



ISSN : 2350-0743



RESEARCH ARTICLE

TEST IDENTIFICATION PARADE-RELEVANCY IN CRIMINAL TRIAL

¹Dr. Aliyar M.E. and ²Varghese, P.A.

¹ Associate Professor, Bharata Mata School of Legal Studies, Aluva, (Formerly Judicial Magistrate); ²Research Scholar, Shri JYT University, Jhunjhunu, Rajasthan (Formerly Dy.S.P, Kerala State Police)

ARTICLE INFO

Article History

Received 20th March, 2025

Received in revised form

17th April, 2025

Accepted 16th May, 2025

Published online 28th June, 2025

Keywords:

Test Identification parade – Relevancy of evidence- u/s. 7 of BSA- Guidelines issued by the Govt. of Kerala-Identity of person/things-probative value of evidence.

*Corresponding author: Dr. Aliyar M.E.

ABSTRACT

Identification of the accused is the crucial aspect of the investigation of a crime. Without proper identification of an accused, it is virtually impossible to complete a criminal investigation. One way to identify the offender or accused particularly when he is unknown to a prime witness, would be the process of Test Identification Parade. So, TIP is widely used as the method of identifying the suspect in criminal cases. But there has been serious concern regarding its reliability and admissibility in evidence why because it may every chance to go for wrong convictions otherwise. The Apex court have delivered so many verdicts in this issue. This research paper scrutinizes the constitutionality of TIPs with respect to the Right against self-incrimination under the Indian Constitution. In addition, in this paper, the researcher tries to provide suggestions for potential improvements in the Criminal Justice System regarding the use of Test Identification Parade. By evaluating TIP's evidentiary value, under the Bharatiya Sakshya Adhiniyam, 2023 may aims to improve India's legal system and ensures that Justice must be seems to be delivered and TIP becomes effective and reliable in the CJS of India.

Copyright©2025, Aliyar and Varghese. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Citation: Dr. Aliyar M.E. and Varghese, P.A. 2025. "Test identification parade-relevancy in criminal trial". *International Journal of Recent Advances in Multidisciplinary Research*, 12, (06), 11350-11356.

INTRODUCTION

"Identification parades" are held at the instance of the investigating office for the purpose of enabling the witnesses to identify either the properties which are the subject matter of alleged offence or the accused persons. Identification parades generally known as TIP, in criminal cases, are held while the cases are under investigation. It is a shred of primary evidence but not substantive evidence and it is used to support the identification of the accused by the witness in a court of law. In *D.Sujata v. S.K. Behem*¹, the Supreme Court of India hold that test identification parade is only an aid to investigation; the practice is not born out of prudence. When a first information report (FIR) is lodged against unknown persons, a test identification parade in terms of *Section 9* of the Indian Evidence Act² (corresponding to *Sec. 7* of the BSA) is to be held for the purposes of testing the capability of the witness to identify persons who were previously unknown to them that they claim to have seen committing the alleged offence. Test Identification Parade (TIP) is always conducted by a Magistrate. Statutes governing Test Identification Parade are the followings:-

- Section 7 of the Bharatiya Sakshya Adhiniyam, 2023. (Sec. 9 of IEA)
- Section 54 of the Bharatiya Nagarik Suraksha Sanhita, 2023. (Sec.54-A of Cr.P.C)
- Section 183 of the BNSS, 2023 (Sec. 184 of Cr.P.C).
- Rule 71 of the Kerala Criminal Rules of Practice.
- Criminal Procedure (Identification) Act, 2022.
- Government Order No. G.O. (MS) 791 Home(A) dated 25-06-1958 issued by the Govt. of Kerala, Trivandrum.
- Identification of Prisoners Act, 1920³.

Section 7 of the BSA deals with two things

- Identity of a person and
- Identity of a thing.

Identification is essential only if the person is not familiar or acquaintance with. So, necessity of Identification Parade is a

¹*Sujata v. S.K. Behem*, AIR 2010(NOC) 812.

² Sec. 7 of BSA, enable to establish the identity of a thing or person whose identity is relevant in connection with a fact in issue.

³ Identification of Prisoners Act 1920 is an Act which relates to identification of prisoners -both convicted and non- convicted – But various rules relating to the holding of T.I.P are based on case law rather than statute. This Act only gives power to the police to take measurements and photographs of persons arrested in connection with offences punishable with R.I. for one year or more.

question to be proved. If there is spot arrest, no question of Test Identification Parade.

WHEN TEST IDENTIFICATION PARADE CAN BE CONDUCTED?

During investigation time: Court has no role in investigation. Section 183 of the BNSS, 2023 provides the procedure for conducting the Test Identification Parade. Confession of an accused or statement of a person other than accused can be permitted to record it even though he does not have jurisdiction at the request of the investigating officer.⁴ However, such confession or statement shall be recorded before the commencement of the inquiry or trial. The legal provision of the Test Identification Parade is Section 7 of the BSA, 2023.

INSTRUCTIONS TO THE MAGISTRATES AND JAIL AUTHORITIES FOR CONDUCTING TEST IDENTIFICATION PARADES: Government of Kerala had issued the following instructions to Magistrates and Jail Authorities regarding the conduct of identification proceedings in G.O.MS. 791 Home (A) dated 25-6-1958 and the District Magistrates should see that these instructions are observed by all Officers concerned.

- When prisoners for identification are admitted to the Jail, the Circle Inspector or Senior Police Officer will inform the Jailor at the time of admission, or as soon as thereafter as possible, that identification proceedings will be held. On receipt of such information, the Superintendent of the Jail will issue instructions to prevent the prisoners being disguised or their appearances changed in such a way as to make recognition difficult such prisoners should be required to keep their hair in the same state until identification proceedings are held and they must not grow a beard if clean shaved or vice versa. During identification proceedings, the prisoners should ordinarily wear the same clothes as they were wearing at the time of admission unless the Magistrate who conducts the proceedings otherwise directs.
- The Magistrate who attends the identification will of course take charge of the proceedings and jail officials will obey his order. The prisoners to be identified should be placed among a member of other prisoners and should not be allowed to conceal their faces or stature so as to impede recognition. In case the number of suspects is one or two, the number of other undertrials (UT Prisoners) in the parade may generally be in proportion of nine or ten per suspect.
- Where the number is larger, they may be mixed in the proportion of not less than five undertrials per suspect. Care should, however, be taken to avoid unnecessarily long parades and this may be done by dividing up the suspects into two or three batches for identification. It is noted that care will, however, have to be taken that the same undertrials are not made to stand in more than one parade.
- So far as possible, there should be in the parade for each suspect, a fair number of under-trials who have the same general appearance and belong to the same age group. If

any of the suspects has a beard or small-pox marks every endeavor should be made to get as many persons with similar beards or small-pox marks in the parade as possible. If any of the suspects has a scar, a mole, pierced ears, a blind eye, a split or any other distinctive mark, efforts should be made to have others having as far as possible similar peculiarities and belonging to the same age group as the suspects, standing in different places in the parade.

- The question of clothing presents some difficulty. Ordinarily every prisoner should wear the clothes in which he was admitted in the jail. There should be no attempt to disguise; prisoners should not be allowed to exchange clothing, and if a prisoner cannot wear his own clothes, he should wear clothes of a similar kind; that is to say, if he is a field labourer, he should not be dressed in the white clothes of a city man or vice versa.
- If, however, a prisoner is wearing conspicuous garment such as a pick turban of a curious pattern, the Magistrate should consider whether the prisoner should be allowed to wear such garment to avoid the possibility of the witnesses making the identification on account of such distinctive mark.
- The Magistrate conducting the identification must at the very time make a record of his proceedings. He should note therein Whether the prosecuting staff or any counsel was present at the proceedings, the precautions taken at the time of identification the number of under trials mixed with the accused and the result of the identification made together with any other matter needing mention.
- The intention of these instructions is to assist in ensuring that identification proceedings shall afford a fair test neither unduly severe no unduly easy, of a witness ability to identify an accused who is alleged to have been seen before under circumstances connected with the commission of the offence. The effect of the instruction, if properly carried out will be to render it difficult for an accused by making alterations in his personal appearance, to vitiate an honest attempt at identification.
- It is further stated that during identification proceedings, the prisoners should ordinarily wear the same clothes as they were wearing at the time of admission unless the Magistrates who conducts the proceedings otherwise directs. This discretion by Magistrates must be retained, but it is important that the ordinary rules should not be deviated from without good reason and this should be impressed on all Magistrates concerned.

GUIDELINES FOR THE IDENTIFICATION OF PROPERTY

- Property to be identified should be sealed by Investigating Officer in the presence of the persons who witnessed its recovery and who should then sign or affix their thumb impression on the wrapper containing the property in token that it was duly sealed in their presence. The seals affixed should thereafter be left intact and should only be broken when the parcel is opened by the Magistrate at the time of conducting the identification.
- In submitting his report for identification of property the Investigating Officer should clearly indicate what particular articles are expected to be identified by each witness and shall also furnish in respect of each article for identification such description as is available in order

⁴ Proviso-1 to Sec. 183 BNSS mandates that any confession or statement made under Sub-section (1) of Sec. 183 may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence.

to enable the Magistrate to instruct the Tahsildar or contractor regarding the number, nature and kind of articles required to be mixed.

- In order that sufficient articles of the required description will be available on the date proceedings are held, the Magistrate will in the first instance obtain from the Tahsildar or Contractor, as the case may be, a written report or intimation that the articles required will be forthcoming and the date by which they will be available.
- On receipt of such report or intimation, the Magistrate will then fix a date, time and place for the proceedings.
- The District Magistrate should see that satisfactory arrangements have been made in the district for the supply of similar articles to be mixed with property to be identified.
- Where it is found that identification proceedings have to be frequently postponed owing to the inability or neglect of the Contractor to produce suitable articles to be mixed, steps should be taken to remedy the matter, if necessary, by appointing any other suitable person to undertake these duties or by making other arrangements.
- It is essential that the Tahsildar or Contractor producing property to be mixed should be clearly instructed that all such property must be enclosed in a covering and sealed before being taken to the place where identification will be held and that the property must be produced seal intact before the Magistrate conducting the inquiry. It must be clearly understood that the person producing property to be mixed before the Magistrate must be able to ensure the latter that such articles had not been seen by the witnesses before the proceeding: —
- The bundle or bundles of property to be identified produced by the Police Officer should be sealed intact and the Magistrate should note whether the wrapper bears any signature or thumb impressions in attestation of the seals.
- Note should be made whether the bundle or bundle of articles to be mixed produced by the Tahsildar or Contractor are duly sealed and the Tahsildar Official or the Contractor bringing the bundles should be questioned so as to make sure that such articles have not been seen by the witnesses. The bundle should be opened and articles mixed in presence of the Magistrate. He should note whether the articles mixed were similar in appearance to those for identification subject to any exception which should be noted.
- Witnesses should be kept outside at a distance and in such place that they cannot see what is going on; witnesses should not be able to communicate with or after identifying make signs to incoming witnesses.
- The signature or thumb impression of each witness should be taken against his name after he had identified.
- Unless there is special reason to do so, it is ordinarily unnecessary to hold identification proceedings of property: —
 - in cases where there is no possibility that the articles recovered will be claimed by the accused; or
 - where the property to be identified is so clearly described in a report previously made, as to establish its identity; and

- (1) is either of such a distinctive nature that it will not be possible to obtain like articles of similar description to be mixed for identification; or
- (2) where similar articles cannot be obtained within a reasonable period of time.
- Thus, where a special kind of article bearing a particular mark is so described in the first information report, it would in such case be ordinarily unnecessary to hold identification proceedings as the very marks described would be sufficient to identify the articles.

RULES TO BE FOLLOWED BY MAGISTRATE FOR TEST IDENTIFICATION PARADE

- On requisition from police, - Magistrate shall conduct TI parade as expeditiously as possible.
- Where bail application pending for the release of the accused and on being informed so by police, the Magistrate shall as far as possibly fix a date earlier to the date of arguments on the bail application and hold the identification.
- As far as possible, non-suspects selected for the parade shall be of the same age, height general appearance and position in life as that of the accused. Where a suspect wear any conspicuous garment/dress, the magistrate conducting the parade shall, if possible, either arrange for similar wear to other or induce the suspected person to remove such garments.
- The accused shall be allowed to select his own position and should be expressly asked if he has any objection to the person present with him or the arrangements made. It is desirable to change the order in which the suspects have been placed at the parade during the interval between the departure of one witness and the arrival of another.
- The witness who has been summoned for the parade shall be kept out of the view of the parade and shall be) Before witness is called up on to identify the suspect, he should be asked whether he admits prior acquaintance with any suspect whom he proposes to identify.
- He shall also be asked to state the marks of identification by which he can identify the suspects. prevented from seeing the prisoner before he is paraded with others.
- Each witness shall be fetched by a person separately. The witness shall be introduced one by one and on leaving shall not be allowed to communicate with witness still waiting to see the persons paraded.
- Every circumstance connected with the identification including the act if any attributed to the person who is identified shall be carefully recorded by the officer conducting it, whether the accused or any other person is identified or not. Particularly any objection by any suspect to any point in the proceedings shall be recorded.

IDENTIFICATION PARADE BY PRIVATE PERSON

If the services of a Magistrate are not easily procurable, the identification parade may be conducted by independent persons of the locality, not in any way connected with or concerned with the case.

- After making all arrangement for the parade, the Police Officers should completely efface themselves, leaving it to the Panchayatdars to conduct the actual identification proceedings.

- The proceedings of an identification parade cannot be used as evidence against accused persons, unless the Magistrate or Panchayatdar who recorded it has been called as a witness.

What are statements? Which of the persons associated with you?

Statement is not defined nowhere in the Bharatiya Sakshya Adhiniyam, 2023 or the Indian Evidence Act, 1872. An action in response to a question is presumed to be a statement like gestures, shaking of head, pointing out of a person etc. Gestures not related to a question are not statement.

Example: - Soliloquy [talking to oneself]

HOW DOES TIP COMMENCE?

Request is to be come from the Investigation Officer

Section 54 of BNSS, 2023⁵ deals with the Identification of an arrested person. Under Section 54a Magistrate is having power to conduct a Test Identification Parade. Rule 71 of the Kerala Criminal Rules of Practice demands that the requisition by Police is to be made to **CJM** (Chief Judicial Magistrate). As per **section 183 of BNSS⁶** no need jurisdiction to conduct TIP. However, **under section 54 of BNSS**, Magistrate having jurisdiction only can conduct a TI parade. By virtue of **Rule 71** of the Kerala Criminal Rules of Practice, the Chief Judicial Magistrate can nominate a Magistrate subordinate to him for conducting a Test Identification Parade. We cannot compel a person to participate a Test Identification Parade. If he refuses, the only remedy available to a court is take adverse inference.

STEPS FOR TEST IDENTIFICATION PARADE

- Apply to a Magistrate having jurisdiction to give direction to the Person subject for Identification.
- Then approach the CJM to nominate a Magistrate to conduct TIP
- CJM nominate a Magistrate for conducting TIP
- Magistrate prepares TIP report and memorandum.

HOW CAN WE PROVE A TIP BEFORE COURT?

- By tendering through witness.
- With the consent of the party.
- If law declares.

PROBATIVE VALUE OF TIP

- It is only previous statement not substantive evidence.
- It is not evidence in the case.
- So, it cannot be tendered as evidence in court.
- It can be used only for corroboration or contradiction.

The evidence of test identification parade is not substantial piece of evidence but only has a corroborative value. In *Heera v. State of Rajasthan*⁷, Supreme Court held that the

identification parades belong to the stage of investigation. They do not constitute substantive evidence. In *George v. State of Kerala*⁸, the court held that TIP corroborates the testimony of the witness and the identification of the accused.

EVIDENCE means a statement by a witness made before court on oath. The person who identified is to be examined first before examining the Magistrate who conducted the TIP. Substantive evidence is the evidence or statement given by the witness before court. If the witness could not identify the person before court, then the TIP is irrelevant further. If he identifies the person, then it can be used for corroboration.

HOW TO CONDUCT A TEST IDENTIFICATION PARADE?

Once a Magistrate has got a direction from the CJM to conduct a TIP

- Inform it immediately to the Investigation Officer and direct him to produce all the relevant records.
- The Magistrate should ensure that the suspected person's details including photo identity never discloses during the time of arrest and subsequent investigation proceedings.
- Intimate the Jail authority about conducting of TIP and not allowed anybody from outside to see the suspect and direct him to make necessary arrangements for the Parade.
- Don't show the suspect to anybody.
- Conduct TIP inside the Jail where the suspect is lodged and minimize the opportunity to see him.
- Issue NOTICE to witnesses through the Investigation Officer directing them to present inside the Jail premises. Notice should contain the Time and Date.
- Privacy should be secured for the Parade from viewing the parade by the Public.
- The Magistrate shall not take him with any Police Officers. Exclude all Policemen from the Jail premises.
- Ask the Jail authority to produce jail inmates with similar physical features of the suspect at least 10 numbers.
- No Jail Authority shall have contacts with the suspect and non-suspects.
- Keep all the witnesses in a room away from the Spot of Parade giving no chance to viewing the Parade?
- Signals or pre-arranged movements indicating the suspect should be watched.
- Provide similar dresses to all in the TIP.
- Suspect and Non-suspect do not know each other.
- If the suspect has a noticeable specially likes mole or scar of identification that should be covered.
- Prepare the list of witnesses along with their addresses.
- Obtain signature of each witness present for the TIP.
- Prepare the list of suspects and non-suspects with addresses.
- Prepare Memorandum (Minutes) or proceeding paper. Write down all the arrangements made for the TIP.
- The age of the witnesses should be noted.
- The suspects and non-suspects should be mixed.
- Send our staff to bring one of the witnesses.
- Ask him to identify the culprit.
- Make sure that the witness had any previous acquaintance with the suspects and non-suspects.

⁵ Corresponding to Sec. 54-A of Code of Criminal Procedure, 1973.

⁶ Corresponding to Sec. 164 of Code of Criminal Procedure, 1973.

⁷ *Heera v. State of Rajasthan*, AIR 2007 SC 2425

⁸ *George v. State of Kerala*, AIR 1998 SC 1376

- Record objections, if any raised by the accused.
- Witness identified *S1/W1* as the assailant.
- Keep the witnesses after identification in a separate room.
- Change or shuffle the Row before Identification by the second witness.

No statutory provision as to how a TIP is to be conducted. No oath is required for TIP and Dying Declaration. Magistrate has power to give oath to witness u/s. 183(5) BNSS 2023. Delay in conducting the TIP may be fatal to the prosecution.

- You need not record any statement other than statement relevant to TIP during the course of Parade.
- Record that the Parade is over at -----AM/PM on-----
- Prepare Report.
- Send the Original Report to the Magistrate having jurisdiction to try the case with intimation to CJM.
- Send a compliance report to CJM.
- Keep a copy of the Report and minutes with you for future references.
- No oath is to be administered.

Asecond TIP is not permitted. Ensure that the first TIP is proper. For preparation of minutes please refer Civil Rules of Practice.

HOW IDENTITY CAN BE ESTABLISHED?

- By Appearance
- By Name.

Will TIP come under the purview of previous statement?: Sec.7 of BSA speaks only of a proceeding in the Court. If the enabling provision is 54 of BNSS, then where not there any TIP before the amendment. Sec. 54 of BNSS does not empower any person to conduct TIP. TIP is to be conducted during investigation solely upon the request of the Officer in charge of a Police Station. Sec.183 of BNSS is the only provision which enables the Court to participate in an investigation. Thus, TIP is conducted as per procedure laid down in Sec.183 of the BNSS 2023.

Sec. 54 of BNSS says "**Court having jurisdiction**".⁹ But Sec.183 BNSS says "**Court having jurisdiction or not**". Sec. 54 BNSS. does not agree with Rule 71 of Cr.RP or with Sec.183 of the Bharatiya Nagaarik Suraksha Sanhita, 2023. The reason is that Sec. 54 BNSS gives the Magistrate the power to direct a person to appear for TIP. It does not ask the Magistrate having jurisdiction to conduct TIP. After the Magistrate makes such direction u/s.54 of BNSS, the SHO shall under R.71 of Cr.RP approach CJM saying that the Magistrate has already directed the person to undergo TIP. Then the CJM shall depute any Magistrate having jurisdiction or not to conduct TIP. Thus Sec. 54 is not in conflict with either Sec. 183 of BNSS or Rule 71 of Criminal Rules Practice of Kerala (CRP). Now the question is whether TIP comes under the provision of Sec. 183 (5) of BNSS. By virtue of

⁹ Proviso to Sec. 54 of BNSS, 2023 says that if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with and the identification process shall be recorded by audio-video electronic means.

183(5) BNSS, oath is to be administered to the person giving statement. But oath need be given only if the statement is best fitted to the circumstances of the case. Thus, oath is not compulsory u/s.183(5)¹⁰ of the Sanhita. TIP is thus to taken u/s.183 (5) of the Sanhitha, even though no oath is administered. TIP recorded u/s.183(5) of BNSS. is a treated in evidence as a previous statement and is not a substantive piece of evidence. (Not at all evidence) Only when the accused is identified in Court, that becomes evidence and can be supported by the TIP report u/s.160 of BSA, 2023¹¹. Without the accused being identified in Court, the TIP report is useless. In order to have the relevancy and admissibility of evidence u/s. 7 of the BSA, the Magistrate who conducted the TIP need not be examined first. The substantive evidence, that is, the witness is to be examined and proved first and then only TIP report can be used to corroborate.

IDENTIFICATION BY PHOTOGRAPHS

Photographs of certain classes of criminals are maintained in the District Intelligence Bureau/DCRB/State Crime Record Bureau. Photographs exist also for dossier criminals. Witnesses may be shown the photographs and asked to identify them. In cases where criminals are identified through photographs, a regular identification parade should also be held after the apprehension of the accused. (2) When identification is sought to be made through photographs, single and individual photographs should not be shown to witnesses. Photographs of as many persons as possible, among which should be the suspect's photograph, should be shown to the witness, who should be asked to pick out from among them the suspect's photograph, if it is there. In the case of, Kartar Singh Vs. State of Punjab (1994) 3 SCC 569, constitutional validity of Section 22 of TADA was challenged before the Apex Court. The Hon'ble Supreme Court of India held that, Section 22 of TADA was opposed to the fair and reasonable procedure enshrined in Article 21 of the Constitution of India, 1950. In the case of, *Rabinder Kumar Pal Vs. Republic of India (2011) 2 SCC 490*, the Hon'ble Supreme Court of India held that, photo identification of accused and test identification parade are only aides to the investigation conducted by the investigating officer and these do not form substantive evidences. Substantive evidence is the evidence in the court of law on oath. The logic behind test identification parade, which includes photo- identification, lies in the fact that it is only an aid to the investigation, where an accused is not known to the witnesses; the I.O. conducts test identification parade to ensure that he has caught hold of the right person as the accused.

IDENTIFICATION BY VOICE: In the case of, Mohan Singh Vs. State of Bihar, (2011) 9 SCC 272, the trial pertained to an offence concerning conspiracy for murder; here, the witness heard the accused while the accused was demanding money from the victim, and subsequently the witness identified the accused by the voice of the accused. Even prior to the happening of the incident, the witness had some acquaintance with the accused. The court held that, the

¹⁰ Sub Sec. (5) of Sec.183 BSA provides that any statement (other than a confession statement) made under Sub Section (1) shall be recorded in such manner provided for the recording of evidence as, is in the opinion of the Magistrate, best fitted to the circumstances of the case and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

¹¹ Corresponding to Sec. 157 of the Indian Evidence Act)

evidence tendered by the witness, identifying the accused by his voice was reliable.

CREDIBILITY OF IDENTIFICATION PARADE

The conducting of test identification parade should not be delayed. It was held in *Raju Choubey v. State of Chattisgarh*¹², the Supreme Court held that delay in holding test identification parade were not acceptable, as it may give an opportunity to the witness to see and study the features of the accused between their arrest and test identification parade to enable a tutored identification. In *Raman Bhai Naranbhai Patel v. State of Gujrat*¹³, the conviction of the accused was upheld on the basis of solitary evidence of identification of accused by a witness for the first in the Court. Similarly in *Prakash Chand Sogani v. State of Rajasthan*¹⁴. In the case of *Thankayyan vs. State of Kerala in (1994) SCC (Cri), 1751*, Accused not previously known to the witnesses. Witnesses identifying the accused for the first time in court. Held that, no reliance can be placed on their evidence. In the case of *Ganpat Singh Vs. State of Rajasthan in (1997) 11 SCC 565*, Appellants shown to the sole eye witnesses in police station who later identified them in TI Parade – Held, no reliance can be placed on such identification and consequently his evidence regarding identification in court after one year cannot be relied upon.

CONCLUSION

The scope of Sec.7 of the Bharatiya Sakshya Adhinyam, 2023, can be extended to facts which establish the identity of a thing or person whose identity is relevant. So, conducting of identification parade by the Investigating Agency is highly inevitable in criminal investigation, especially in serious cases. Section 7 of the BSA makes the test of identification of proper accused and properties admissible and relevant facts in a court of Law, but this Act does not make it obligatory for the accused to present for the Test Identification Parade by the investigating officer. This problem is tackled in Section 54 of the BNSS. Sec. 54 says that when the identification of an accused by the witness is considered necessary for investigation of such offence in which the accused is arrested, the Court, having jurisdiction, may on the request of the officer in charge of a police station, direct the accused so arrested to subject himself to identification by witness or witnesses in such manner as the Court may deem fit. Like any other law or test, this test (TIP) also has its disadvantages. Some critics say that human memory can be easily manipulated and everyone has their way to analyze the scene. So, witness identifying the accused might not always be accurate and it affects the course of the investigation and also interrupt the process of justice. This can be improved by implementing strict and clear guidelines for the investigation officers which will be fair for both the accused and the witness. Improved process will help the court in delivering the

just judgment. In the case of *Peare Lal Show v. The State*¹⁵, 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*¹⁶, the learned single judge of the Madras High Court referred to an American Case of *Holt v. United States*¹⁷, 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 and therefore, TIP is not unconstitutional.

REFERENCES

1. *Ramakrishnan Mithanlal Sharma v. State of Bombay* (AIR 1955 SC 104) Identification parade in the presence of police officer inadmissible-
2. *Jarnail Singh V. State of Punjab*, AIR 2010 SC. 3699, (2009) SCC. 719) The accused was identified by the witnesses at the time of arrest itself. TI parade became a futile exercise, in consequential.
3. *Mulla V. State of UP* (2010Cr.LJ.1440(SC); AIR 2010 SC 942 (2010) 3 SCC 508) TI Parade has to be held at the stage of investigation. & The identification of accused for the first time in the court is not a basis for conviction but only corroborative evidence.
4. *Umesh Kumar V. State of Bihar*, AIR 2005 SC 726 ;2005 Cr LJ. 098 SC), TI Parade belongs to the stage of investigation and does not constitute substantive evidence. However, the result of TI parade will be of little value.
5. *Mahabir V. State of Delhi*, 2008 Cr.LJ. 3036 SC., Object of holding TI Parade at the investigation stage is to test memory of witness.
6. *Heera V. State of Rajasthan*, AIR 2007, SC 2425; 2007 Cr.LJ. 3514; (2007)3SCC(Cr)461)The identification tests are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation is proceeding on the right line.
7. *(State (NCT of Delhi) V. Navjot Sandhu* (2005) 11 SCC 600; 2005 Cr. LJ 3950; 2005 (3) Crimes 87(SC)., Identification by photographs is permissible under law.
8. GO.791/1958 Home dt.25-6-1958. Issued by the Government of Kerala to Magistrates and police officers relating to the guidelines as how to conduct the Identification Of accused persons.
9. *Thankayyan vs. State of Kerala in (1994) SCC (Cri), 1751*, Accused not previously known to the witnesses and Witnesses identifying the accused for the first time in court. Held that, no reliance can be placed on their evidence.

¹² *Raju Choubey v. State of Chattisgarh*, (AIR 2014 SC 3741 Page 3745)

¹³ *Ramanbhai Naranbhai Patel v. State of Gujrat (1999 AIR SCW 4770)*. In this case the injured who had been physically assaulted in broad day light easily seen the faces of the accused persons assaulting him and their appearance and identity would remain well imprinted in his mind. So conviction of the accused on the basis of this evidence alone, even without conducting an identification parade was upheld.

¹⁴ *Prakash Chand Sogani v. State of Rajasthan*, (Cr. A. No. 92 of 1956) It was held that the failure to hold TIP does not have the effect of weakening the evidence of identification of the accused in the court.

¹⁵ *Peare Lal Show v. The State*, AIR 1961 Cal 531.

¹⁶ *Subayya Goundar v. B. Subramaniam*. AIR 1959 Mad 396.

¹⁷ *Holt v. United States*, (1910) 218 U.S. 245.

10. *Kerala Criminal Rules of Practice*, M E ALIYAR, published by Swamy Law House, Ernakulam, Cochin, Third Edition (2024)
11. *The Bharatiya Nagarik Suraksha Sanhita, 2023*, Bare Act, 2024 Edition, Published by Law & Justice Publishing Co, Delhi.
12. *The Bharatiya Sakshya Adhinyam, 2023*, Bare Act with short notes, 2024 Edition, published by Universal Law Publishing, New Delhi.
13. *Police Diaries, (Statements, Reports, and Investigation)* Namrata Shukla, Edition-2022, published by Kamal Publishers, New Delhi.
14. TEST IDENTIFICATION PARADE, Paper presented by, Sri. V. Srinivasa Rao, XVI Additional District Judge, Nandigram (2014)
15. Indian Kanoon: <https://indiankanoon.org/>
16. Legal India: <https://www.legalindia.com/>
17. Bar and Bench: <https://www.barandbench.com/>
18. National Law University Delhi: <https://nludelhi.ac.in/>
19. Law Commission of India Reports: <https://lawcommissionofindia.nic.in>
20. LexisNexis India: <https://www.lexisnexus.co.in/>
21. SCC online: <https://www.sconline.com/>¹⁸
22. Kartar Singh Vs. State of Punjab (1994) 3 SCC 569.
23. Peare Lal Show v. The State, AIR 1961 Cal 531.
24. Subayya Goundar v. B. Subramaniam. AIR 1959 Mad 396.
25. Holt v. United States, (1910) 218 U.S. 245.
