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TEST IDENTIFICATION PARADE: ITS UTILITY AND VERACITY

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INTRODUCTION

Identification is an act of the mind, observation should be good otherwise the wrong person might get convicted. Test Identification is a technique primarily used in criminal cases to identify the accused in Court. It is used in cases where there's no direct evidence. The Indian Evidence Act determines which evidence can be used in legal proceedings, and identifies how witnesses are to be examined and documents assessed. A Test Identification Parade (TIP), however, is an investigative mechanism for the police, and is not strictly evidence. Judges do not preside over TIPs, but a witness's erroneous identification can disrupt a case's investigation and possibly cause the case never to be investigated.

WHAT IS TEST IDENTIFICATION PARADE?

Test identification is a process through which the identity of the person, article or animal concerned in the offence under investigation or trial is established through a test parade. The witness or the identifier is to identify the suspect from a lineup of several individuals along with the suspect to confirm the accused's identity.

A Test Identification Parade (TIP) is an important pre-trial investigative procedure commonly utilized in criminal courts when the identity of the offender is unknown to witnesses. The main aim of a TIP is to test the memory, truthfulness and recall ability of the witness who claims to have seen the defendant at the time of the offense. The TIP serves as a mechanism to bridge the gap between the earlier stages of the investigation and the trial to assist in corroborating that the investigation is moving in the right direction. The TIP does not constitute substantive evidence in itself, but rather serves as a method to confirm the identification of the defendant by the witness at trial. The TIP procedure is where the defendant is paraded with a number of physical 'dummies' who are similar in appearance to see if the witness can correctly identify the defendant amongst the group. The TIP helps to establish

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the first link in the evidence chain between the suspect and the crime in a way that assures that the witness's claim is based on identification and is not as a result of suggestion or coaching.

PROCEDURE FOR TIP

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) establishes the framework for conducting a Test Identification Parade under Section 54, which corresponds with Section 54A of the Code of Criminal Procedure, 1973. It provides a Magistrate, at the request of the investigating officer, with the authority to order that the arrested person be identified by witnesses for the purpose of proving identity of the suspect. Specific to this, the protection of judicial oversight (the magistrate) ensures that the identification is fair and is devoid of undue influence or police suggestion. The identifying witnesses (the panchas) will be asked to view the accused alongside an equal number of persons of similar appearance, with the witness required to identify the offender without having previously viewed them. Any method of eyewitness identification procedure should include the safeguards of having an independent witness (panchas) and a Magistrate present during the parade. Any complaints raised by the accused should also be specified in the identification memo, along with all details associated with the identification parade.

The significance of such identification in evidence is addressed within Section 9 of the Bharatiya Sakshya Adhinyam (BSA), 2023, in which facts to prove identity are relevant where identity is in issue. However, a TIP itself is treated as corroborative evidence (a sort of aid to identification in court) not enough to establish guilt.

HISTORY

There were no specific provisions in the Code of Criminal Procedure or the Evidence Law until 2005. In 2005, an amendment was made in CrPC introducing a new section 54A (Section 54 BNSS,2023) which requires testing for the identification of an arrested person. A Test Identification Parade (TIP) should take place immediately following the arrest, with all appropriate safeguards in effect. Nevertheless, the TIP procedure is unnecessary, if the witnesses have previously seen the accused on separate occasions. While TIPs can be arranged by police officers, magistrates, or private citizens, they hold legal evidentiary significance for corroboration only if the TIP is conducted in the magistrate's presence, having presumably conferred some legitimacy to the process in the eyes of the court.

CREDIBILITY OF IDENTIFICATION

A successful TIP during investigation offers substantial corroboration. It confirms, based on the witness's identification of the suspect, that investigators have corroborated the leads and direction of investigation prior to charging someone formally.

Since the identifiers are no experts and are mostly common people who rarely get into such situations, the reliability of their identification of the accused varies from situation to situation. It is a general notion that given the severity of the crime and the actions of the perpetrated offender, leaves a permanent scar on the victim or the identifier's mind, making it hard to forget who committed the crime.

In the cases where the attack took place in daylight and it is considered that if a crime has been committed in broad daylight, the witnesses would easily be able to identify and remember the offender. Thus, in such cases, the conviction may be made based on identification by Test Identification Parade. In the case of *Dana Yadav v. State of Bihar 2002*, the Apex court contended that the very purpose of a Test Identification Parade is to corroborate the court and identify the offender.

TIP NOT A SUBSTANTIVE EVIDENCE

Although useful, the validity of TIP has been a contested subject for legal and psychological scrutiny. It is an inherently weak form of evidence primarily due to the fallibility of human memory and perception. Memory of an event can be compromised by a multitude of problematic phenomena (i.e., stress/trauma at the time of the crime, cross-racial effect, weapon focus, decay of memory over time, and unconscious transference) all of which can compromise the accuracy of an identification. Courts have taken the implied flaws seriously and since have imposed rigorous procedural safeguards, many of which are now supported, implicitly, by the BNSS's requirement for judicial supervision.

As required by the BNSS at present, the parade must be conducted by a Judicial Magistrate who is independent of the police, ensuring independence. Not only must the accused be paraded with a sufficient number of other persons of similar age, height, build, and complexion, it is also essential that there are enough persons to ensure an adequate test is conducted. A TIP is rendered completely worthless if there is any likelihood that before the conduct of the parade, the witness has seen the accused (or a photograph of the accused). It would hold that a TIP conducted after such viewing is a complete farce and should not be admitted into evidence.

In *Lajjaram v. State* (1955) the accused had committed the offence of robbery and during the TIP the witnesses identified both the accused and the stolen property. The issue in front of the Court was whether TIP can be treated as substantive evidence. The Court ruled that, Test Identification is not substantive evidence and it can only be considered as corroborative evidence, the real evidence would be the identification of the accused in Court.

TIP's value lies in its ability to act as a safeguard against being falsely identified, wrongly convicted and/or tampered with evidence. When a witness says he/she saw the offender briefly under stress, the parade allows objective consideration of the claim in a controlled environment. Courts have recognized this value such as in *Lajja Ram's* case, where the Court stated that identifying in a TIP is not substantive evidence, it merely corroborates what is done in court. This principle prevents convictions based on uncertain or suggestive identification which also safeguards the presumption of innocence. Thus, the process lies in between investigation and trial - helping police and safeguarding the accused.

CONSTITUTIONALITY OF TIP

The constitutionality of the Test Identification Parade (TIP) is well-established and in no way violates the fundamental rights of an accused person. In particular, a magistrate's order mandating a person to attend a TIP does not violate that person's right against self-incrimination as per Article 20(3) of the Constitution of India. The reasoning, simply is that when a witness identifies the accused at a TIP, this identification does not represent the accused's own voluntary evidentiary act. The court has also held that an accused may be compelled to stand, or expose their face, or reveal scars or marks on their body to a witness for identification. Again, all of this does not constitute "testimony" or "evidence" as understood in Article 20(3).

LANDMARK CASE LAWS ON TIP

1. SAJJAN SINGH V EMPEROR (1943)

In this case, the magistrate refused the application of the accused for conducting an identification parade on the grounds that the witness knew the accused from before and the application would only delay the process.

2. AMAR SINGH V. EMPEROR (1943)

In this case it was contended by the honourable court that "Whenever an accused person disputes the ability of the prosecution witnesses to identify him, the Court should direct an identification parade to be held save in the most exceptional circumstances."

3. UMESH CHANDRA V. STATE OF UTTARANCHAL, 2019

The Court held that TIP under Section 9 of Evidence Act is not substantive evidence, it only corroborates the evidence. More importantly, as TIP is part of the investigation, it has to be proved by the prosecution that it was held in accordance with the law. It is only after the prosecution had established that a valid TIP was conducted, the question of considering any objection can be made.

4. Godra Train Burning Case

In this case, the first accused was identified through Test Identification Parade, he was pelting stones at the passengers not letting them leave the train.

CONCLUSION

The TIP system faces a range of practical concerns that limit its procedural and evidentiary merits. Delays in the procedure, showing suspects to witnesses in TIP, and lack of trained magistrates or independent witnesses for identification of suspects can totally undermine the credibility of the process. Likewise, the suggestive and biased nature of human memory makes complete reliability questionable.

Ultimately, test identification parade is a careful balance of investigative need and respect for the rights of individuals. Its lasting usefulness is this ability to confirm the truth in a fair and correct manner and it is this flexibility that reflects the system's ability to adapt to new challenges that emerge in criminal justice. When done promptly and impartially with judicial oversight, the TIP is another way to secure justice based on identification, not guesswork. Thus, in a legal landscape rapidly evolving towards modernization, the test identification parade remains an important procedural safeguard, an unassuming, but crucial, guardian of truth and fairness in criminal jurisprudence.