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## Test Identification Parade: A Duty to Cooperate or a Right to Refuse?

*Avula Vishnu Smarana*

### What is a Test Identification Parade?

A Test Identification Parade (TIP) is an investigative technique that police officers employ when the person they are trying to identify is not known to the witness. The suspect is presented to a group of volunteers who look like him and the witness is told to pick out the person they saw at the scene of the crime. TIP is NOT substantive evidence of guilt. It is just an aid to corroboration. The actual substantive proof is the identification of the witness in court on oath.

No person shall be compelled to be a witness against himself or herself" Article 20(3)<sup>1</sup> of the Constitution. The right to not be compelled to speak, or to provide documents, to an accused. For decades, legal scholars have been debating whether “standing quietly in a line-up” is included in this protection. Is forcing somebody to show their body for identification, compelled testimony?

### The Supreme Court's Ruling in *Mukesh Singh v. State* (2023)

In *Mukesh Singh v. State* (NCT of Delhi)<sup>2</sup>, the Supreme Court held that the accused has a duty to do a TIP. The Court determined that being in a line-up is not a "testimonial act. Article 20(3) is not breached as the accused does not speak and actively produce evidence. It further

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<sup>1</sup> CONST. art. 20, cl. 3.

<sup>2</sup> *Mukesh Singh v. State* (NCT of Delhi), 2023 SCC OnLine SC

observed that participation can be ordered under Section 54A of the Criminal Procedure Code and if the accused refuses, the same can be recorded against him.

### **Why Experts Disagree:**

This judgment has been strongly condemned by legal experts, such as Vidhi Centre for Legal Policy. They claim that the Court erred in interpreting Section 54A<sup>3</sup>. The provision includes the word 'may' which allows discretion of a magistrate in issuing a parade. It has no specific mandatory statutory responsibility on the accused. Second, it fails to appreciate the difference between a TIP while under investigation and a substantive evidence-gathering process. The Vidhi analysis finds that the order raises questions about the meaning of 'compelled participation'.

The most important objection to it is that of psychological force. In the famous *Selvi v. State of Karnataka* (2010 case)<sup>4</sup>, the Supreme Court established that psychological pressures are included in the definition of compulsion found in Article 20(3). Any procedure which obtains information from a person's mind or body, without his or her consent, infringes the right against self-incrimination. Being told that refusing means that it will be taken against them; particularly when they are in a custody situation, standing in a line up in front of a bunch of cops, is not a voluntary act. Forcing an accused to stand for identification is, according to critics, a psychological coercion which Article 20(3) sought to prevent.

### **The Law Commission's Reports**

The Law Commission of India has also touched upon the issue of identification in a few reports. In its 185th Report on "Review of the Indian Evidence Act" it had pointed out that TIPs are investigational and not substantive evidence.<sup>5</sup> The Commission has also recognized that TIPs can be a useful tool, but that enforcement without minimal protections, including a lawyer or a magistrate, may be unconstitutional. The Commission has suggested explicit criteria for voluntary participation or the automatic penalty for refusing to participate.

### **What Happens When an Accused Refuses?**

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<sup>3</sup> Code of Criminal Procedure, No. 2 of 1974, § 54A (India).

<sup>4</sup> *Selvi v. State of Karnataka*, (2010) 7 S.C.C. 263 (India).

<sup>5</sup> Indian Evidence Act (2003): 185th Report of Law Comm'n of India.

The police are not allowed to physically put an accused person in a line-up. There is no provision allowing them to use physical force for this purpose. Judges, however, have the right to "draw an adverse inference" against the accused who refuses without a good cause. In *Amar Kumar Gupta v. State* (2013)<sup>6</sup>, the Delhi High Court noted that the accused's refusal was not justifiable and an adverse inference could be made. This implies that if the accused had taken part, the witness would have recognized him.

### **Limit on Adverse Inference: Rajesh v. State of Haryana (2020)**

There is a crucial limit to this power. *Rajesh vs. State of Haryana* <sup>7</sup>(2020) was a case decided by the Supreme Court, which stated that a refusal to undergo a TIP is not sufficient to convict. Just saying "no" is not sufficient to determine guilt. There has to be other supporting details. This safeguards the accused of being convicted simply because he/she is exercising a perceived right to remain silent.

### **When is it okay for an accused to refuse?**

There are valid defences for refusal. The scientific value of the TIP is lost if the police has already presented to the witness a picture of the accused or if the witness had seen the accused at the police station before the appointed parade. In such situations, the accused may dispute based on the corrupt procedure. A TIP is not required in any case where the accused is identified by the witness or a photo has been readily distributed.

### **Conclusion**

You do not have to take an active role in the police's work. There is no requirement to speak, confess, cooperate or exceed the instruction to just stand in place. Article 20(3) does not constitute self-incrimination if someone fails to speak during a Test Identification Parade. You must, however, refuse to be taken without a good reason, such as your picture having been produced for the witness. A refusal would be an adverse inference to the judge.

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<sup>6</sup> *Amar Kumar Gupta v. State*, 2013 SCC OnLine Del

<sup>7</sup> *Rajesh v. State of Haryana*, (2021) 1 S.C.C. 247 (India).

However, this is not enough to establish a conviction. Participate. Stand silently. Say nothing.  
Your silence will be kept. Your refusal is not