

**TEST IDENTIFICATION PARADE: A CAUSE OF CONCERN FOR CRIMINAL
JURISPRUDENCE IN INDIA**- Bevan Avil Pinto¹**Abstract**

Identification of the accused is the most elementary aspect of the investigation. Without the identification of the accused, it is virtually impossible to complete a criminal investigation. One way to identify an accused, especially one unknown to a witness, would be with the process of Test Identification Parade, or TIP for short, which is a widely used method of identifying suspects in criminal cases. However, there have been concerns regarding its reliability and potential for leading to wrongful convictions. Despite the Supreme Court of India's assessment of TIP in various decisions, there is a lack of comprehensive analysis and clarity of its evidentiary value in India. To address this gap, this paper scrutinizes ten relevant Supreme Court decisions to understand the scope and meaning of TIP in the Indian context. Moreover, this paper securitizes the constitutionality of TIP with respect to the Right against Self-Incrimination under the Indian Constitution. Further, the paper provides suggestions for potential improvements in the Indian criminal justice system regarding the use of TIP. The paper identifies areas of concern for the criminal justice system, including missing links that led to the acquittal of accused individuals. This paper enlists crucial areas that call for immediate reforms if justice is to prevail and the truth is to reign supreme. By evaluating TIP's evidentiary value, this paper aims to improve India's legal system and ensure that justice prevails and TIP becomes effective and reliable in the Indian Criminal System.

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Introduction

The term 'Identification Parade' has been defined by Black's Law Dictionary as "*A police identification procedure in which a criminal suspect and other physically similar persons are shown to the victim or a witness to determine whether the suspect can be identified as the perpetrator of the crime.*"². Although very general, this definition does not suffice to define the meaning and scope of the Test Identification Parade (*hereinafter* TIP) in the Indian Context. Unlike this definition, Test Identification Parade can be said to be a process under which the accused or thing in question is identified before the court. The main goal behind doing so is to test the authenticity of the ability of a witness to correctly identify, from several persons, an unknown person whom the witness has seen at the time of occurrence³.

Until the 2005 amendment to the Code of Criminal Procedure (*from now on* CrPC), no specific provision existed regarding the TIP of an accused under the Indian Evidence Act or CrPC⁴. Under this amendment, Section 54A was introduced, giving the court the power to conduct a TIP on an arrested person if such TIP was necessary⁵. However, it is pertinent to note that the TIP is unnecessary. This was established in the case of *State of U.P. v. Sukhpal Singh*⁶, wherein the court noted that if the witness could clearly identify the accused persons and such a person is not a stranger, then the TIP would not be deemed necessary. Similarly, if the accused were caught red-handed, a TIP would not be necessary⁷.

The TIP is part of the investigation stage of Criminal Trials, and if adequate safeguards are ensured, such evidence from the TIP may be used in the Court of Law for corroboration⁸. Regarding the relevance of TIP, Section 9 of the Indian Evidence Act clearly outlines that facts that establish the identity of anything or person whose identity is relevant are considered relevant⁹. Therefore, it is clear that the TIP is legally valid in India regarding relevancy and

²Identification Parade Definition, Black's Law Dictionary (9th ed. 2009), available at Westlaw.

³Ravi Anand, *Proof of the Identification Parade*, Social Science Research Network (2009). Available at SSRN: <https://ssrn.com/abstract=1372353>.

⁴BATUK LAL, THE LAW OF EVIDENCE 132 (Central Law Agency, 22d ed. 2018).

⁵The Code of Criminal Procedure, 1973, §54A.

⁶State of U.P. v. Sukhpal Singh, AIR 2009 SC 1733.

⁷Kishore Prabhakar Sawant V. State of Maharashtra, AIR 1999 SC 1462.

⁸BATUK LAL, THE LAW OF EVIDENCE 132 (Central Law Agency, 22d ed. 2018).

⁹The Indian Evidence Act, 1872, §9.

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admissibility. However, in any case, the evidentiary value of a TIP is only to test and strengthen the trustworthiness of substantive evidence of a witness in court¹⁰.

Nevertheless, the reliability of TIP is not absolute, and Courts have often dismissed the admissibility of TIPs on the ground that such TIPs were not conducted in the manner prescribed by the Courts. This paper aims to first establish the evidentiary value of the TIP in the Courts of Law with the help of evolving jurisprudence. The paper shall then explore the potential contribution TIPs might have in wrongful convictions in India. Finally, the paper shall discuss the constitutional validity of TIPs in India regarding the Right of Self-Incrimination and whether TIPs, in light of this, can be considered valid evidence before a Court of Law. After analyzing these areas of TIP, the paper shall conclude the current evidentiary value of TIP in India and put forth suggestions to advance further the fairness and reliability of the evidentiary value of TIP in India.

Evidentiary Value of Test Identification Parade in India

Undoubtedly, the TIP has a place in the Indian Criminal Legal System. However, examining the scope of the TIP and its objectives is pertinent. In the case of *Budhsen vs. State Of U.P.*¹¹, the Supreme Court discussed at length the importance of TIP in the investigation. In the case, a convicted murderer challenged his sentence based on the primary identification proof given by the victim's wife, who had observed the crime. The appellant claimed that the police TIP was untrustworthy and defective because witnesses were only shown his picture, not those of other people who looked like him. The Supreme Court established two goals for the TIP: first, to determine the name of the accused and corroborate the witness's evidence before the trial, and second, to test the witness's memory. In a criminal trial, establishing the offender's identity is critical because the individual who did the offense is frequently contested, even if the crime itself is not. Hence, the accused's identity becomes relevant.

The Supreme Court recognized the restricted evidence value of the Test Identification Parade in the case of the *State Of Himachal Pradesh vs. Lekh Raj*¹². TIP can be deemed a safe guideline

¹⁰Ram Babu v. State of U.P., AIR 2010 SC 2143.

¹¹Budhsen vs State Of U.P, 1970 Cr.L.J. 1149

¹² State of H.P. v. Lekh Raj, AIR 1999 SC 3916.

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of prudence to usually seek corroboration of the witness's evidence in court regarding the identity of the accused, mainly when they are strangers to the witness, the court noted. In this instance, the victim was raped by two accused, and a TIP was not performed because the victim could not adequately describe the accused. The court determined that while failing to perform a TIP may not be deadly, naming the accused for the first time during the trial is intrinsically insufficient evidence. The court said that even if a TIP was performed, it could not be used as the only and most reliable proof to support the accused's conviction. As a result, the court determined that TIP's evidentiary worth is confined to correlating the witness' testimony and is not deemed substantive proof.

It is a well-established concept that if a witness recognizes the accused for the first time in court, the probative value of such evidence diminishes, and relying on it without corroboration is usually risky. However, in *Dana Yadav v. State Of Bihar*¹³, the Supreme Court recognized that in extraordinary situations where the single evidence of a witness can be depended on for judgment, this general rule could be circumvented. For example, the judge may be impressed by a specific witness and believe their testimony is reliable enough to depend on without further investigation. As a result, relying on TIP is only sometimes essential, as particular sole testimonies can be deemed adequate even without the corroborative character of TIP.

Additionally, as it was established, one of the Objectives of the TIP is to establish the truthfulness of a witness. In this regard, in the case of *Hare Krishna Singh v. State Of Bihar*¹⁴, regarding the killing of the deceased by seven accused, the witness failed to identify one of the accused in the TIP and subsequently identified the accused before the court. Reversing the High Court order, the Supreme Court found that the failure to identify an accused during TIP would render any subsequent identification before the court useless. Therefore, the corroboratory value of TIP is enhanced to provide that TIP may contradict a later title, thereby pointing out inconsistencies in a Witness Testimony and testing out the veracity of a witness.

Finally, another critical aspect of the evidentiary value of TIP is enshrined in the case of *Kiwan Prakash Pandurang Mokash v. State of Maharashtra*ⁱⁿ a case dealing with murder, the

¹³Dana Yadav & Ors v. State Of Bihar, (2002) 7 SCC 295,

¹⁴Hare Krishna Singh v. State Of Bihar, AIR 1988 SC 863

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Supreme Court observed that the refusal to appear for TIP could result in an adverse inference of guilt being drawn by the Court under Section 54A of the CrPC. Therefore, the evidentiary value of the TIP has expanded to such that the court can infer guilt from the refusal of TIP, which expands into the evidentiary value of TIP.

Therefore, while TIP is primary evidence, it cannot be conclusive. The value of TIP remains entirely corroborative for the substantive evidence. However, in some instances, TIP can also be used in other scenarios, such as to indicate the veracity of a witness and draw adverse guilt on an accused by refusing to participate in a TIP. Thus, the evidentiary value of TIP, although not necessary and fatal to a decision by a court in most cases, tends to provide a sufficient amount of evidentiary value to help decide the judgment to be delivered by the court.

TIP a Contributing Factor to Wrongful Convictions in India

The Evidentiary value of TIP is not substantive; however, it cannot be denied that its evidentiary value is corroborative, and it is possible that TIP could result in false identification and wrongful conviction. Although eyewitness testimony is often a significant and valuable form of evidence, globally, errors in eyewitness identification are known to be a leading cause of wrongful convictions¹⁵. Oftentimes, witnesses are asked to identify an accused when they have a limited vision of the natural occurrence and are often in confusing circumstances. Even if such mistakes are made in good faith, they could harm a case. A study found that 52% of wrongful conviction cases were due to erroneous and false eye-witness¹⁶. Thus, it is possible that criminal conviction from TIP can also be one such factor contributing to criminal convictions in India.

In the case of *Wakil Singh. Vs. State Of Bihar*¹⁷, the Supreme Court overturned the decision of the High Court in an appeal as to the conviction of the accused based on the testimony of a single witness and overlooking the fact that the TIP was held three months after the crime. The Supreme Court observed that in light of the delay of TIP and single witness testimony, the benefit of the doubt would be given to the accused, and the possibility of wrongful identification remained possible.

¹⁵Heather L. Price, "Judicial Discussion of Eye-witness Identification Evidence" 49 CJBS 209–220 (2017).

¹⁶ Arye Rattner, *Convicted but Innocent: Wrongful Conviction and the Criminal Justice System*, 12(3) LAW AND HUMAN BEHAVIOR, 283 (1988).

¹⁷Waqil Singh v. State of Bihar, AIR 1981 SC 1392.

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From the above case, it can be seen that such circumstances could often result in the wrongful conviction of the accused based solely on wrongly identified TIP and witness testimony. If the High Court could find the accused guilty, it is very likely that such a circumstance is familiar amongst the lower courts, if not the High Courts of India.

The delay in having a Test Identification Parade (TIP) is frequently considered by courts when evaluating its legitimacy. The TIP may only be admissible if the judge is pleased with a reasonable justification for the delay. The Supreme Court ruled in *Rajesh Govind Jogesh v. State of Maharashtra*¹⁸ that the Investigating Officer's explanation that no judge was available in Bombay for five weeks to oversee the TIP could have been better. However, in *Murarilal Jivaram Sharma v. State of Maharashtra*¹⁹, a 2-month delay in having a TIP was deemed an adequate explanation. In this instance, the Investigating Officer repeatedly requested that the judge conduct the TIP, but the magistrate could not do so due to prior commitments. As a result, the validity of a TIP is decided on a case-by-case basis, taking into account the reason for any delay in having it.

Therefore, while TIP has strict standards and guidelines to abide by, it does not remove the possibility of a wrongful conviction on the grounds of a wrongful identification. While delay and other factors may play a role in assessing the validity of a witness, there remains no guarantee that such an assessment would protect the interests of an accused wrongfully convicted of a crime. Therefore, the problem of the evidentiary value of TIP allowing for wrongful convictions remains a significant problem in the Criminal Legal System of India.

TIP is Constitutionally Valid under Article 20(3) of the Constitution

The process of TIP involves the lining up of the accused for the sake of identification by a witness as to the presence of the accused at the occurrence of the crime. However, the refusal of the accused to be present at the time of the TIP would result in an adverse inference of guilt on the part of the accused. This results in the question of whether TIP is constitutionally valid as

¹⁸Rajesh Govind Jogesh v. State of Maharashtra, AIR 2000 SC 160.

¹⁹Murarilal Jivaram Sharma v. State of Maharashtra, AIR 1997 SC 159.

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Article 20(3), commonly referred to as the Right against Self-incrimination, outlines that no accused shall be compelled to be a witness against himself²⁰.

The scope of Article 20(3) was primarily discussed in the case of *M.P.Sharma v. Satish Chandra*²¹, wherein the collection of evidence from the custody of the accused was contended to be in violation of Article 20(3) of the Indian Constitution. The contending side has abridged various American Case laws to showcase the liberal interpretation that Article 20(3) not only refers to the oral testimony alone but includes documentary evidence in the custody of an accused. The court noted that a violation of the Right against Self-Incrimination would occur if the accused were forced to provide evidentiary documents which may support a case against the accused. However, this cannot render a judicial warrant of seizure issued against such evidence.

In the case of *Peare Lal Show v. The State*²², the court examined the scope of TIP in light of Article 20(3). Relying on the above judgment, the court noted that every positive volitional act which furnishes evidence would be a testimony and could amount to a violation of Article 20(3); however, in the case of TIP, the accused, although it may be considered to be compelled to attend is not doing any positive act. The identification by a witness is not his act, and thus, it cannot be said to be in violation of Article 20(3) of the Indian Constitution.

This was similarly seen in the case of *Subayya Goundar v. B. Subramaniam*²³, the learned single judge of the Madras High Court referred to an American Case of *Holt v. United States*²⁴, wherein it was stated that,

"It is not a violation of the privilege against self-incrimination to require an accused to put on a hat or another garment, or to stand up, or to move his foot so that it can be seen, or to make a foot-print because in all such cases, he is not giving testimony but is exhibiting facts."

Therefore, it cannot, in any case, be said that the evidentiary value of a TIP is self-incriminating against the accused. For Article 20(3) to be triggered, there needs to be a positive act; however, in the process of a TIP, the witness is the one who commits the act of identification, and hence,

²⁰INDIA CONST. art. 20, cl. 3.

²¹M.P. Sharma v. Satish Chandra, AIR 1954 SC 300

²²Peare Lal Show v. The State, AIR 1961 Cal 531

²³Subayya Goundar v. B. Subramaniam, AIR 1959 Mad 396.

²⁴Holt v. United States (1910) 218 U.S. 245.

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no right against self-incrimination is violated at the time of TIP. Therefore, the evidentiary value of TIP is not tainted and remains vital and corroborative towards the prosecution of an accused.

Conclusion

In conclusion, the TIP is a crucial process in India's criminal justice system as it helps identify the perpetrator of a crime. The paper reveals that TIP is an essential tool for the police and the judiciary to identify the accused, and its evidentiary value must be maintained. However, it is equally essential to ensure that TIP is conducted fairly and unbiasedly, without any suggestive influence or coercion. Moreover, it has been established that TIP alone will not be enough to convict an accused, and the role of TIP is corroborative in nature. However, despite this safeguard wherein conviction alone cannot be based on TIP, it is very well possible that TIP may be a significant factor leading to wrongful convictions. It was also established that the process of TIP is not violative of the Indian Constitution under Article 20(3) as there exists no positive act by the accused in this process. Therefore, its validity in the Indian Scenario continues to remain. If the evolution of TIP was to be restricted to what exists now, many individuals would likely lose their freedom erroneously. Therefore, although TIP is very significant, its value must be considered and be used carefully.

To ensure reliability in the Test Identification Parade that specific issues need to be addressed; firstly, there should be clear guidelines for conducting TIPs. These guidelines should cover aspects such as the composition of the lineup, how the lineup is presented to the witness, and the instructions given to the witness before the lineup is conducted. This would help standardize the TIP procedure across the country and ensure that the procedure is conducted fairly and transparently. Secondly, ensuring that TIPs are undertaken as soon as possible after the crime has been committed is essential. Delay in conducting the TIPs can lead to memory decay, making it difficult for the witness to identify the accused accurately. Thirdly, it is crucial to train the police officers and other officials who conduct TIPs. They should be trained on how to conduct TIPs fairly and transparently without putting undue pressure on the witnesses. Finally, ensuring that the TIP results are not the sole basis for conviction is important. The courts should consider TIP results, other evidence, and factors, such as motive, opportunity, and other corroborative

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evidence. This would help ensure that TIP is not misused to convict innocent individuals wrongfully.



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