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## An Examination of the Dynamics and Obstacles facing the Legal Importance of Dying Declarations in Existing Criminal Jurisprudence

Vidur Laddhad<sup>a</sup>

<sup>a</sup>Symbiosis International University, Pune, India

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*A 'Dying Declaration' is an expression in law that pertains to a statement said by an individual who perceives that they are on the verge of death, either as a result of a mortal accident or an incurable sickness. This statement is deemed acceptable as evidence in a court of law, despite the unavailability of the individual who originally made it to testify in person. The admission of dying statements is based on the premise that persons who are about to die have less motivation to deceive since they are more inclined to choose honesty in their last moments. Under the principles of common law, a dying declaration can be used as evidence if the declarant has passed away and there is uncertainty about the circumstances and causes of their death. However, the declaration must be related to the declarant's beliefs about their impending demise. This research will rigorously assess the admissibility and evidential importance of dying utterances within the legal systems of two common law nations, specifically India and the United Kingdom. The current research primarily focuses on the acceptability of evidence in different legal proceedings, the circumstances related to the death of the person making the statement, the person's expectation of their own death, and the factors or sequence of events that led to their death. This study exclusively investigates all facets of the Dying Declaration and its evidential importance within the contexts of India and the United Kingdom (referred to as the UK). Although the circumstances leading to this exception may vary, both of these legal systems, which are based on common law, recognise the deathbed remark as an exception.*

**Keywords:** *dying, common law, Indian, declaration, legal, declarant.*

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## INTRODUCTION

When a person is on their deathbed or in the later stages of their life, they may make a final statement that is referred to as a 'dying declaration'. The message can be conveyed using hand gestures, verbal expressions, written words, or any combination of these modes of communication.

One of the provisions of the Indian Evidence Act, Section 32(1), states that a will and testament made at the end of one's life can be presented in a court of law in India. When the declarant passes away, the statement must be made when it is necessary. In the event that the individual does not pass away, the statement may be regarded as a statement in accordance with Articles 154 and 161 of the Code of Criminal Procedure rather than a declaration that the subject is dying. This exemption to the hearsay rule is based on the legal adage '*nemo moriturus praesumitur mentire*' which states that a man will not approach his Maker with a lie in his mouth. This adage serves as the foundation for this exemption.<sup>1</sup>

According to Law, a person's 'dying moments' are accompanied by a '*subconscious yearning to alleviate the mind of its load*' with the latter statement being justified on a religious level. The law goes on to suggest that this yearning is accompanied by a 'moment of death'. For this reason, it might be concluded that a court has judged someone guilty entirely on the basis of their own free will. Only the characteristics of the procedures, the declaration of death, the likelihood of the declaration of death, and the cause or circumstances that ultimately resulted in the declaration of death have been the subject of research on admissibility. There is an exception to the rule in this specific circumstance, despite the fact that some individuals may have lost faith in the rule of proof after years of court procedures that have been carried out under a variety of different systems.

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<sup>1</sup> Indian Evidence Act 1872

To begin, in India, the final words said by a person are admissible in both civil and criminal procedures, provided that the reason for the person's death is pertinent to the case.

**The Essentials of the Declaration of Dying:** According to the Indian Evidence Act, the most important need for a deathbed declaration is that the person who is making the statement must have passed away before the declaration may be acknowledged.

**It is provided that the following additional conditions are met:**

- It is necessary for the person who got the information to have some level of awareness of the deceased person.
- It is the responsibility of the individual to provide a formal declaration that provides an explanation of the events and underlying elements that led to their death.
- The declaration must be documented by the party that is directly involved in the investigation of the death.

There are a variety of judicial and administrative actions that allow for the use of statements as evidence.<sup>2</sup>

## JUDICIAL PRONOUNCEMENT

According to the ruling in the case of *Munnu Raja & Ors v State of Madhya Pradesh*,<sup>3</sup> it has been determined that there is no legal or ethical requirement to include further proof along with a dying statement. Therefore, there is no apparent reason to prevent the acceptance of a dying pronouncement without such evidence. If the deathbed declaration is determined to be authentic and willingly given in the court's view, the lawsuit can proceed without requiring more proof, as per the judgement. In accordance with the legal precedent set in the case of *State of UP v Ram Sagar Yadav*,<sup>4</sup> the use of a deathbed declaration as evidential support requires the explicit sanction of the court. The acceptability of a dying person's final statement as evidence depends on the specific circumstances of the case, as stated in the legal precedent set by the

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<sup>2</sup> *Kishan Lal v State of Rajasthan* AIR 1999 SC 3062

<sup>3</sup> *Munnu Raja & Ors v State of Madhya Pradesh* (1976) 3 SCC 104

<sup>4</sup> *State of Uttar Pradesh v Ram Sagar Yadav* (1985) SCR 1 621

Kushal Rao v the State of Bombay case.<sup>5</sup> This verdict also highlights essential fundamental elements for crafting dying declarations:

- A dying declaration does not need to be confirmed by other evidence, as there is no legal or practical requirement for a dying statement to be supported.
- It is crucial to thoroughly examine the factual details and contextual factors surrounding the event in which a death statement is made.
- Each court must assess the circumstances in which a dying declaration is recorded, including factors such as the lighting in the room, the mental state of the person making the statement, the timeliness of the declaration, and its consistency with the facts and circumstances of the case.
- Additionally, courts need to determine if there are any factors that may have influenced the victim's statement.

In the matter of K Ramachandra Reddy & Ors. v The Public Prosecutor,<sup>6</sup> the court was responsible for determining whether the witness offered her evidence willingly, or if extraneous factors influenced her, or if her statement was a product of her own imagination. Section 32 of the Indian Evidence Act allows for the admission of a deathbed declaration without the need for an oath or cross-examination. This implies that it is more desirable for the witness to be in a state of heightened psychological stability. In the case of Laxman v State of Maharashtra,<sup>7</sup> the Supreme Court delivered a judgement affirming that the statement's admissibility is not compromised by the lack of a doctor's certification about the declarant's mental competence during the time of declaration. The Court, in its authoritative ruling, also opined that assessing suicide notes under Section 32(1) of the Evidence Act of 1872 may pose challenges in determining the physical and mental state of the deceased, as these notes are usually written by individuals in isolation.

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<sup>5</sup> *Kushal Rao v State of Maharashtra* AIR 1958 SC 22

<sup>6</sup> *K Ramachandra Reddy & Ors. v The Public Prosecutor* (1977) 1 SCJ 36

<sup>7</sup> *Laxman & Ors. v State of Maharashtra* (1974) 2 SCJ 371

In the legal case of *Queen-Empress v Abdulla*,<sup>8</sup> it was established that the appellant deliberately caused a deep cut to his own throat with a razor, which may be seen as a definitive action. Despite her inability to speak, she expressed agreement by making a positive gesture, namely by giving the 'yes' sign in answer to the inquiry. The individual's last statement was appropriately acknowledged based on the signs she exhibited. Similarly, the person known as Nirbhaya in the groundbreaking legal case of *Mukesh v State for NCT of Delhi*<sup>9</sup> had substantial bodily injuries and had difficulty speaking. Therefore, she completed her final statement via gestures and signs. An indication, signal, or gesture that symbolises an individual's acknowledgment of their own death.

Conversely, the court's ruling in *Rex v Mead*<sup>10</sup> was grounded on the absence of lucidity concerning the exact reason for the individual's demise. The court rejected the acceptance of the dying declaration made by the lady who had an abortion, stating that such statements are only admissible when the inquiry is related to the person's death. This verdict essentially suggested that the prosecution for abortion was not applicable under such circumstances. The cause-related dying declaration was rejected in the English court, despite the argument that illegal abortion was the main contributing reason to the person's death. Historically, dying pronouncements have been deemed inadmissible as evidence in both criminal and civil procedures, even those involving homicide.

## COMPARATIVE ANALYSIS

**Death of the declarant:** If a person who made a statement in a document has passed away, the statement must be used as evidence in criminal proceedings for any facts that the person would have sworn to verbally. This is in accordance with Section 23 of the Criminal Justice Act 1988,<sup>11</sup> which was passed in the United Kingdom. Statements made by a deceased person, whether they be spoken or written, that include crucial facts are deemed to be factual evidence in India.

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<sup>8</sup> *Queen-Empress v Abdulla* (1885) ILR 7 All 385

<sup>9</sup> *Mukesh v State for NCT of Delhi* (2017) 6 SCC 1

<sup>10</sup> *Rex v Mead* (1824) 2 B&C 605

<sup>11</sup> Criminal Justice Act 1988, s 23

This provision is found in Section 32(1) of the Indian Evidence Act 1872,<sup>12</sup> which says that India adheres to this provision. The total restriction of recognition under English law in the event that the individual making the statement lives is a significant distinction between the perspectives of India and Britain. In line with Indian law, the accomplishment of other legal conditions is a prerequisite for the statement to be admissible in court. One interpretation of the remark made by the survivor is that it might be interpreted as supporting evidence for the verifiable claims that are established in Section 157 of the legislation. It is because of this that the third point of dispute arises, which is whether or not the legality of death announcements is dependent on the probability of death.

**The Expectation of Death:** In order for a declaration to be admissible in a UK court, the declarant must possess a firmly established and irremediable anticipation of their own demise at the time of making the statement. The speaker must possess a definite knowledge of the imminent arrival of death. In the case of *R v Jenkins*,<sup>13</sup> the defendant was charged with the murder of a female victim who, while experiencing respiratory distress, delivered a confession that incriminated the defendant. The recording was made when she provided her statement and acknowledged its irretrievability. They appended their signatures to the document and used the phrase 'at present' to indicate their existing circumstances.

Due to the presence of hope, the court considered the statement to be inadmissible. The primary justification is a firm conviction that death is unavoidable and that a final declaration made on one's deathbed serves as a substitute for a formal oath. This measure may serve as a safeguard against cross-examination, as the forthcoming meeting with God has significant importance. There are no such laws in accordance with Indian legislation.<sup>14</sup> According to Section 32(1), the admissibility of a declaration of approaching death is not affected by the expectancy of death. Curiously, the Indian Supreme Court has referenced several judgements that provide evidence in favour of deathbed pronouncements.

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<sup>12</sup> Indian Evidence Act 1872, s 32(1)

<sup>13</sup> *R v Jenkins* [2006] QCA 22

<sup>14</sup> Onkar Nath Tiwari, 'Cogency of Dying Declaration: Analysis' (2018) 87 *ILI law Review*  
<<https://ili.ac.in/pdf/don.pdf>> accessed 28 December 2023

In the case of *R. v Woodcock*, this particular form of evidence is deemed admissible due to the fact that such statements are made in highly critical situations, typically when the person making the statement is on the brink of death, lacking any hope, uninterested in falsehoods, and obliged to reveal the truth. According to the law, a court-administered oath is a solemn and grave event that has a resemblance to this occurrence.

Defending this rationale is challenging due to the fact that the Indian legislation permits the inclusion of such evidence, regardless of whether the declarant believes they are about to die or lacks the psychological or religious need to provide an honest dying declaration. In order to be admissible under common law, dying declarations must have a direct connection to the individual's cause of death.

**Circumstances relating to death:** An individual's personal experience with the cause of death must be clearly corroborated in order for their declaration to be considered acceptable under British law. We quickly ruled out any possibility that had nothing to do with the death's cause. The statement must specifically state the 'cause of death' of the declarant, as well as any other relevant 'circumstances of the transaction' that contributed to the declarant's death; these details are acceptable according to India's legal framework. Alternatively, the idea that 'circumstances' and death are intrinsically related is not always true. It is adequate if the dead person mentions anything related to any of the things that caused their death. A case between Rattan Singh and the State of Himachal Pradesh<sup>15</sup> is the one described before. Given that the criteria surrounding death transactions in India and the UK are comparable, it would appear that India's jurisdiction is more expansive.

**Comparison between dying declaration & dying deposition:** An announcement of death might be made by anybody, including a judge, a physician, or a law enforcement official. It is the responsibility of the magistrate to record the statements made by the terminally ill witness, provided that the accused or their counsel is present. It is permissible to conduct a cross-examination of a witness who is suffering from a terminal illness. However, it is important to

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<sup>15</sup> *Rattan Singh v The State of Himachal Pradesh* (1997) 4 SCC 161

keep in mind that this clearance does not apply to wills and testaments that are executed after death. As opposed to dying declarations, dying depositions involve the act of administering an oath, which takes on a more substantial significance in the context of dying depositions. It is required to refer to the Indian Evidence Act, which contains laws dealing with dying depositions, in order to assess whether or not a dying declaration is legitimate within the context of this framework. A statement that is provided by someone whose time is running out carries less weight than a deposition that is almost over. A deposition that is almost over carries greater weight.

### CRITICAL ANALYSIS

In the case of *Pakala Araya A. Swami v Emperor*,<sup>16</sup> it was made clear that the phrase 'any of the circumstances of the transaction which resulted in his death' encompasses a wider range of circumstances than the phrase 'the cause of his death'. It was with the goal of collecting money from Pakala Narayana Swamy in Behrampur that the deceased person left his residence. Despite this, he was discovered inside a trunk, mutilated and dead beyond recognition. The Privy Council deliberated on whether or not the statement that the dead individual had made to his wife falls inside the purview of Section 32(1) of the Evidence Act. Because the Privy Council has found that the dead person's statement to his wife before he left for Behrampur played a significant part in his passing, the Privy Council has decided that the speech will be considered a dying declaration.

At the time when the declarant was making the declaration, the court would often take into consideration the medical opinion regarding the declarant's state of health. It is not possible for this to be an inelastic rule. The Dying Declaration will be approved if the person who records the statement or the witness to the declaration provides proof that is adequate on the fit mental condition of the individual before the declaration is accepted. In the judgement that was handed down by the Constitution Bench of the Honourable Supreme Court in the matter of *Laxman v*

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<sup>16</sup> *Pakala Araya A Swami v Emperor* AIR 1939 PRIVY COU CIL



State of Maharashtra,<sup>17</sup> it is elucidated in a concise manner that the acceptance of the Dying Declaration does not need medical certification as absolutely necessary.

Despite the fact that dying statements are of comparable evidentiary significance in both nations, the implementation of dying declarations tends to vary in order to strengthen convictions. In the case of *DPP v Hester*,<sup>18</sup> it was established that it would be counterproductive to arrive at particular conclusions only on the basis of the evidence presented by a single individual. In a great number of instances, the authenticity of the evidence may be affected by elements such as vindictiveness, self-exculpation, or self-interest, all of which have the potential to be present. The conduct in question, on the other hand, does not constitute a reliable indicator of an individual who is in the midst of the process of dying. In the United Kingdom, there is a popular idea that people who are extremely obese and who no longer have conventional motivations to lie will naturally have a true predisposition to tell the truth.<sup>19</sup> This view is supported by the fact that fat people are less likely to lie. There is a possibility that this idea is an expression of religious ideals that are not religious in nature. Throughout the 19th century, the argument made by Eyre, C.B. in *Woodcock* that utterances made by persons on their deathbeds had evidentiary importance similar to that of sworn testimony is the component that continues to be important today.

Therefore, according to the legal system in India, the dying declaration is deemed to be a sort of evidence that has not been validated independently. As is the case with any other kind of evidence, it is necessary for it to satisfy the requirements established by the court in order to demonstrate that the statement is an accurate and trustworthy depiction of the events and that it may be utilised in legal proceedings. In the case of *Satish Ambanna v State of Maharashtra*,<sup>20</sup> it was established that a court has the authority to consider a statement as evidence for the

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<sup>17</sup> *Laxman v State of Maharashtra* AIR 2002 SC 2973

<sup>18</sup> *DPP v Hester* (1972) 3 All ER 1056

<sup>19</sup> Muskan & Sayani Pal, 'Dying Declaration and Its Evidentiary Value in Relation to India & United Kingdom' (2023) 5(1) Indian Journal of Law and Legal Research  
<<https://heinonline.org/HOL/LandingPage?handle=hein.journals/injlolw10&div=168&id=&page=>> accessed 28 December 2023

<sup>20</sup> *Satish Ambanna v State of Maharashtra* AIR 2009 SC 1626

purpose of convicting an individual if it conducts a comprehensive investigation and determines that the statement is factual, free from any form of coercion or manipulation of the deceased, and demonstrates coherence and consistency. Even in the absence of any more proof to back up the assertion, this is something that can be done.

Countries such as India and the United Kingdom took distinct methodologies, but in the end, they arrived at outcomes that were comparable. In spite of this, rulings in both nations can be based only on a closing remark. In the United Kingdom, statements made by a person while they are lying on their deathbed are considered to be persuasive evidence because of the expectation of their own mortality. In the context of India, the significance of individual pieces of evidence is contingent upon the specific circumstances and circumstances in which they were gathered. When a deathbed declaration accurately explains the circumstances surrounding a person's death and names the individuals responsible for the assault, the courts in the Indian legal system have the option to waive the necessity for corroboration. This is the case in scenarios when the courts conclude that the declaration accurately characterises the nature of the attack.

## **CONCLUSION**

This statement, spoken upon one's demise, holds significance in both instances of suicide and murder according to Indian legislation. Under Indian law, statements made by a person are considered valid and can be used as evidence in both criminal and civil proceedings, regardless of whether the person who made the statement is deceased. According to English law, the statement can only be utilised in criminal proceedings if the person who made the statement has passed away and their death is relevant to the case. The presence of genuine fear or dread of death holds importance in English law, although it is not a prerequisite under the Indian Evidence Act.

Although dying pronouncements are still acceptable in the two common law jurisdictions, the task of maintaining this longstanding admissibility has become more challenging. The United Kingdom has upheld its stringent regulations on the acceptance of deathbed statements throughout the years.

The utterances of a dying individual are revered by certain individuals, however, such evidence is often met with intense scepticism. The declarant will not be subject to cross-examination. An oath is not obligatory. Perjury is not legally sanctionable. There is always a possibility of committing an irreversible error. To guarantee the use of this evidence for the pursuit of justice, it is imperative to establish rigorous criteria for its acceptance. Nevertheless, this is counteracted by the stipulation that the statements made by the defendant on their deathbed must be completely dependable, voluntary, and honest in order to constitute the only basis for a conviction.