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SHIFTING PARADIGM OF DYING DECLARATION IN INDIA: AN ANALYSIS

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Abstract

A dying declaration refers to statements made by individuals concerning their dying moments. Declarations made before death and concerning the cause or circumstances around the death are admissible in court as evidence. Under Section 32(1) of the Indian Evidence Act, 1872, dying declarations are to remain the most important declarations under Indian law. The most traditional explanation behind this reasoning is contained in the phrase *nemo moriturus praesumitur mentiri*-- a dying person is under no obligation to lie. The faith adjudicators used to place on dying declarations has drastically reduced. This paper explores the development of law concerning the dying declaration in India, and the extensive and varying judicial treatment of multiple or inconsistent declarations to the standard of fairness, and the lack of secured procedural reform in dying declaration evidence. All of this signals a most welcome reconsideration of faith in the criminal justice system.

Keywords: Dying Declaration; Section 32(1); Indian Evidence Act; Hearsay Exception; Reliability; Criminal Justice

1. Introduction

A “dying declaration” is a statement made by a deceased person concerning the explanation or the circumstances leading to their death. The rationale behind this is that a person who is about to die would have no reason to lie and would not falsify the statement concerning their death. This rationale comes from English common law specifically, *Rex v. Woodcock* (1789) which asserted that no one would lie when death is about to take place. Section 32(1) of the Indian Evidence Act, 1872, provides that such statements become exceptions to the hearsay rule and are admissible where the reason for that person's death is relevant (Indian Evidence Act, sec. 32(1)).

Dying declarations, in the context of homicide or dowry death, have unique importance as, in some situations, the victim's declaration could directly incriminate the perpetrator. This particular piece of research attempts to understand the development of the Indian judiciary's response to dying declarations. It focuses on the major shifts in judicial reasoning, the current treatment of non-verbal or multipart declarations, and the impact of procedural rules on the admissibility and trustworthiness of a declaration as evidentiary dying declaration.

This research is based on a study of case law and statutes, which is supplemented by a limited study from other jurisdictions. The following part of the paper will discuss the legal framework of dying declarations in India.

2. Statutory and Conceptual Framework

Section 32(1) of the Evidence Act states the statement made by a person regarding the reasons for their death or the situations that led to their death will be admissible as evidence as long as the person's death is being questioned. This applies as a specific exception to the hearsay rule. Importantly, unlike the old English rule, Indian laws do not require the declarant to be in a state of expecting death when making the declaration. The only criteria are that the statement's maker is deceased, and the statement pertains to the cause or the circumstances of the death.

A dying declaration which is admitted under Section 32(1) is considered substantive evidence with no need for corroboration. If a court determines that a dying declaration is faithful and voluntary, it can serve as the case's sole basis for conviction. The Supreme Court cemented this position in *Khushal Rao v. State of Bombay* (1958). The reasoning here is twofold: necessity (the victim is unavailable to testify) and moral imperative by presuming Deaf testimony to be truthful. The position taken in other jurisdictions is more limited. In England, dying declarations were admissible evidence only in



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homicide cases. This was when a declaration was made during a state of impending death. In the present UK (Criminal Justice Act 2003), such statements are considered hearsay under general rules, although the law still requires testimony to be heard on prescribed points. The Federal Rules of Evidence (804 (b)(2) in the USA states that dying declarations are limited to homicide prosecution and civil cases if the declarant was going to die within the time prescribed). The law in India is broader which is in-line with the global position. This reflects a judicial policy which places considerable evidence on a dead victim's last words.

3. Evolution of Judicial Interpretation in India

In the early days of the Indian judiciary, dying declarations were treated with considerable skepticism, and courts sought corroborative evidence. This can be seen in the case of *Queen-Empress v. Abdullah* (1885). A victim identified her attacker by nodding, and while the courts accepted this as a declaration, they pointed out the need for caution to be applied. For a long time, a conviction based solely on an untested statement was seen as inappropriate by the courts.

This approach reached a milestone in the case of *Khushal Rao v. State of Bombay* (SC 1958), wherein the court observed that “neither a rule of law nor of prudence” dictates the necessity for corroboration of a dying declaration, so long as it is of a reliable nature. Thus, a conviction can solely be made on a dying declaration if the court finds it to be valid and reliable. This was a significant shift in approach, as lower courts began to track dying declarations with the confidence that dying declarations were valid and reliable, no corroboration needed, so long as it was thoroughly rationalized.

In the 1970s, the Supreme Court confirmed that dying declarations may stand as the sole evidence, as long as the declarations are free from any signs of tutoring or coercion. In *Munnu Raja v. State of M.P.*, the Court endorsed a police officer's statement recorded as an FIR and admitted it as a dying declaration. The Court also noted that there are no legal restrictions to a police recorded dying declaration, although it is preferable to have a magistrate. The Court reiterated that the declaration must be given in a fit mental state and without prompting. In the case of conflicting multiple dying declarations, the Supreme Court has held that it is unsafe to convict in such cases without corroboration; the court should prefer the version that is most consistent with the other facts or require further corroboration.

The Court also dealt with the procedural aspects. In *Paparambaka Rosamma v. State of A.P.* (1999), a dying declaration was held to be suspicious solely on the ground that a certificate of fitness from the doctor was not obtained. This rigid approach was, however, relaxed in *Laxman v. State of Maharashtra* (2002) where a larger bench held that in the absence of a medical certification, it is not fatal to the case if evidence shows that the victim was conscious and coherent while making the declaration. By the early 2000s, the law was settled. A dying declaration is a powerful piece of evidence that can suffice for a conviction, if the court is fully confident of its truth. If any doubt exists as to its truth or the circumstances under which it was made, courts prefer to look for corroborative evidence. This reflects the cautious approach.

4. Procedural and Evidentiary Safeguards

Courts emphasize several safeguards to ensure dying declarations are reliable:

- **Recording by Proper Authority:** A magistrate should ideally record a dying declaration to provide unbiased oversight. Nevertheless, if a police officer or doctor, due to the circumstances, records it, it is still admissible. In any case, the statement will be watched by the court to ensure that it is neither coached nor pressured.
- **Medical Fitness:** The declarant should be conscious and sound to give a statement. It is normal practice for a doctor to testify that the victim is of sound mind. Nonetheless, per *Laxman* (2002), a dying declaration is not invalid simply for lack of a formal certificate if other evidence demonstrates the declarant was mentally fit. If the victim was unconscious or otherwise incapable, the statement must be discarded.
- **Exact Words & Forms:** It should be recorded in the exact words of the declarant as much as possible. It can be oral, written, or even gestures. In *Abdullah* (1885), for example, nods or signs were accepted as equivalent to an oral statement. The recorder should not change the content of the declaration and leading questions must be avoided.



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- **No Tutoring:** No relatives or police should prompt the victim, and any indication of coaching will make the declaration invalid.
- **Legal Exception:** Specifically, dying declarations are considered an exception to the hearsay rule. This is since the declarant is not available to testify. If the victim survives, the statement in question is not a dying declaration and must be supported by regular testimony.

These safeguards aim to preserve the integrity of a dying declaration. When followed, they provide confidence that the declaration is the true, untarnished last testimony of the victim, which the court can then evaluate on merit.

5. Judicial Trends and Shifting Paradigm

Recently, courts have adopted a more sophisticated approach to dying declarations, integrating elements of analysis while still showing a degree of respect for such declarations. One noticeable development is the checking of consistency and coherence of a dying declaration with other pieces of evidence. Most modern decisions seek corroborative evidence, such as medical evidence surrounding the victim and motive evidence, although this is not a legal requirement, to justify their confidence in the declaration's veracity.

In the case of several dying declarations, the courts make inter se comparisons. Consistency provides supportive evidence for confirmation while material contradictions justify an approach of caution. The Supreme Court has recently restated the position that one dying declaration that is reliable or several that are consistent is sufficient for conviction. But significant discrepancies, in the case of several conflicting declarations, will typically favor the accused. This demonstrates a “trust but verify” approach.

In summary, there has been a change from considering dying declarations as imperatively authoritative to understanding them as valuable evidence that needs to satisfy the court's belief. Apprehending the moral weight of "words said on the deathbed" might provide, the courts now appropriately combine it with the common-sense approaches of examination, plausibility, and consistency to the evidence provided to the court. The paradigm shift occurs from the use of dying declarations at a point to ensure that all relevant justice has been adequately investigated and the evidence also exhaustively examined.

6. Challenges and Critiques

The use of dying declarations, while often necessary, raises several concerns:

- **No Cross-Examination:** Since the declarant cannot be cross-examined, the defense lacks a way to verify the truth of the statement directly. This task falls heavily on the judge to evaluate the statement for enough internal consistencies as well as for congruence amongst the other pieces of evidence.
- **Reliability Issues:** Those making a dying declaration may be in excruciating pain, deeply traumatized, or dialed out of reality due to extreme medication, which in turn may cloud their perception and memory. The dying declarant might also be motivated to lie, albeit this is usually assumed to be rare. Because of this, some jurists suggest that dying declarations be assumed to lack truth and that the court seek corroborating evidence in all cases (Sarkar 412).
- **Tutoring/Coercion:** The possibility of someone unduly influencing a victim's statement must always be considered. A subtle police or family member suggestion of who to blame may manipulate the testimony, resulting declaration is suspect and almost impossible to prove after the fact.
- **Multiple Versions:** The situation is even more troubling if the victim gave different accounts. This lack of consistency manifests as dying declarations that are legally inconsistent. The court is then faced with the dilemma of accepting one declaration over another, which might lead to the conclusion that all are equally false.
- **Procedural Lapses:** Practical failures, such as the omission of the medical certificate, failing to capture the affidavit's exact words, or the absence of a signature of a witness, can render the declaration unauthenticated. These



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types of gaps are often exploited by defense attorneys, especially concerning arguments pertaining to the unreliability of the statement or improper documentation.

In sum, while dying declarations are an important tool for justice, they must be handled with care. Courts are aware of these challenges and have increasingly addressed them by tightening the standards for accepting such statements.

7. Comparative Perspective

India's approach to dying declarations differs from that in many other countries. **United Kingdom:** Historically, English law admitted dying declarations only in cases of the declarant's homicide and only if made under a settled expectation of death. Today, after the Criminal Justice Act 2003, such statements are treated as one form of hearsay that may be admitted if the witness is unavailable (due to death) and if the court finds the statement reliable. The UK courts thus have discretion to exclude a dying declaration if it lacks credibility. **United States:** Under the Federal Rules of Evidence, dying declarations are a very narrow exception – only admissible in homicide prosecutions or civil cases and only if the declarant believed death was imminent. U.S. law reflects a strong preference for live testimony, and constitutional confrontation rights also impose caution. **India:** By contrast, Section 32(1) allows dying declarations in any case where the cause of death is in question, regardless of whether the declarant anticipated death. Indian law is thus broader in scope. However, Indian courts balance the broad admissibility with careful appraisal, achieving a similar cautionary effect through judicial practice.

8. Suggestions and Reforms

To strengthen the law on dying declarations, a few reforms may be considered:

- **Standard Protocol:** A uniform procedure should be implemented for the recording of dying declarations. In the first instance, a magistrate should be assigned the recording, and audio-visual recording techniques should be utilized in documentation so as to capture the condition of the person and the exact words of the victim.
- **Training & Guidance:** Training should focus on the police, the medical personnel, and the magistrates in the proper handling of dying declarations (not leading the dying victim, assessing the condition of the victim properly, etc.). Authoritative guidelines or an amendment to the existing legislation may be proposed to consolidate the best practices (i.e., obtaining medical attestation on the alertness of the victim in dying declarations, provision of interpreters to be a Spanish speaker, and documentation of symptoms of coaching).
- **Encourage Corroboration:** It is suggested, albeit not a legal requirement, that all other evidence (forensic, medical or circumstantial) be sought to accompany a dying declaration. This, unequivocally, brings about safer convictions and a fair trial as all other laws remain, to the effect, that a clear and credible dying declaration may stand alone as sufficient evidence.

9. Conclusion

In India, the law concerning dying declarations has unfolded from a position of nearly complete trust to one of cautious trust. Earlier, courts used to convict solely on the basis of dying declarations, for it was commonly believed that no one could die deceitfully. Contemporary courts, while still maintaining this presumptive belief, also consider the dying declaration for its reliability and consistency. The courts inquire, does this declaration sound true? Was it made in reasonable circumstances? If the answer is yes, then it is accepted as a conclusive piece of evidence. If the answer is no, then courts are likely to exercise doubt and insist corroboration.

Under the current approach, there is an appreciation of dying declarations as fundamental to the justice system, while also emphasizing the need for safeguards against lasting miscarriages of justice. There is the view dying declarations need to gain the confidence of the courts. True, the voice of the deceased should be heard and appreciated, but only to the extent that it satisfies the requirements of the court. Indian law tries to 'reason with the dying,' and permit the dying declaration,



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with the deceased's sensibilities, and the accused sensibilities, deny it for declaration without proof. In this respect, there is a reasonable balance in law between two extremes of compassion and caution.

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