Validity of Test Identification Parade as an Admissible Piece of Evidence

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ABSTRACT

This paper puts its focus on the admissibility criteria of evidence that is obtained through the conduct of test identification parade, which is then followed by several landmark case laws that deal either with evidence that is obtained through video or audio form, through the conduct of test identification parade. The importance of holding the parade in a certain manner for instance the presence of magistrate is also been put into discussion along with the laws in the Indian judiciary that support the test identification parade as a mechanism for collecting evidence.
Introduction

Test Identification parade is a tool or methodology that is used by the court of law so as to whether the evidence obtained by the police is admissible before the court of law. It is basically a way for the court of law so as to gather evidence in the specific scenario when the prime witness of a case has seen the accused either while committing the said offence or while leaving the scene of crime.

Statutes describing Test Identification Parade (TIP)

It has been dealt in the Section 9 of the Indian evidence act according to which the facts that are essential or must for the case law, which support a necessary inference from the case law, or that which help in establishing identity of a person which is relevant or finding the time or correct place where an incident occurred or the facts that explain relation between specific parties to a case are relevant. It also concerns the section 54A of the code of criminal procedure, that deals with how to identify the person that is arrested by the court of law. As it says whenever a person is arrested by the police on the suspicion of a crime that was committed, if the police considers it necessary to identify the person by another person, so in that case with proper permission from the inspector in charge of the case, the court can conduct the necessary identification process. Herein it is necessary to keep in mind that if the person so arrested by the court of law, then the process of identification be done under the command and authority of the judicial magistrate, as other it would be against the principles of the court.
Also, in the case that the person who is giving the testimony before the court of law is mentally ill, then in that case the process should take place with the help of videographer. Section 162 of the code of criminal procedure on the other hand deals with how the statements given by any accused person are not admissible before the court of law whether they may be in writing, or in a manner of confession before the police. For the same reason that police might use brute force for the purpose of getting the confession.

So, for the purpose of test identification parade the presence of the magistrate becomes necessary and the fact that no police officer is present during the identification process, it gives the process a clearance that its not in violation of section 162 of code of criminal procedure.

Article 20(3) of the constitution too is not violated by the process of test identification parade as appearing for the test identification parade does not mean giving testimony, as according to article 20(3) of the constitution no person can be forced to giving testimony, that could be used against him as evidence before the court of law. So, since the system of test identification parade has been used by the court of law for many past years, despite having major loopholes it still stands tall, before all the rest of the alternatives that are available to the court of law. As when it comes to the admissibility of evidence in the court of law we have to take care of the fact, that the evidence obtained is sound and reliable, as while gathering the evidence it’s important to look after the facts such as weight, height, age, color as these facts may prove to be relevant while identifying the person. Alternatives that are there so as to gather and accumulate the evidence includes the videography and voice note procedure, forensic identification, but what the court of law still relies on is Test identification procedure.
As the two negatives that are widely popular when dealing with the system of voice notes is that first that the prime witness has to completely rely on the fact that the voice he is hearing at the time of investigation is whether the same or not, that’s pretty much difficult for anyone to rely on their memory skills so much that they can give proper testimony. As a result of which there have been many cases of false testimony given before the court law that eventually lead to wrong people being convicted of the crime that they never were a part off.

**Relevant Case-Laws**

This puts a big question mark before the court of law whether the evidence obtained is credible enough or not, but as said in the case law of *Dana Yadav vs State of Bihar*¹, herein it was decided by the court of law that it considers the fact that the evidence that is obtained as a result of the conduct of the test identification parade is not of substantial in nature, but it helps in the investigation of the crime for the police department as it instills in them a sense of reliability that the prime witness has identified the culprit and now its just a matter of time before the same thing happens before the court of law and the accused can be convicted of the crime, but in this case the witness who gave testimony during the test identification parade and rightly identified the culprit but before the magistrate he could not do the same as he was said to be frightened, so with adequate remarks from the judge of the trial court it was decided that the evidence can be submitted before the trial court as the prime witness had earlier identified the accused during the test identification parade. In another case law that highlights how important the procedure of test identification parade is the case law of *Ramanath vs state of Tamil nadu*², as it is said by the judge in the judgement that this whole process has been an integral part of the judicial system for quite some time, although the evidence that is gathered would be of primary nature, but it helps in the identification of the accused, and the credibility of the witness is also thoroughly tested by the

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¹ 2002 7 SCC 295
² 1978 3 SCC 86
court of law, as many suspects are made to stand before the witness and from there on the witness has to decide.

This helps the police investigating officer to fill in the gap of what really is the identity of the culprit as even after catching the criminal, there has to be someone other than the police department that has seen the culprit at the crime scene or escaping from the same, so the process of test identification parade becomes very essential. So, if we look at what can be the purpose of Test identification parade it is majorly can be seen to be carried out by investigation agencies around the world, and is stated it helps these agencies to actually find out whether the testimony of the witness is credible or not. This can be seen in the landmark case of State of Maharashtra vs Suresh³, as there in the court of law explained the two major reasons for which the test identification parade is conducted by the investigation authorities. The first major test is that the prime witness to have complete satisfaction as in regards to the accused, as if or not the accused is the same person, the prime witness of the case believes was present at the scene of crime.

As many times it’s possible that there may be a confusion in the mind of the witness regarding the identity of the accused. Second reason for the conduct of test identification parade is for the authorities of police to have a breathing space before the actual trial begins in the court of law. As they now have at least some confirmation as to what the identity of accused is, as identified by the witness. Now we look at the procedure as to how the process of test identification parade is carried out under the Indian evidence act. First instance of crime takes place and the police then decides to take the case after a First information report is filled in their station.

³ 1999 5 BOMCR 184
This is followed by the police catching the culprit, who the police believe to be the main suspect of the case. This is then followed by the test identification parade wherein the prime witness has to identify the major accused from a list of people who are of the same bodily features as the accused in the particular case, then if the witness picks up the right person the police authorities know for sure that the witness is telling the truth and the case is heading in the right direction.

Second crucial step involves the conduct of the test identification parade, under which the magistrate in charge has to ensure that he carries out the two essential photocopies of the test identification report and after certifying both of them the magistrate has to take one for the investigating officer and has to keep for report for himself for the purpose of maintenance of records. And no other report should be handed out in the public domain, until and unless the charge sheet for the offence is filed under the section 173 of criminal procedure code.

The document kept with the magistrate should be sealed and termed as strictly confidential as no other officers are allowed to view the same. The test identification parade should be mandatorily conducted in special rooms that should be built in all the prison systems for the purpose of the parade to be carried out with utmost efficiency. The room should be built in a special manner with one side view glass as the key instrument. As the magistrate and the witness should be behind the covered view and the suspects should not be able to see the witness and the magistrate. While the witness should be able to see all the suspects clearly, so that there is no as such difficulty in identifying the main culprit. For this purpose, only the investigating department has to make sure that all the clothes that the suspects are wearing should be well illuminated for the purpose of identification. There should also be a separate space for the suspects to change their attire too. Now we can go through two scenarios’ in which first the test identification parade is a necessity and the second time where the test identification parade is not a must.
First we look at the condition when the test identification parade is a definite necessity, for this we look at the ruling of the court of law that was given in the case law of *Biray Singh vs State*\(^4\), herein it was decided by the court of law that whenever there is a conflict of interest when it comes to the matter of identity of the prime accused, as to what maybe his height, weight, hair color and other features that constitute as part of the identity of the accused.

This is also the case when the witness in the case has never seen the prime accused before in his life before the beginning of the crime scene. So if the witness agrees that, it can identify the prime accused during the test identification parade it becomes essential for the court of law to conduct the test identification parade as it is necessary to identify the accused so that the police and investigating authorities have a upper hand in the court of law, as they have a person who has identified the accused, if the same can done by the witness in the court of law, than the accused would find it difficult before the court to prove it not guilty. It should also be considered by the court of law that the test identification parade be carried out in the presence of a magistrate as otherwise the whole process becomes biased towards the witness, as the police are very much bound to favor their prime witness so that their case becomes strong in the court of law.

**Situations Where TIP not Necessary**

Now we look at what the situation can be when it’s not necessary to conduct the test identification parade. It is said by the court of law and very well recognized too that this process is majorly used a means to gather primary evidence and not substantial evidence, that is which is given in the court of law, so when there is a case scenario in which the witness has seen the accused before the crime scene, they are not completely strangers to each other, in that case the court of law does not have any kind of necessity so as to conduct the test identification parade. As the whole process of the test identification parade is for the witness to identify the accused on the factual scenario that they are completely strangers to each other. So, the witness and accused if they know each other it defeats the whole purpose of identification process.

\(^4\) 1953 *Crl.L.J.*, 1817, Allahabad
As stated by the court of law in the case law of *Heera vs State of Rajasthan*\(^5\), the court herein pushed forward its argument related to the value and purpose of the whole process of test identification parade. As the court said that it is not necessary to conduct the test when the two people witness and accused know each other beforehand, similarly in a case where there is another evidence with the investigating agency that can be used in the court of law as a strong point against the accused, then there is no as such complete necessity to carry out the test identification parade.

As said under section 162 of the act, the evidence gathered under the test identification parade is just the primary evidence, what counts as a significant and essential evidence is that which is used in the court of law, so if for that test the process of test identification parade is not carried out by the court of law it would not mean that the evidence cannot be admitted in the court of law. Now while carrying the procedure of test identification parade it is necessary to keep in mind the certain precautions that the investigating agency has to take care while the test identification parade.

**Possible Precautions**

First of the precautions that have to be kept in mind is that the investigating agency has to ensure that there are not more than two accused that can be present during the operation of a test identification parade. This includes the presence of 12 dummies too, that are there so as to test the accuracy of the prime witness. The police have to ensure that the attire of all the people standing in the parade is same, so that there is no added advantage for the witness. The accused should be mixed among the people in the parade, not should be visible as a different identity all together. Also, there should be a separate changing space if in any case the accused wants to change the attire. Second major precaution that the investigating agency has to take is that there should be a wall between the accused and the witness, the accused should not be able to see the witness.

\(^5\) AIR 2007 SC 2425
Also, if there are more than two witnesses who are testifying than as soon as one parade gets over the first witness has to then immediately leave the room, also there are strict guidelines that the witness is not allowed to have a talk with the second witness.

Also, it has to be kept in mind completely that there is no presence of a police officer during the whole procedure as it would leave in violation of the section 162 of the criminal procedure code and the whole investigation would be in complete doubt and loose its importance as a source of evidence. As far as the credibility of the whole test identification parade is concerned there have been many instances in which the evidence gathered was under doubt as it may be the case that identifier saw the accused during the night time, or maybe the case that the face was covered in these cases it is difficult for the court of law to rely on the evidence that is gathered. The basic premise on which the whole process is carried out whenever there is a crime scene it leaves a heavy mark on your mind with respect to the whole scenario. So, the witness inn majority of the cases due to the immediate shock value of the incident remembers the detail of the incident, time, place of occurrence of the incident and the face of the accused too.

So, it completely relies on the memory retention power of the witness. As can be seen in the case law of Ramanbhai Naranbhai Patel vs State of Gujarat6, the witness testimony was considered as an evidence in the court of law because the whole crime scene happened during broad daylight so it’s very much possible that the witness was able to recollect all the memories of the day during the test identification parade. Next we look at the instance or the case law where there was an instance of irregularity of conduct of test identification parade. Normally what the scenario is that the test should be conducted as soon as possible after the scene of crime there should not be any kind of unnecessary delay and if there is one the adequate reasons should be mentioned before the court of law.

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6 1999 AIR SCW 4770
For this we look at the case law of *Muralilal Jivaram Sharma vs State of Maharashtra*\(^7\), herein there was significant amount of delay in conduct of the test identification parade, as there was even letter sent to magistrate about the same, but the magistrate was not present at that time, but still the evidence that was gathered here was considered as adequate and it did not lose its evidentiary value too.

There is also a provision for the instance when the witness of the case is blind. As seen in the case law of *Dola alias Dolagobinda Pradhan vs state of Odisha*\(^8\), the evidence of the witness was considered on the basis of voice identification, herein the court of law gave the ruling that if the witness is believed to be in close proximity to the accused during the crime scene that it can recognize the voice of the accused than the evidence can be admitted in the court of law. Although we have to keep in mind that the voice recognition is too fragile of an evidence but if the court believes in the credibility of the evidence than it can be considered in the court of law.

**Conclusion**

So, the test identification parade as a process has been of immense benefit for the past many years for the Indian judiciary system, but it still has many flaws which need to be taken care off. there needs to be strict implementation of the rules when it comes to the interference of the police officers during the parade, also there needs to be more test identification parade centers that need to be made so that the process is carried out more efficiently.

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\(^7\) AIR 1997 SC 1593  
\(^8\) 2018 18 SCC 695