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# Dying Declaration under the Indian Evidence Act, 1872

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## ABSTRACT

*Dying declaration is defined under Section 32 of the Indian Evidence Act, 1872. It is made by a person who has died, who is not in the world, who is not able to provide evidence and whose presence cannot be acquired without an amount of delay under which the facts appear unreasonable to the court. A statement made by a person stating the reasons of his death or as to any transactional situations that caused led to his death, are applicable facts will be admissible as evidence. These statements are known as dying declaration.*

*Dying declaration is based on the maxim "Nemo moriturus proesumitur mentiri". This indicates that no man is going to meet his maker with a lie in his mouth. The dying declaration is an essential evidence and can be the only ground of judgement. The admissibility of dying declaration is in accordance with the facts and circumstances of each case. If the court determines that it is accurate and voluntary, additional evidence is not needed.*

*Both written and oral dying declarations are admissible. It is permissible to use any kind of communication, including gestures, signs, nods and even looks. A declaration should be recorded in the victim's language. It enhances the authenticity and credibility of the declaration. If discrepancies are found between more than one dying declaration in a case involving multiple of them, the court must determine whether or not these discrepancies are important. The declaration must be recorded in a language that the victim can easily understand. As per section 32(1) of the Indian Evidence Act, 1872, there is no specific person to whom dying declaration should be made. It can be made to anyone, a friend, relative or stranger. But a dying declaration made to a magistrate will have higher evidentiary value as compared to a dying declaration made to a stranger. The statement must be given voluntarily without any undue influence in order to be admissible in court of law. A dying declaration will be examined based on the surrounding facts and circumstances.*

**Keywords:** Section 32, Evidentiary value.

## I. INTRODUCTION

Dying declaration is defined under Section 32 of the Indian Evidence Act, 1872. It deals with a

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statement of relevant fact which can be expressed orally or in writing by an individual-

- Who has died.
- Who is not in the world.
- Who is not able to provide evidence.
- Whose presence cannot be acquired without an amount of delay under which the facts appears unreasonable to the court.

This declaration, which discloses the reason for his death, may be either explicit or implicit. The single statement made shortly before a person's death is known as dying declaration. A person may express the reason for his death if he is mentally capable and knows that he is going to pass away. In a court of law, this statement will be considered as evidence. This statement can be expressed either orally or in writing. The expression "dying declaration" relates to a statement made by a person who is about to die, thereby its meaning is obvious.

#### **(A) Meaning of Dying Declaration**

The meaning of dying declaration has been explained in the following cases:

- In **Sudhakar and Anr vs the State of Maharashtra**, dying declaration was defined as follows:
- As per Section 32(1) of the Indian Evidence Act, 1872, a statement made by a person stating the reasons of his death or as to any transactional situations that caused led to his death, are applicable facts will be admissible as evidence. These statements are known as dying declaration.
- In **Ram Bihari Yadav vs the State of Bihar (1998)**, Justice Syed Quadri gave an explanation of dying declaration as:
- A final statement given by someone who passed away regarding the reason behind his death or any details of the transaction that caused his death. As per section 32 of the Indian Evidence Act, 1872, the cause of his death is relevant and admissible in evidence under certain situations when it is called into question. The dying declaration is an exception to the general rule barring hearsay evidence from being admitted, as it counts as indirect evidence.<sup>2</sup>

#### **(B) Features of Dying Declaration**

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<sup>2</sup> Dying Declaration By Arundhati25, <https://www.legalserviceindia.com/legal/article-488-dying-declaration.html>

The key features of dying declaration are as follows:

- One of the exceptions to the general rule that hearsay evidence is excluded is a dying declaration.
- The dying declaration need not simply be relevant to a specific type of proceeding. It is applicable to both civil and criminal proceedings.
- There is no definite legal norm that states a dying declaration cannot be carried out unless it is supported by further, independent evidence.

### **(C) Elements of dying declaration**

The elements of dying declaration are defined under section 32(1) of the Indian Evidence Act, 1872. As per section 32(1) of the Indian Evidence Act, 1872, a dying declaration is a statement:

- Which is either oral or written.
- Which contains relevant facts.
- Which is made by a person who is not alive.

This statement will be relevant when it is made by a person as to:

- The reasons that led to his death.
- The situations of the transaction that resulted in his death.

This statement will be relevant:

- Whether or not the individual who made them was expecting to die at the time they were made.
- Whatever the nature of the proceeding in which the cause of death is challenged.

## **II. MULTIPLE DYING DECLARATIONS**

If discrepancies are found between more than one dying declaration in a case involving multiple of them, the court must determine whether or not these discrepancies are important.

- The law regulating multiple dying declarations has been thoroughly settled as indicated by multiple rulings of the Supreme Court.
- In these kinds of situations, the truthfulness of such statements must be meticulously evaluated.
- As a result, there are two possible outcomes: multiple dying declarations that are compatible with one another and multiple dying declarations that are incompatible with one

another.

- In circumstances when there are inconsistent dying declarations, the court has to determine the magnitude of incompatibilities.
- The inconsistencies could prove out to be compatible. In instances like this, in which the inconsistencies connect to some detail or description but are incriminatory in nature insofar as the accused person is concerned, the court will refer to the evidence on file to decide which dying declaration ought to be counted with, unless it appears that they are untrustworthy.<sup>3</sup>
- In the case of **Sher Singh vs. State of Punjab**, in a situation where three dying declarations were taken into account, the court held that conviction may be based on the third statement, which became consistent with the second, whereas the first statement, made immediately after being admitted to the hospital, came under threat or pressure.

### III. PROCEDURE FOR RECORDING DYING DECLARATION

Both written and oral dying declarations are admissible. It is permissible to use any kind of communication, including gestures, signs, nods and even looks. A declaration should be recorded in the victim's language. It enhances the authenticity and credibility of the declaration. Even if there is a short statement but it is the genuine words of the declarant, it will be a substantive evidence. But declarant must be of sound mind while making the statement.

- There is no specific form or rules for recording a dying declaration, so it is not essential to be recorded exclusively by a Magistrate. Instead, it can be done by a doctor, police officer, magistrate or another person.
- A dying declaration shouldn't be overlooked simply because it wasn't recorded in question-and-answer format.
- A narrative statement might seem more natural and provide an accurate account of the events as viewed by the injured individual.
- It is extremely important to obtain certificates from doctor certifying that the declarant was in good health while making the statement. Nevertheless, the validity of dying declaration is not undermined by the absence of these certifications. The dying declaration recorded by a competent magistrate would have higher admissibility as compared to that recorded by any other person.

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<sup>3</sup> Drishti Judiciary, <https://www.drishtijudiciary.com/to-the-point/ttp-indian-evidence-act/dying-declaration>

### **(A) Recording of declaration in different languages**

The declaration must be recorded in a language that the victim can easily understand. There should be no ambiguity or irregularity in the language. In the case of **B. Shashikala vs. State of Andhra Pradesh**, an issue emerged with the recording of the victim's dying declaration in Hindi. The Magistrate asked the questions in English and the victim responded in Hindi. The physician translated the victim's response. Both the doctor and the magistrate had a basic understanding of Hindi and have approximately certified the translation, the victim was not given any chance to make further statements. As a result, the declaration was deemed to have been properly admitted and supported by the courts.

### **(B) Forms of dying declaration**

A dying declaration can be either oral or written. It can also be partially oral and partially written or none. It can also be made by signs and gestures.

### **(C) Dying declaration by signs**

In the case of **Queen Empress vs. Abdullah**, the girl was having a sore throat and she lost her ability to communicate. She stated the name of the accused by sign. She pointed at the accused with the help of her hand gestures, indicating that he was the cause of her death. The court questioned that whether the victim's gestures and finger pointing towards the accused could be considered as a dying declaration, and if so, whether such a statement or action will be admissible in court. As per the court, the victim's statement will be regarded as a dying declaration by taking into consideration the mental state of the victim. It was also observed that further evidence is required to support the statement given by the victim and be proven true beyond a reasonable doubt and it must also relate to other facts and details. Conviction is certain if additional evidence proves the death and the circumstances associated with it match the dying declaration. The ruling stated that a person's questions and signs taken together could be interpreted as a spoken statement regarding the reason behind their death.<sup>4</sup>

### **(D) FIR as dying declaration**

A statement made by the victim and recorded as a FIR could be regarded as a dying declaration, and Section 32 of the Indian Evidence Act permits the admission of such a statement. In the case of **Mahmood Illahi vs. State of Uttar Pradesh**, the court ruled that under section 32(1) of the Indian Evidence Act, 1872, a report submitted to the police officer by the dead person

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<sup>4</sup> Dying Declaration Under the Indian Evidence Act, <https://www.writinglaw.com/dying-declaration-under-evidence-act/>

explaining the reason for his death would be relevant.

### **(E) To whom dying declaration can be made**

As per section 32(1) of the Indian Evidence Act, 1872, there is no specific person to whom dying declaration should be made. It can be made to anyone, a friend, relative or stranger. But a dying declaration made to a magistrate will have higher evidentiary value as compared to a dying declaration made to a stranger.

The following conditions must be satisfied for a dying declaration to be admissible-

- The person making it must be dead.
- The dying declaration should not be an incomplete statement.
- It has to be made voluntarily and without any influence.
- The declarant needs to clarify the reason of his death, or the circumstances that caused his death.
- The person making the dying declaration must be mindful and clear.
- The person making the dying declaration should be of sound mind.
- The reason of death of the declarant must be investigated.

### **(F) Dying declaration given to a police officer is admissible**

The statement given to a police officer by the deceased person is admissible in court. In the case of **Sudhakar vs. State of Maharashtra**, a headmaster and a co-teacher raped a 20 year old teacher. She gave the details of the incident to her father after a few days and this incident was reported to the police after 11 days. She committed suicide after 4 months because she could not handle the humiliation she faced after the incident. She was also charged for abatement to suicide under section 306 of the Indian Penal Code, 1860. It was questioned that whether her statement will be admissible as dying declaration or not. It was held by the Supreme Court that in order to consider this statement as dying declaration, the statement that was made when the incident was reported stating the facts and circumstances of the death will be taken into account. However, this must be established beyond a reasonable doubt, which the prosecution has not done.

## **IV. EVIDENTIARY VALUE OF DYING DECLARATION**

Dying declaration is based on the maxim “Nemo moriturus proesumitur mentiri”. This indicates that no man is going to meet his maker with a lie in his mouth. The dying declaration is an essential evidence and can be the only ground of judgement. The admissibility of dying

declaration is in accordance with the facts and circumstances of each case. If the court determines that it is accurate and voluntary, additional evidence is not needed.

Nevertheless, the court has to be satisfied that the dying declaration is of such a type that it may have complete confidence in its authenticity. The courtroom must ensure that the statement given by the deceased is now true and is not the result of instruction, encouraging or conceiving. The court has to be further convinced that the person who died was in a sound state of mind and had an obvious chance to search for and identify the perpetrators of the crime. Whenever the courtroom has determined that the declaration is accurate and voluntary, it can be the sole ground of judgement without any further evidence. The evidentiary value of dying declaration differs from case to case.

In the case of **Sham Shankar Kankaria vs. State of Maharashtra**, it was held by the Hon'ble Supreme Court that in the situation in which a man is on his deathbed is so severe and serene that the grave situation in which he is placed provides enough justifications in law to accept the veracity of his declaration. As a result, oath and cross-examination are no longer required. If the dying declaration is eliminated, it will result in a failure of justice since the victim frequently serves as the most effective eyewitness in serious crimes and eliminating the statement would leave the court with no evidence.

**(A) Evidentiary value of dying declaration in case the person giving the statement survives**

The statement given by the victim is considered as dying declaration only if the person who made the statement is dead. In case the person who made the statement survives, then he will become a witness against the accused in the court. The concept of a dying declaration is based on the presumption that the person who gave the statement is near death and is will not lie before dying. However, in case the declarant survives, his remark will not regarded as a dying declaration and cannot be used as evidence. In case the person who gave the statement survives, then it will not be considered as dying declaration under section 32 of the Indian Evidence Act, 1872. However, it will considered as a statement under Section 164 of the Code of Criminal Procedure, 1973.

**(B) Evidentiary value of dying declaration when it is based on suspicion**

In cases where suspicion doubts the authenticity of dying declaration then its evidentiary value can be challenged. If the prosecution's case is based exclusively on a dying declaration in such doubtful circumstances, it may be insufficient for supporting a conviction. For example, if a magistrate recorded a dying declaration in which the signature of the deceased and the date and



time when it was recorded is absent, it will not be admissible unless and until a valid reason will be given by the prosecution for such eliminations.

## **V. CASE LAW**

### **1. Natha Shankar Mahajan vs. State of Maharashtra (2011)**

It was held by the Bombay High Court that in case the dying declaration contains any suspicion, the accused will get the benefit of doubt. Hence, if a dying declaration is suspicious and unclear it will not be taken into consideration.

#### **a) Exceptions of dying declaration**

The statement given by the deceased is not applicable as a dying declaration in certain circumstances-

- The court is not bound to consider a statement as a dying declaration if it is contrary in nature.
- The statement made by a deceased person should be given voluntarily and without any undue influence.
- An inconsistent statement will not be considered as a dying declaration.
- An incomplete statement which is unable to justify the cause of death of the deceased person will not be considered as a dying declaration.
- A medical certificate and doctor's opinion should be presented with the statement in order to prove that at the time of making the statement the deceased was in a sound state of mind and capable of making the statement.
- The statement given by the deceased which is not in accordance with the prosecution will not be considered as a dying declaration.
- If the statement given by the deceased person is not in connection with the cause of his death, then it will not be relevant as a dying declaration.

### **2. Amar Singh vs. State of MP**

The statement made by a child will not be admissible as a dying declaration in court. If there is no proof of physical fitness and mental fitness then statement will not be taken into consideration.

### **3. Krishna Lal vs. Jagun Nath**

Dying declaration which is made under influence and pressure will not be considered, whereas

dying declaration which is made voluntarily will be considered.

**a) Evidentiary value of medical certificate and doctor's opinion**

A dying declaration recorded by a doctor has high evidentiary value. It's doctor's duty to record the statement in cases where patient's life is in danger and there is no time to call the police or magistrate. Judicial magistrate obtains a medical certificate from doctor ensuring that the victim was fit to give the statement and the statement is true.

## **VI. CONCLUSION**

A dying declaration is a substantive piece of evidence. It is a statement made by a person who is dead justifying the circumstances that caused his death. It can be a sole ground for judgement without any additional corroboration. No man will meet his maker with a lie in his mouth. The statement must be given voluntarily without any undue influence in order to be admissible in court of law. It is based on the facts and circumstances of the case. The statement given by the deceased must have a connection with the cause of his death. It should be in accordance with the prosecution. A statement given to a magistrate will have higher evidentiary value as compared to the statement given to any other person. The person giving the statement must be of sound mind and capable of giving it. An incomplete statement will not be considered as a dying declaration. In cases where suspicion doubts the authenticity of dying declaration then its evidentiary value can be challenged. If a dying declaration is suspicious and unclear it will not be taken into consideration. In case the person who gave the dying declaration survives, then the statement will not be considered as a dying declaration. Then he will become a witness against the accused in the court. It will not be considered as dying declaration under section 32 of the Indian Evidence Act, 1872. However, it will considered as a statement under Section 164 of the Code of Criminal Procedure, 1973. A medical certificate and doctor's opinion hold high evidentiary value in a dying declaration. Judicial magistrate obtains a medical certificate from doctor ensuring that the victim was fit to give the statement and the statement is true. FIR made to a police officer by the dead person explaining the reason for his death would be relevant. The declaration must be recorded in a language that the victim can easily understand. If discrepancies are found between more than one dying declaration in a case involving multiple of them, the court must determine whether or not these discrepancies are important. A dying declaration will be examined based on the surrounding facts and circumstances.

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