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DYING DECLARATION: AN INTERNATIONAL PERSPECTIVE

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I. ABSTRACT

Dying declarations have a distinct and crucial place in criminal law, playing as an exception to hearsay evidence. It provides vital insights into the cause and circumstances behind a person's death, often it is becoming key evidence in cases where the victim is unavailable or can't be called to testify. It is based on the principle that a person facing imminent death is unlikely to lie. Dying declarations are recognized across worldwide., in India it is codified under the Section 26(a) Bhartiya Sakshya Adhiniyam, 2023 dying declarations carry significant weight and importance, that make it more admissible and reliable. Issues related to dying declarations are such as the declarant's mental and physical condition, the potential for coercion, inconsistencies in statements, and the absence of cross-examination posing unique hurdles for the judicial system. This study examines and deals with the legal framework, evidentiary value, procedural requirements, and comparative perspectives of dying declarations, focusing and highlighting both their strengths and the precautions necessary to maintain fairness and justice in criminal trials.

II. KEYWORDS

Dying Declaration, Hearsay Exception, Evidentiary Value, Admissibility, Comparative Jurisprudence.

III. INTRODUCTION

Dying declarations have significant importance in criminal trials, especially in offences such as murder or cases involving serious bodily harm. Dying declaration refers to a Statement Given by a person who has died explaining the cause of his death or any of the circumstances which Resulted in his death. The reason behind admitting such statements is based on the belief that a person on the verge of death is unlikely to fabricate

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information. With imminent death, the individual is presumed to speak the truth, making their final words legally valuable. This principle forms an exception to the hearsay rule and is embodied in Section 26(a)² of Bhartiya Sakshya Adhiniyam which permits the use of a person's statement relating to the circumstances of their death and circumstances leading to death, when the declarant is not available to testify.

Dying declaration often serve as a direct account from the victim, offering crucial details about the incident which leads to death and the identity of the perpetrator. One of the most different features of a dying declaration is that it is admissible even though the maker of such statement cannot be cross-examined, However, courts do not accept such statements blindly it is the duty of court to satisfy itself. Their admissibility depends on various conditions whether the person was in a fit mental and physical state to make such statement, whether the declaration was voluntary, and whether it was recorded in a fair and reliable procedure.

Indian courts have consistently held that a trustworthy dying declaration can by itself, be sufficient to convict an accused. At the same time, the judiciary has also laid down strict criteria for evaluating these statements, particularly in cases where no supporting evidence is available. Over the years, it has resulted in a robust body of case laws that guides judges on how dying declarations should be scrutinized and examined to ensure fairness and justice.³

A. Research Objectives

This paper aims to examine the evidentiary value of dying declarations within criminal jurisprudence. It seeks to analyse the legal principles governing admissibility, assess judicial approaches across jurisdictions, and evaluate the reliability of such statements in the absence of cross-examination. The study also aims to identify procedural safeguards necessary to ensure fairness and accuracy in the use of dying declarations.

² Bhartiya Sakshya Adhiniyam, 2023, section. 26

³ Prithwish Ganguli, "Evidentiary Value of Dying Declarations: Reliability, Admissibility, And Judicial Interpretation" *12 international journals of creative research and thoughts*, b294 (2024).

B. Research Questions

This study is guided by the following questions:

1. What are the legal foundations and rationale for admitting dying declarations as an exception to hearsay?
2. How do different jurisdictions interpret and apply rules governing admissibility and evidentiary weight?
3. What factors influence the reliability and credibility of dying declarations?
4. What challenges arise in their practical application, and how can these be addressed?

C. Research Methodology

The research adopts a doctrinal and comparative methodology. It involves analysis of statutory provisions, including the Bharatiya Sakshya Adhiniyam, 2023, and relevant evidentiary laws in selected jurisdictions such as India, the United Kingdom, and the United States. The study also examines judicial precedents and scholarly commentary to evaluate interpretative trends and practical implications. Secondary sources, including legal journals, commentaries, and case law databases, have been consulted to support the analysis.

IV. BACKGROUND OF DYING DECLARATION

The doctrine of dying declarations is originated from early English common law and shaped significantly by the moral and religious beliefs of the medieval period. The foundational maxim of dying declaration is *nemo moriturus praesumitur mentire*, which means “a person on the verge of death is not presumed to lie,” it reflects the ancient conviction that the expectation of death induces a solemn obligation to speak the truth. Historically, the law treated a dying person’s statement as possessing a quasi-sacred character and grounded in the belief that one who anticipates meeting their Maker would be unlikely to fabricate or mislead. Early English courts admitted such dying declarations in homicide cases where the declarant’s testimony was otherwise unavailable. Over time,

this principle evolved into a recognised evidentiary principle, allowing hearsay statements made under settled, hopeless expectation of death to be received as credible and important proof of the cause and circumstances of the declarant's demise. This doctrine influenced several common-law jurisdictions worldwide, including India.

With enactment of the Bhartiya Sakshya Adhiniyam, 2023 this principle is codified under Section 26(a), expanding its scope beyond homicide to any statement which relates to the cause of death. Thus, the historical journey of dying declarations shows a blend of moral philosophy, judicial pragmatism, and evolving evidentiary standards.⁴

V. PROVISION OF DYING DECLARATION IN DIFFERENT COUNTRIES

Dying declarations are recognised across numerous legal systems, although the scope of the rule and the standards of admissibility differ from one jurisdiction to another. The underlying premise remains constant a statement made by a person who believes death is imminent carries special evidentiary value. Below is a comparative overview of how various countries treat dying declarations.

- 1. India:** In India, dying declarations fall under Section 26(a) Bhartiya Sakshya Adhiniyam. which carves out an exception to the hearsay rule. Statements made by an individual regarding the cause of their death, or the circumstances leading to it, are admissible when made under the belief of impending death⁵.
- 2. United States:** The United States recognizes dying declarations through Rule 804(b)(2) of the Federal Rules of Evidence. The declarant must believe death is unavoidable, and the statement must directly relate to the circumstances of death. Although used largely in homicide prosecutions and certain civil cases, courts

⁴ Ratanlal and Dhirajlal, *The Law of Evidence* 1088–1095 (LexisNexis/Bharat Law House 27th edn, 2020)

⁵ *supra* note 2, at 2

scrutinize voluntariness and the declarant's state of mind before admitting such statements.⁶

3. **United Kingdom:** In the UK, the doctrine derives from common law principles. It applies strictly to homicide cases, provided the declarant had a firm conviction of impending death and the statement concerns the cause of death. Courts remain cautious and generally seek supporting evidence.
4. **Canada:** Canada follows common-law norms, allowing dying declarations mainly in homicide trials. The declarant must have abandoned all hope of survival, and the statement must relate to the cause of death. Canadian courts adopt a strict reliability test before accepting such evidence.
5. **Australia:** Australian law recognises dying declarations under common law as well as statutes such as the *Evidence Act 1995*. The declaration is admissible when made under a belief of imminent death and where it directly concerns the circumstances of the fatal incident.
6. **South Africa:** South African courts accept dying declarations through common-law principles. Admissibility depends on the declarant's expectation of death and the relevance of the statement to the cause of death. Emphasis is placed on voluntariness and the overall reliability of the account.
7. **New Zealand:** Under New Zealand's *Evidence Act 2006*, dying declarations are admissible when the maker believes death is unavoidable, and the statement pertains to the circumstances of the death. Courts evaluate such statements carefully, ensuring they were made freely.⁷
8. **Germany:** Germany recognises dying declarations within its broader system of hearsay exceptions in criminal proceedings. Although admissible when the declarant anticipated death, their use is limited, as German courts generally rely heavily on corroboration and forensic evidence.

⁶ Ibid

⁷ *Evidence Act 2006* (New Zealand), s. 18.

9. **France:** French law, through provisions in the Code of Criminal Procedure, allows the admission of dying declarations, but courts approach them with considerable caution. Unlike common-law systems, France places greater trust in objective evidence and formal testimony than in last-minute statements of the dying. Across jurisdictions, the doctrinal nuances may vary, yet the core belief remains the same: a person who perceives death as imminent is presumed to speak truthfully, making their final words a potentially significant piece of evidence⁸.

VI. LEGAL FRAMEWORK IN INDIA FOR DYING DECLARATION.

Section 26(a) of the Bhartiya Sakshya Adhiniyam defines dying declaration. Dying declaration means statement given by a person who has died explaining the cause of his death or any of the circumstances which resulted in his death.

A. Essentials

Following are the essentials:

1. It is a statement which can be made orally or in writing.
2. It is made by a person who has died.
3. The statement so made explain either the cause of his death or any of the circumstances of the transaction which resulted in his death.
4. Fear or expectancy of death is not necessary at the time of the making of the statement.
5. Cause of death should be in question either in civil or criminal proceeding

B. Whether death of the person making the statement is compulsory?

For statement to amount to dying declaration it is necessary that the person who made that statement should have died. If he survives after the making of that statement, then it cannot be used as a dying declaration however it can be used for other purposes under section 4 of Bhartiya Sakshya Adhiniyam it can be used for following purposes:

⁸ *supra* note 2, at 2

1. It can be used as *res gestae* under section 4 BSA.
2. It can be used as self-serving admission under section 19(1) of BSA.
3. It can be used as a previous statement to either corroborate testimony being given in court under section 160 of BSA by the maker himself or it can be used to cross-examine or contradict him under section 148 of BSA by the opposite party.

C. Cause of death

The statement made by a person disclosing his cause of death is relevant and admissible as a dying declaration when a person tells about his cause of death it means that it is a post injury statement wherein injury has already been caused to him and while being under the fear or expectancy of death he tells that as to who cause the injury and how that injury was caused for example A stabs B, B says A stabs me and died this statement is telling us about the cause of death which is stabbing by A and it is made of the causes of the injury under the fear of death.

D. Circumstances of the transaction which result in death

Any statement regarding the circumstances of the transaction which result in the death of the maker of the statement also amount to dying declaration .transaction here in means a series of events or circumstances in the continuity of which the death was caused whenever death is caused it will never be cause in isolation it will be preceded by a series of circumstances which eventually lead to death of victim the court will identify the circumstances or the event from which the transaction of death commenced and herein after it ,if the victim makes statement about any of the circumstances then it will amount to dying declaration. These statements are preinjury statements made when the maker is not under the fear of death.

In *Pakala Narayan Swami vs emperor 1939(privy council)*⁹, the actual transaction of death started when the victim receive letter from the accused asking him to come to her

⁹ *Pakala Narayana Swami v. Emperor, AIR 1939 PC 47.*

house and collect money this transaction continued till the death of the victim ,when the victim makes statement to his wife that he is going to the accused house to collect money as he has received a letter from his this statement to the wife amount to the dying declaration as it tells about two circumstances of transaction of death which are receiving the letter and going to the accused house.

E. Expectancy or fear of death is not necessary

Under the Indian law of dying declaration, it is not necessary that the maker should be the under fear or expectancy of death at the time of making of the statement when the statement relates to the circumstances of the transaction which resulted in death it is a preinjury statement not made under the fear of death. Indian law of dying declaration is broader than that of English law under Indian law both types of statement amount to dying declaration whether made under fear of death or made without fear of death whereas under English law only those statements amount to declaration which are made under fear of death. Dying decoration is relevant in civil as well as criminal proceedings

F. Why dying declaration is admissible

- 1. Nemo morturus praesumitur mentire:** It means that a man will not meet his maker with a lie on his lips. When a statement is made by a person under fear of death then it is expected that the approaching death will make him a truthful man and he will not die with the lie on his lips this maxim is partially applicable in India it will apply only in those cases when the statements relates to the cause of death and not when the statement relate to the circumstances of the transaction which resulted into death when the statement is as to cause of death it is a post injury statement under fear of death. Whereas when the statement relates to circumstances of the transaction which result into death then it is a preinjury statement made without fear of death.
- 2. Doctrine of Necessity:** Dying declaration is admissible because of necessity the person who has died is the best source to reveal his cause of death and as

he is dead, he cannot be called as a witness, so we have to rely upon the statements made by him before his death.

Difference between English and Indian law of dying declaration

English law	Indian law
1. English law of dying declaration is narrower than Indian law only that statements amount to dying declaration which is made under fear of death. ¹⁰	It is broader than English law both types of statement amount to dying declaration whether made under fear of death or without fear of death.
2. It is admissible only in criminal proceeding.	2.It is admissible in both criminal and civil proceedings.
3. The maxim no one will die with the lie on his lips is fully applicable.	3. The maxim no one will die on his lips is partially applicable.
4. Expectancy of death is mandatory.	4. Expectancy of death is not mandatory.

VII. EVIDENTIARY VALUE OF DYING DECLARATION OR CAN CONVICTION BE BASED SOLELY UPON DYING DECLARATION

In *Khushal Rao vs state of Bombay* 1958 SC¹¹ the supreme court held that dying declaration is a substantive piece of evidence and conviction can be based solely upon it if it is found to be voluntary trustworthy true and correct record of what was said by victim and has been duly proved a truthful and consistent. dying declaration needs no corroboration and conviction can be based upon it thus as a rule of law there is no bar to convict solely on the basis of dying declaration. Practically a matter of prudence the court before convicting the accused on the basis of dying declaration will look for corroboration

¹⁰ Shipra, "Dying Declaration: A Critical Analysis of Admissibility, Reliability and Ethical Implications in Modern Era" 10 *international journal of novel research and development*, b228 (2025.)

¹¹*Khushal Rao v. State of Bombay*, AIR 1958 SC 22.

practically speaking the court will be able to establish the voluntariness truthfulness trustworthiness of dying declaration only after looking into the circumstantial evidence the dying declaration and the circumstantial evidence should both direct towards the same inference.

It is humbly submitted that there are few issues in solely Relying upon the dying declaration:

1. As the maker of statement is dead the truth of that statement cannot be determined by cross examining him.
2. As is made in a statement of extremity the maker may not be physically or mentally fit.
3. The maker of the statement may take advantage of the last opportunity to implicate his enemies.

Thus, in *Paniben v. State of Gujarat*, 1992 Supp (2) SCC 474¹² supreme court

The supreme court lay down the extensive guideline to be followed before convicting the accused on the basis of dying declaration:

1. Rule of law allows the court to convict the accused on the basis of dying declaration if it is found to be voluntary and true.
2. The court must satisfy itself that declaration was voluntarily and it was not a result of prompting tutoring or imagination.
3. The court should also satisfy itself that the declarant had the opportunity to observe and identify attackers.
4. The court must ensure that the declarant was in a fit state of mind at the time of the making of the declaration he was conscious and, in a position, to answer the question Putten to him.
5. If the dying declaration suffers from any infirmity, then the court will not rely upon it.

¹² *Paniben v. State of Gujarat*, 1992 Supp (2) SCC 474.

6. If the prosecution version is different from the original dying declaration, then the court will not rely upon it
7. If there are multiple dying declarations, then they should be consistent with each other where they are contradictory then the court will rely upon the dying declaration which is in corroboration with the circumstantial evidence.

VIII. HOW DYING DECLARATION SHOULD BE RECORDED

1. It should be made post injury as it will then specifically tell us about as to who cause the injury and how the injury was caused (in India preinjury statement is also admissible as dying declaration).
2. It should be recorded by the judicial magistrate as he is a neutral person ruling out any possibility of tutoring and he will record by following the correct procedure (in India dying declaration can be recorded by any person).
3. It should be recorded in the language of the victim if it is recorded in any other language then the person who recorded it must satisfy the court that he knew the both the language and state the reason for not recording in the language of victim.
4. It should be recorded in question-and-answer form, it is preferred over narrative form.
5. It should be recorded immediately after the causation of injury.
6. It should be accompanied by a fitness certificate it is certificated by the doctor which states that the declarant was in a fit state of mind at the time of making of the statement.

(The above are the guidelines which are recommendary and not mandatory)

7. **Who can record the dying declaration:** Dying declaration can be recorded by any person, police officer, judicial magistrate, executive magistrate, relatives, doctor.
8. **Dying Declaration How can be made:** It can be made orally or in writing, or by signs and gestures.
9. **Dying Declaration How can be recorded:** Dying declaration can be recorded in narrative form or in question-and-answer form. If it is recorded in the language of victim, then there is no problem if it is recorded in different language then show you know both languages and give reason for not recording in the same.

IX. LANDMARK CASES

In *Laxman v State of Maharashtra (2002)*¹³, the Supreme Court clarified that a dying declaration cannot be discarded merely because it lacks a doctor's formal certification of the declarant's mental fitness. What ultimately matters, the Court stressed, is whether the maker of the statement was mentally alert and capable of giving a voluntary and coherent account of the events. Medical endorsement is certainly helpful, but its absence is not fatal to admissibility.

Similarly, in *Ravikumar v State of Tamil Nadu (2006)*¹⁴, the Court reaffirmed that a dying declaration recorded by a police officer is not inherently inadmissible. The decisive factor is the reliability of the circumstances in which the statement was made and whether the content inspires confidence.

In case of *State of Uttar Pradesh v Shishupal Singh (1994)*¹⁵, the Court deals with situations involving multiple dying declarations and held that consistency across such statements plays a crucial role. If contradictions appear, the court must examine each version carefully to determine which one is most credible and reliable.

¹³ *Laxman v. State of Maharashtra*, (2002) 6 SCC 710

¹⁴ *Ravikumar v. State of Tamil Nadu*, (2006) 9 SCC 240.

¹⁵ *State of U.P. v. Shishupal Singh*, (1994) 4 SCC 357

In case of *Koli Chunilal Savji v State of Gujarat (1999)*¹⁶, the Court held the admissibility of a dying declaration conveyed through gestures. The ruling emphasized that non-verbal communication, including pointing or nodding, can constitute a valid declaration if the gestures clearly express the declarant's intention.

The Supreme Court in case of *Uka Ram v. State of Rajasthan, AIR 2001 SC 1814* further noted that dying declaration need not be comprehensive. Even an incomplete statement may be admitted so long as it directly relates to the cause of death.

Finally, In *Ram Nath Madho Prasad v. State of Madhya Pradesh, AIR 1953 SC 420*, the Supreme Court held that a dying declaration requires corroboration before it can form the basis of a conviction. This cautious approach was subsequently reconsidered in *Khushal Rao v. State of Bombay, AIR 1958 SC 22*, wherein the Court clarified that a truthful and voluntary dying declaration can, by itself, sustain a conviction without the necessity of corroboration.

X. CHALLENGES IN USING DYING DECLARATION AS EVIDENCE

Dying declarations hold a unique position in criminal law as an exception to the hearsay rule. While it can be used as crucial evidence, it has several challenges that affect admissibility, reliability, and the overall fairness of trials. One of the significant issues is the absence of cross-examination. Since the declarant is dead, the accused cannot question or clarify the statement. Cross examination is important for testing the credibility of witnesses, and its absence raises question about the equitable conduct of the trial. Another challenge is the mental and physical condition of the declarant at the time of making the declaration. Pain, medication, or trauma can impair judgment and affect the accuracy of the declaration. Courts must decide whether the declarant was in a "fit state of mind," a task that is inherently difficult posthumously.

The risk of tutoring and external influence is also a problem. The declaration made in the presence of relatives, police, or other interested parties may be subject to coercion or

¹⁶ *Koli Chunilal Savji v. State of Gujarat, (1999) 9 SCC 562*

manipulation, undermining voluntariness and authenticity. Multiple declarations or internal inconsistencies can further create problems. Contradictions between statements or within a single declaration can result in doubt on reliability, requiring courts to carefully assess credibility and reliability.

While corroboration is not legally mandatory, courts generally prefer supporting evidence. When a dying declaration is the only piece of evidence and conflicts and contradicts with other findings, it may not be sufficient to secure a conviction. Language and interpretation issues can result in another challenge. If the statement is recorded or translated by someone else, errors or miscommunications may distort the declarant's intent.

Strict compliance with legal formalities is essential. A declaration if not recorded by a magistrate or credible witness, or lacking certification of mental fitness, may be rejected. Procedural lapses can therefore weaken evidentiary value of declaration. Judicial discretion adds another layer of complexity in dying declaration. Judges examine the significance of a dying declaration based on circumstances, voluntariness, and the declarant's state of mind, leading to variability in outcomes.

Finally, although the law presumes that individuals on the brink of death are likely to speak truthfully, but there remains a risk of fabrication or false accusations, particularly in cases involving personal animosity. Courts must remain vigilant, ensuring that dying declarations are not treated as incontrovertible evidence without scrutiny. In sum, while dying declarations are a potent evidentiary tool, its use requires careful judicial evaluation, procedural safeguards, and corroboration wherever possible to ensure that justice is served without compromising fairness.¹⁷

¹⁷ Prithwish Ganguli, "Evidentiary Value of Dying Declarations: Reliability, Admissibility, And Judicial Interpretation" *12 international journals of creative research and thoughts*, b306-b307(2024).

XI. SUGGESTIONS AND RECOMMENDATIONS

The paper recommends the introduction of mandatory audio-visual recording of dying declarations to enhance evidentiary reliability. It further suggests the adoption of standardized procedures for medical certification of the declarant's mental fitness prior to recording statements. Legislative clarification of the phrase "circumstances of the transaction" under the Bharatiya Sakshya Adhiniyam, 2023 is also proposed to ensure consistent judicial interpretation. Additionally, judicial guidelines should be strengthened to minimize risks of coercion, misinterpretation, and evidentiary misuse.

XII. CONCLUSION

Dying declarations are one of the most compelling forms of evidence in criminal law, offering a direct account of victims in circumstances where other testimony may be unavailable. Their admissibility is founded on the belief that individuals on the verge of death are unlikely to falsify information. However, their use demands careful scrutiny. Courts must ensure that the declaration is voluntary, reliable, and recorded under circumstances that minimize coercion or error. While Indian law allows conviction solely based on a trustworthy dying declaration, prudence often requires corroboration through other evidence. Ultimately, dying declarations exemplify the balance between practical necessity and judicial caution: they provide powerful insights into criminal acts but must be evaluated meticulously to protect the principles of fairness, accuracy, and justice.

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