



# Dying Declaration: A Critical Analysis of Admissibility, Reliability And Ethical Implications in Modern Era

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**Abstract :** Dying declarations hold a significant place in criminal and evidence law, serving as crucial evidence in determining the cause of death. This paper examines the admissibility, reliability, and ethical implications of such statements in Indian courts. It explores the historical evolution of dying declarations, legal frameworks governing their use, and key judicial precedents that have shaped their interpretation. While Indian law adopts a broad approach to admissibility under Section 32(1) of the Indian Evidence Act, 1872, common law jurisdictions like the UK and the US impose stricter conditions. The study also analyzes the role of mental and physical fitness of the declarant, corroborative evidence, and judicial scrutiny in assessing reliability. Ethical concerns arise as the accused is denied cross-examination, necessitating safeguards against misuse. Comparative perspectives highlight the variance in legal treatment across jurisdictions. The research underscores the need for a balanced approach that upholds justice while preventing wrongful convictions based on unverified statements.

**IndexTerms -** Dying Declaration, Admissibility, Reliability, Section 32(1) Indian Evidence Act, Hearsay Exception, Ethical Implications, Judicial Interpretation, Corroboration, Common Law Comparison, Res Gestae, Cross-Examination, Evidentiary Value, Criminal Proceedings, Fit State of Mind, Procedural Safeguards.

## INTRODUCTION

Dying declaration plays an important role in criminal proceedings and it has a distinctive place in the domain of criminal as well as evidence law. This paper highlights the multifaceted dimensions of the statements which are given by any person at the threshold of death, focusing on the Admissibility, Reliability and also the Ethical implication evolved in the Indian courts. Dying declarations have the potential to lead the investigation with critical information and it carries substantial weight in evidence law. This paper explores the historical development of the admissibility of these statements, legal framework surrounding it and examines the criteria by which these statements could be relied upon also, arguments made for reliability of dying declaration by considering many factors including mental and physical state of the person making the statement. There are a number of case laws out of which few cases which are very important for understanding the evolution of dying declaration and its implication in modern times are discussed in this paper. The challenge of striking a balance between seeking justice and defending the rights of accused and victims is highlighted by the ethical issues that the legal practitioners encountered while processing and presenting these remarks. This paper examines the practical effects of dying declaration on India court systems and highlights the regional variances in their handling through case studies and global perspectives. To address current issues and improve the admissibility and dependability of dying declarations, reform proposals are offered. This research emphasizes the necessity of a nuanced approach of dying statements, one that recognizes their historical relevance while also admitting their limitations and ethical complexities. It also talks about how the international viewpoint is different in various nations and how It differs from India by comparing the admissibility of dying declarations. "After critically examining the case laws and different opinions of jurists and scholars, the difficulties that are faced by Indian courts in deciding the whole concept of dying declaration are discussed.

The interpretation of section 32 of the Indian evidence act is critically discussed."

**“Articulo Mortis** is the latin maxim, in law it means “At the point of death” and when we talk about the admissibility of dying declaration in evidence is based upon another latin maxim- **Nemomortuus Prae-Sumitur Mentire** which means a man will not meet his maker with a lie in his mouth. Everyone despises the statements given before death as the hearsay exemption as it appears outdated and parochial, relying for its trustworthiness and policy justifications on religious beliefs in divine punishment.” “In essence, the dying declaration exemption allows dying people to make declarations concerning the reason of their death as long as they are aware that they are dying and have no prospect of recovery.” The conventional view is that deathbed statements are especially trustworthy since no one would dare to face god’s vengeance by dying with a lie on their lips. Dying declaration is only made to a magistrate in the presence of an advocate because it is not easy to determine the dying declaration admissibility.

The courts have examined that when a man is dying, his words are virtuous. Certain elements are considered while making it as a proof and not all dying declarations are considered as evidence so proper analysis is done by the magistrate by looking at the facts of each case. It should be severe enough and close enough in chain of evidence, these statements are not strict as *res jecte* but considered in some cases. The element that strengthens the dying declaration is that it is recorded by a magistrate, written in exact words, made shortly after assault and these statements should be made before the controversies have happened. Every case is different thus there is no fixed criteria to rely upon these statements but the understanding has developed with the passage of time as courts have decided and given judgments after looking at the facts and relevancy of dying declaration from case to case.

## REVIEW OF LITERATURE

**Aviva A. Orenstein** in one of its papers talked on the jurisprudence of the dying declaration in the modern times and focused on the modern utility of dying declaration in the secular age. Also the admissibility of dying statements is given much more importance by the supreme court with changing time.

**Chief Justice M. Monir** elaborated the concept of dying declaration by giving different case laws and talked on credibility, consistency, and important guidelines for conviction in his book.

**Kanchan Chaudhari** in one of her articles said that in the absence of endorsement of the statement by the doctor regarding the mental fitness of the victim cannot be the reason for its inadmissibility.

**Bhaswat Prakash** in his article highlighted who all can record the dying declaration under what circumstances. He elaborated the concept of admissibility along with confession because the magistrate under section 146 cannot misuse its power and cannot record the statement to be used for evidence without the consent of the declarant.

## ADMISSIBILITY AND RELIABILITY

“Dying declaration are the statements which are made by the dead person orally or in a documentary form, both of these are admissible under section 32 (1) of Indian evidence act, 1872. Though admissions are defined under section 17 to 23 but the criteria followed for the dying declaration is different as there are two types of evidences primary and secondary evidences, dying declaration does not fall under primary evidence as it is the exception to hearsay. The admissions are done for being used as evidence and which has a substantial value thus dying declaration do have substantial value only if it fulfils the three things including the nature of the proceedings, the expectation of the death and the death of the person who has given the statement.” “While the dying declaration is accepted in India and also in common law countries such as in the u.k, Australia and u.s.a. There is no particular criteria or set of rules for admissibility of dying declaration because it is not an easy task to consider the statement whether it is reliable or not as it should form a chain for the cause of death and not just the death of the person. In India dying declaration is used as an evidence in a broader sense where the death of the person is not necessary even the expectation of death is admissible in court. These statements made by the dead person can be oral but it in these cases it is crucial to look upon the grounds that the sole eye-witness is the victim itself to the crime and if the statement of the victim is not admitted then it might defeat the ends of justice and the fear of death, which generates sanction equivalent to the requirement of an oath”. These statements are only made to the magistrate in the presence of an advocate and certain elements are considered while making it a proof. However, not all dying declarations are considered as evidence but when a man is dying, his words are virtuous. The statement should be severe enough and close enough in chain of evidence to be able to become admissible in court and to be used as substantial evidence. It is not as strict as *res jecte* but it is considered to hold a substantial value in some cases at times.

The statements are made before the controversies happened not after the incident otherwise the very purpose of dying declaration is defeated. To give strength to the dying declaration it is recorded by the magistrate, written in exact same words and has to be made shortly after the assault happened. Someone cannot be convicted on a vague statement and it has to be a clear plus explained statement.

“Similarly, in *Puran Chand v. State of Haryana*, 2010 case victim was burned by the family members after the first week of her marriage and the offence for which the accused was convicted is under section 302 and 34 of IPC which is a criminal offence. The context of this case revolved around the admissibility of the dying declaration made by the victim



as the statement was recorded by the magistrate right before her death in hospital itself. Arguments were made on her declaration that the statement she gave is malicious and she was not clear about what happened but the court analysed it critically and examined the statement of the victim in which she mentioned the name of puran chand this meant the statement cannot be said to be vague and it is reliable in the eyes of court because when someone is telling the truth then the specific detailed statement is given. In this case, as the dying declaration was merely oral but it was recorded by the judicial magistrate which gave it a substantive value.” “In sharad birdhichand sarda v. state of Maharashtra, the court rejected the theory of suicide after looking the facts and circumstances of the case. The court analyzed that victim faced awful behaviour from her father-in-law and husband and the victim narrated her awful tale to her sister, right after some days she was found dead and decided this cannot be the case of suicide rather she was murdered. Court considered 17 circumstances in this particular case which lead to the admissibility of the statements given by the victim to her sister as dying declaration. In order to prove the circumstantial evidence produced by prosecution were complete and conclusive, the court mainly focused upon two facts: firstly, the cause of the death was immediate, secondly, circumstances of transaction resulted in her death. These both can be considered as dying declarations because it is not just evidence in lack of any other evidence but as forming Res jecte. Other factors were also looked upon such as letters written by the victim, oral statements made to father and mother, appellant last seen with deceased until matter reported to police. When determining the veracity of a statement, courts frequently evaluate the availability of corroborating evidence.” Other evidence that supports the claims stated in the dying declaration might help to strengthen its credibility. Relevance includes other factors as well, it is not absolute and the state of the mind of the person who gave the statement is analyzed. However, while determining the relevancy of the statement it is crucial to check if there were any external influences on the deceased? If yes, then the chances of admissibility of that statement becomes very low because the statement was given under pressure or maybe out of jealousy.

### ETHICAL IMPLICATION AND CORROBORATION

As dying declaration plays a vital role in the modern era and it has gradually evolved with time in order to make it more credible. Ethical considerations may lead courts to seek supporting evidence to back up a dying declaration, particularly if it is the single or major foundation for a conviction of the accused. Relying only on such a statement without verification might be unethical. In the past years when the concept of dying declaration was new, at that time the understanding of dying declaration was different to different people. Unless there were case laws which dealt with dying declaration it was difficult to come to any conclusion. The declaration is valid in both civil and criminal cases wherever the cause of the death of the person comes into picture. The most crucial aspect is that the victim was in a fit state of mind when the recording began and remained in a fit state of mind until the recording of the statement was completed. To guarantee that dying declarations are properly acquired, documented, and evaluated, ethical standards require the development of protections and due process. This involves protecting the declarant's rights and addressing any possible concerns with the declaration. The Indian judicial system is dependent upon the evidence and without proof it can convict because every person is innocent in the eyes of law until proven guilty. Therefore, for proving the corroboration of evidence is important element and thus the conviction cannot solely be done on just one statement because it would be ethically wrong.

### ARGUMENTS ON INDIAN VS COMMON LAW

Admissibility of Dying declaration is the exception to direct evidence which shows that it holds an evidentiary value in the eyes of law but there are critics on this because a person who is accused would be convicted only on the basis of the statement given by the person who is already dead. In the case of dying declaration there is no scope of cross-examination left which is not fair for the accused because he has the right to have the cross-examination but due to the death of the person this right cannot be exercised. In India there is no necessity for the declarant to be dead but in u.k it is the only way for the admissibility of dying declaration when the person is dead. In India the idea of dying statements has broadened whereas in the u.k it is very narrow where homicide is the only way for admissibility. In Crawford v. Washington common law case the main focus was on the right of the accused for the cross-examination which is defeated if the dying declaration is admitted but this is the only exception to hearsay as it holds substantial value when the statement is very precise then it has to be admitted.

### CONCLUSION

Illustration- This is the real life incident where the critical analysis of admissibility dying declaration can be done through this example – I have a 24 hours maid at my house and recently she came to me at midnight and she was crying like nothing, when I asked her what happened she told me that somebody has misused her private video and uploaded it on internet. I asked her to file a complaint against that person and no need to worry but she replied to me that nothing is left in my life and again cried. Now in this serious situation where a girl is terrified and traumatized by that person, if she dies by suicide after few days and the facts and circumstances link to the cause of her death then that person could be convicted on the statement given by her. So, there are cases where construction of section 32(1) is elaborated such as in case “Pakala Narayana Swami v. emperor, all general expressions or circumstances which do not form direct relation to occasion of death will not be admissible.

Circumstances of a transaction include evidence of all relevant facts and there should be some proximate relation in a series of circumstances. The credibility according to me is a very crucial thing to keep in mind while admitting any statement as evidence and in modern context case laws help a lot.”

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