the case of *Anil Kumar v. State of U.P.* AIR (2003) SCC, the Hon. Supreme Court of India ruled that holding a TIP is not necessary and the accused has the ability to request that TIP be held. Even though there is no fatal consequence if TIP is delayed, every effort should be made to hold TIP as soon as possible to avoid the accused showing the witnesses their mischief. TIP should ideally be conducted as soon as possible to avoid any mistakes on the part of the witnesses. Before noting the suspects to be identified and the witnesses who will be doing so, the judicial/executive magistrate charged with conducting the TIP must become familiar with the case's facts; It is a

complete waste of time and resources for the public to hold a TIP in cases where the prosecution witness is familiar with the defendant/suspect; Before conducting TIP, the police officials should ideally contact two trustworthy, independent individuals who are not related to or connected to them. The judicial/executive magistrate should explain the facts of the case to these unrelated parties and, as to Who (suspect) needs to be identified and who (eyewitnesses) hasn't come forward yet; All police officers and constables must leave the room where the TIP will take place completely empty. TIP meetings should ideally not take place in a police station building, but rather in designated spaces in another building. Before the TIP can start, the accused or suspect must be brought from the lock-up room. The judicial or executive magistrate must record in the identification memo that the accused was brought to the room where the TIP was to be conducted by the appropriate two independent people (panch witnesses). when the defendant or suspect is brought before the judge or executive as a result, it is the duty of the judicial/executive magistrate to give the accused or suspect permission to stand wherever he pleases during the procession. An accused or suspect has no right to cover his face during the TIP, so it's important to have enough dummies stand alongside them. Ideally, each accused should be subjected to identification separately. The judicial/executive magistrate shall specify in the identification memo the place where the accused or suspect chooses to stand.

## CONCLUSION

Therefore, it is crucial to provide a general, succinct, and clear explanation of the burden and standard in situations where the prosecution's case depends solely on the identification of a single witness. The judge should typically base his or her decision on the attorneys' submissions, depositions, and statements, though there may be a few circumstances where it will be advantageous to conduct a voir dire (an examination of the truth or admissibility of the evidence). Last but not least, when deciding whether to exclude identification evidence or how much weight to give it, the court may take the police's disregard for the law into account. Nobody can be forced to wait in queue. for TIP, and he does so at his own risk if he chooses not to submit himself for TIP. Haryana State v. Suraj Pal, AIR (1995) SCC Bail cannot be denied simply because TIP is still being conducted if the court determines that, given the facts of a particular case, the accused should be granted bail. The accused may be granted bail with a few restrictions placed on them, such as being prohibited from speaking to the media or appearing in public for a while. To make sure the investigation is going in the right direction, a test like TIP is a crucial component. It might

only be Although it only has corroborative value, the court-performed identification is still important. Like all processes, it has flaws and, if used carelessly, could change the verdict and the course of justice.

The rules for police officers can be tightened up to ensure that it is done in a morally righteous and impartial manner. This century-old procedure can be strengthened with minor adjustments and stricter regulations, which will aid the courts in holding trials quickly and pursuing the truth. A minimum number of witnesses is not required to identify the suspect or offender, and there is no statutory time frame within which TIP must be carried out.

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<sup>i</sup> **Test Identification Parade: A Critical Analysis In India Practice**

- [Author\(s\): Asia Pacific Law & Policy Review](#)
- Publication Date: February 21, 2020

<sup>ii</sup> TEST IDENTIFICATION PARADE AS A TOOLS TO BETTER CRIMINAL JUSTICE ADMINISTRATOR NAME – SHUBHAM SONTHALIA

