ANALYSIS OF JUDICIAL DISCRETION IN DYING DECLARATIONS: TIMING AND ADMISSIBILITY

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INTRODUCTION

Dying declarations hold a significant place in the Indian legal system Section 26(a) of the Bharatiya Sakshya Adhiniyam (BSA) of 2023. A dying declaration refers to a statement made by a person who is on the verge of death, concerning the cause of their death or the circumstances leading to it. The underlying principle behind admitting dying declarations as evidence is based on the belief that a person who is about to die would not lie. However, the admissibility of such declarations remains a contentious issue, particularly concerning the timing of the statement. Courts have exercised broad discretion in determining whether a dying declaration is admissible, resulting in inconsistent judicial outcomes. This research project seeks to critically analyze how the proximity of timing of dying declarations influences their admissibility and how judicial discretion in this regard has led to legal uncertainty.

The research will begin by examining the existing legal framework governing dying declarations, with a particular focus on timing. Key judgments such as Munnu Raja v. State of M.P.[1], Kishan Lal v. State of Rajasthan[2], Laxman v. State of Maharashtra[3], and Bhagwan Das v. State of Rajasthan[4] will be analyzed to illustrate how courts have accepted or rejected dying declarations based on the timing of the statement. These cases reflect the inconsistency in judicial decisions, where months-old declarations have sometimes been admitted while more recent ones have been rejected.

The project will identify the key factors that courts consider when admitting dying declarations, apart from timing, and will assess the challenges faced by courts in maintaining consistency.

[1] Munnu Raja v. State of M.P IR 1976 SC 2199.
[2] Kishan Lal v. State of Rajasthan AIR 1999 SC 3062.
[3] Laxman v. State of Maharashtra 2002 AIR SC 2973.
[4] Bhagwan Das v. State of Rajasthan AIR 1957 SC 589.

The analysis will aim to propose the introduction of uniform legal guidelines on the admissibility of dying declarations based on timing. By standardizing this aspect of evidence law, the project intends to address the legal uncertainty caused by judicial discretion and ensure greater consistency and fairness in judicial decisions. This research project will rely on a doctrinal method of analysis, using primary and secondary sources, including statutes, case law, legal commentaries, and scholarly articles. Through this comprehensive analysis, the project will provide concrete recommendations for improving the legal framework governing dying declarations.

CONCEPT OF DYING DECLARATION

A dying declaration holds a significant place in the Indian legal system as a piece of evidence. It refers to a statement made by a person regarding the cause of their death or the circumstances leading to it, when they believe that death is imminent. The legal acceptance of dying declarations is based on the belief that a person facing death is unlikely to lie. The principle is that a person's statement made under the expectation of death is treated as trustworthy because, at the moment of death, there is no reason for the person to misrepresent the truth.

Definition-

In India, the concept of dying declaration is governed by Section 26(a) of the Bharatiya Sakshya Adhiniyam, 2023 (which replaced Section 32(1) of the Indian Evidence Act, 1872). According to this provision:

"A Dying Declaration means the statement of a person who has died explaining the circumstances of his death. It can be said to be a statement made by a mortally injured person, indicating who has injured them and/or the circumstances surrounding their injury. The injured is aware that he/she is about to die and while the declaration is hearsay, it is admissible since it is believed that the dying person does not have any reason to lie."[5]

"This provides for the 'dying declaration' which is incorporated from the English Law principle, which relates to what are popularly known as dying declaration but marks a remarkable departure from them, as in English Law this type of statement is relevant only when the charge

[5] Monark Gahlot, 'Evidentiary Value of Dying Declaration', Manupatra, 15 April 2005 <https://articles.manupatra.com/article-details/Evidentiary-Value-Of-Dying-Declaration>

is that of murder or manslaughter."[6]

Presumption Principle-

The presumption is based on assumption of '*Nemo moriturus praesumitur mentir*'or 'truth in the face of death' which means 'No one at the point of death is presumed to lie.' Or in other words 'A man will not meet his Maker with a lie in his mouth.' "The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sucrose not status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the Courts, it becomes a very important and a reliable piece of evidence and if the Court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration"[7]

Mode of Making a Dying Declaration

A dying declaration can be made in different forms:

1. **Oral Statement** – A verbal statement made to a police officer, magistrate, or any person.

2. **Written Statement** – A written document signed or marked by the declarant.

3. **Gestures or Signs** – If the person is unable to speak, their dying declaration can be recorded through signs or gestures.

In Queen-Empress v. Abdullah (1885)[8], the court admitted a dying declaration made by gestures, where the victim nodded in response to questions about the identity of the attacker.

Rationale Behind Dying Declaration

The admissibility of dying declarations is based on two primary reasons:

[6] 'Chapter 4- Dying Declaration', Manupatra <http://student.manupatra.com/Academic/Abk/Law-of-Evidence/Chapter4.htm>.
[7] Monark Gahlot, 'Evidentiary Value Of Dying Declaration', Manupatra, 15 April 2005 <https://articles.manupatra.com/article-details/Evidentiary-Value-Of-Dying-Declaration>.
[8] Queen-Empress v. Abdullah ILR 7 All 385.

1. **Trustworthiness of a dying person's statement** – It is presumed that a person at the point of death is unlikely to lie, as they have no motive to mislead.

2. **Necessity** – In many cases of homicide or unnatural death, the victim is the only witness to the crime. If their statement is excluded, valuable evidence could be lost, leading to a miscarriage of justice.

INDIAN LEGAL FRAMEWORK: SECTION 26(a)

The concept of dying declaration in India is governed by Section 26(a) of the Bharatiya Sakshya Adhiniyam, 2023. This provision replaces Section 32(1) of the Indian Evidence Act, 1872 and retains the core principles related to the admissibility of dying declarations as evidence.

Statutory Provision-

Section 26(a) of the Bharatiya Sakshya Adhiniyam, 2023 states:

"When *the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question*"[9]

This provision creates an exception to the general rule that hearsay evidence is inadmissible in court. The law assumes that a person who is about to die is unlikely to lie or misrepresent facts. Therefore, statements made by a dying person regarding the circumstances of their death are treated as credible and admissible evidence.

Judicial Interpretation-

Indian courts have played a crucial role in shaping the interpretation and applicability of dying declarations. Judicial precedents have clarified the circumstances under which a dying declaration can be admitted as evidence and the factors that affect its credibility. The case of

[9] Bharatiya Sakshya Adhiniyam, 2023(47 of 2023) s 26(a).

Paniben v. State of Gujarat (1992)[10] laid down key principles regarding the admissibility and evidentiary value of dying declarations:

1. "There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

2. If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

3. This Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state of mind to make the declaration.

4. Where dying declaration is suspicious it should not be acted upon without corroborative evidence.

5. Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.

6. A dying declaration, which suffers from infirmity, cannot form the basis of conviction.

7. Merely because dying declaration does not contain the details as to the occurrence, it is not to be rejected.

8. Merely because it is a brief statement, it is not to be discarded. On the contrary,the shortness of the statement itself guarantees truth. Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit a conscious state to make this dying declaration, the medical opinion cannot prevail.

9. Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon."[11]

[10] Paniben v. State of Gujarat AIR 1992 SC 1817.
[11] Ibid 10.

Comparative Legal Analysis: India and UK

Aspect	India	United Kingdom
Statutory Basis	Section 26(a) of the Bharatiya Sakshya Adhiniyam, 2023	Common law principles, codified under the Criminal Justice Act, 2003
Scope	Admissible in all criminal and civil cases where the cause of death is in question	Admissible only in homicide cases
Form of Declaration	Oral, written, or through gestures	Oral or written only
Corroboration	Not mandatory if the dying declaration is consistent and credible (*Paniben v. State of Gujarat*)[12]	Corroboration is generally required unless the declaration is highly reliable
Fitness of Declarant	Absence of medical certification does not invalidate the statement (*Laxman v. State of Maharashtra*)[13]	Medical certification is important for assessing reliability
Recording Authority	Can be recorded by a magistrate, police officer, or any credible person	Preferably recorded by a magistrate
Timing of Declaration	Timing affects admissibility but is not the sole determinant (*Kishan Lal v. State of Rajasthan*)[14]	Timing is crucial; delayed statements are treated with suspicion
Use as Sole Evidence	Can form the sole basis of conviction if consistent and voluntary	Corroboration is usually required

IMPACT OF TIMING ON ADMISSIBILITY

"The timing of a dying declaration plays a crucial role in determining its admissibility and evidentiary value. Courts have addressed the issue of proximity between the declaration and the death of the declarant in various cases. The Supreme Court in Sharad v. State of Maharashtra[15] held that a dying declaration remains admissible even if there is a time gap between the statement and death, provided the statement directly relates to the cause or circumstances of death. The court clarified that the validity of a dying declaration is not necessarily compromised by a delay, as long as the statement retains a direct connection with

[12] Ibid 10.
[13] Laxman v. State of Maharashtra 2002 AIR SC 2973.
[14] Kishan Lal v. State of Rajasthan AIR 1999 SC 3062.
[15] Sharad v. State of Maharashtra 1984 AIR 1622.

the incident that led to death.

The court laid down two important propositions regarding the test of proximity:

1. A dying declaration is valid when made by a person regarding the circumstances or reason of his death, irrespective of whether the death is homicidal or suicidal.

2. The test of proximity cannot be reduced to a rigid formula and depends on the facts and circumstances of each case.

In Sharad case, the prosecution had not examined the doctor who made the endorsement on the dying declaration, stating that "the patient was in a fit state of mind to depose." However, the court reasoned that the delay in recording the statement did not affect its validity since the declarant's mental state and consistency were not in doubt.[16] The court also acknowledged that when death results from a prolonged event, a statement made at any point during the course of that event or while recording the declaration must be interpreted in the broader context of past events.

This ruling demonstrates that the timing of a dying declaration is not the sole determinant of its admissibility. The key factors remain the mental state of the declarant, the consistency of the statement, and its direct relevance to the cause of death. Courts have thus adopted a flexible approach, allowing discretion to consider the surrounding circumstances while assessing the evidentiary value of delayed dying declarations."[17]

JUDICIAL INCONSISTENCY AND CASE LAWS

The admissibility of dying declarations has witnessed significant judicial inconsistency, particularly concerning the timing and reliability of such statements. Courts have adopted varying standards when determining the evidentiary value of dying declarations, especially when there is a delay between the statement and death. This inconsistency has led to uncertainty in legal outcomes, as courts have exercised broad discretion based on the facts of each case.

[16] Justice Chandrashekar A., 'Dying Declaration- Its Applicability in Criminal Cases', Karnataka Judicial Academy <https://kjablr.kar.nic.in/assets/articles/Dying_Declaration_Its_applicability_in_Criminal_Cases.pdf>.
[17] Sneha Mahawar, 'Admissibility of Dying Declaration', iPleaders, 5 May 2022 <https://blog.ipleaders.in/admissibility-of-dying-declaration/>.

In Moti Singh v. State of UP[18],the Supreme Court ruled that a statement made by the deceased months before death could still be treated as a dying declaration if it directly related to the cause of death. In this case, the deceased made a statement identifying the accused months before succumbing to injuries. The defense challenged the admissibility of the statement on the ground that it was made too long before death. However, the Supreme Court held that the timing of the declaration does not automatically disqualify its admissibility if the statement clearly relates to the cause or circumstances of death. The court emphasized that the content and consistency of the statement, rather than the timing alone, determine its evidentiary value.

In Munnu Raja v. State of M.P, the Supreme Court ruled that "a statement recorded as a First Information Report (FIR) can be treated as a dying declaration. The injured person made a statement to the police identifying the accused before succumbing to injuries. The statement was treated as an FIR. The court held that an FIR recorded under such circumstances could be treated as a dying declaration if the declarant later dies from the injuries sustained. The court established that the form of the statement (FIR or otherwise) is immaterial as long as it relates to the cause of death and is consistent."[19]

In Kishan Lal v. State of Rajasthan[20], the Supreme Court rejected inconsistent dying declarations made months apart. The deceased made an initial oral declaration naming the accused, but in a later statement before the magistrate, the deceased stated that the injuries were sustained in darkness and could not identify the attackers. Medical evidence also suggested that the cause of death was unrelated to the injuries claimed in the declaration. The court ruled that inconsistent statements and the absence of a clear link between the declaration and the cause of death rendered the declarations unreliable. The court held that contradictions between multiple declarations and medical evidence weakened the credibility of the statements, thereby making them inadmissible.[21]

In Bhagwan Das v. State of Rajasthan,[22] the Supreme Court held that delay in recording the dying declaration weakened its evidentiary value. The dying declaration was recorded after a considerable delay, raising questions about whether the statement was influenced by external

[18] Moti Singh v. State of UP AIR 1964 SC 900.
[19] Munnu Raja v. State of M.P. (AIR 1976 SC 2199).
[20] Kishan Lal v. State of Rajasthan AIR 1999 SC 3062.
[21] Khan, I., & Choudhary, H. (2022). Recording and admissibility of dying declaration. International Journal of Health Sciences, <https://doi.org/10.53730/ijhs.v6nS4.10319\>.
[22] Bhagwan Das v. State of Rajasthan AIR 1957 SC 589.

factors. The court rejected the dying declaration, stating that the delay cast doubt on the voluntariness and accuracy of the statement. The court emphasized that an unexplained delay creates room for manipulation and raises questions about the authenticity of the statement.

In Laxman v. State of Maharashtra[23], t the Supreme Court upheld the admissibility of a dying declaration recorded by a doctor, holding that the absence of a magistrate does not make it inadmissible. The court ruled that consistency and absence of tutoring are more important than the identity of the recorder. However, the court emphasized that the declaration must be free from suspicion and recorded without undue delay. The ruling established that the timing of the declaration should not be the sole factor for rejecting it, but the circumstances and consistency of the statement must be carefully evaluated.

Similarly, in Kaka Singh v. State of M.P.[24], the court rejected the dying declaration due to an unexplained and significant delay in recording it. The dying declaration was recorded after a considerable delay without any justification from the prosecution. The court held that the delay made the statement unreliable and inadmissible. The court emphasized that an unexplained delay allows room for manipulation, thereby reducing the statement's credibility.

The analysis of these cases shows that judicial interpretation of dying declarations concerning timing has been inconsistent. In cases like Munnu Raja, the court accepted delayed dying declarations if they were consistent and related to the cause of death. However, in cases like Bhagwan Das, Laxman, and Kishan Lal, the court rejected delayed statements, citing issues of reliability and manipulation. The lack of a uniform standard has created legal uncertainty, as courts have exercised broad discretion without clear guidelines on how timing should influence admissibility. This inconsistency underscores the need for specific legal standards to assess the admissibility of dying declarations based on timing, thereby ensuring greater consistency and fairness in judicial outcomes.

NEED FOR UNIFORM GUIDELINES

The admissibility of dying declarations holds significant importance in the judicial system, especially when they serve as the primary evidence in criminal cases. However, the absence of

[23] Laxman v. State of Maharashtra 2002 AIR SC 2973.
[24] Kaka Singh v. State of M.P. (AIR 1982 SC 1021).

uniform guidelines on the admissibility and evaluation of dying declarations has resulted in inconsistent judicial decisions. Courts have often applied different standards based on the facts and circumstances of each case, leading to unpredictability in legal outcomes. This lack of consistency has weakened the reliability of dying declarations as evidence and created confusion in the legal framework.

Uniform guidelines are essential to establish a clear and consistent approach in assessing dying declarations. A standardized framework would ensure that courts follow a uniform process when determining the admissibility of such statements, reducing the scope for subjective interpretation. Consistency in judicial reasoning would enhance the credibility and reliability of dying declarations, making it easier for courts to evaluate their evidentiary value objectively.

Furthermore, having clear guidelines would help prevent manipulation and ensure that the declarant's statement is accurately recorded and preserved. Guidelines addressing factors such as the timing of the statement, the mental and physical condition of the declarant, and the procedure for recording the declaration would provide clarity to both the judiciary and law enforcement authorities. This would ensure that dying declarations are treated with the seriousness they deserve and that their evidentiary value is assessed fairly and uniformly across cases. Ultimately, uniform guidelines would strengthen the integrity of the judicial process and promote greater fairness in legal outcomes.

Furthermore, clear guidelines would also ensure that the dying declaration is recorded by a competent authority, such as a magistrate or a medical professional, to minimize the risk of fabrication or coercion. Proper training of officials involved in recording dying declarations would help maintain accuracy and authenticity. Uniform standards would promote fairness, reduce judicial discretion, and enhance the overall integrity of the justice system.

CONCLUSION AND SUGGESTIONS

The concept of dying declaration holds a critical place in the Indian legal framework, as it serves as a key piece of evidence in cases where the declarant's testimony would otherwise be lost due to death. However, the judicial approach toward the admissibility and reliability of dying declarations has remained inconsistent, particularly regarding the rule of proximity of time. The hypothesis that the absence of uniform guidelines has contributed to this inconsistency is strongly supported by the varying judicial outcomes examined in this research.

Courts have often relied on their subjective interpretation of facts and circumstances, leading to conflicting judgments. This has created legal uncertainty and reduced the predictability of judicial outcomes, thereby affecting the reliability of dying declarations as admissible evidence. A structured and consistent approach through clear guidelines can serve as a fundamental improvement in resolving these discrepancies.

Establishing uniform guidelines will address the inconsistency by setting objective standards for the admissibility of dying declarations. The guidelines should include clear parameters regarding the timing of the declaration in relation to the death. A practical approach would be to define a reasonable time frame within which a statement can be considered as directly linked to the cause of death. However, the guidelines should also provide room for judicial discretion where the circumstances warrant flexibility, such as in cases where death results from prolonged injuries or delayed medical complications.

To enhance reliability, the guidelines should mandate that dying declarations be recorded by a magistrate whenever possible or, in their absence, by a qualified medical professional in the presence of impartial witnesses. The statement should be documented in writing and, where feasible, supported by video or audio recording to prevent allegations of manipulation or coercion. Additionally, the guidelines should require that the declarant's mental state be certified by a medical professional at the time of recording to confirm that the statement was made voluntarily and with full awareness of its consequences.

Furthermore, the guidelines should address the issue of multiple declarations by establishing a hierarchy of reliability based on consistency, proximity to death, and corroboration by other evidence. In cases where multiple declarations exist, the most consistent and contemporaneous statement should carry greater evidentiary value. Courts should be directed to assess the declaration within the broader context of the evidence available, thereby balancing the need for proximity with the factual background of the case. Certain rules can include the following:

1. Fixed Time Frame for Proximity– A practical rule should define that a dying declaration made within 30 to 60 days of the incident should be presumed to have a direct connection with the cause of death. Any declaration made beyond this period should require additional corroborative evidence to establish a clear link between the statement and the cause of death.

2. Cross-Verification with Circumstantial Evidence– Courts should be required to cross-check dying declarations with circumstantial evidence. A declaration that is inconsistent with the overall factual matrix should be treated with caution and may be disregarded unless corroborated by independent evidence.

3. Clear Guidelines for Delay Justification– If a dying declaration is recorded after a delay, the prosecution should provide a reasonable and documented explanation for the delay. Courts should be directed to reject declarations where the delay remains unexplained or appears suspicious.

4. Hierarchy of Multiple Declarations– In cases involving multiple declarations, the most consistent and contemporaneous statement should hold higher evidentiary value. Inconsistent or contradictory statements should be admissible only if supported by independent evidence.

5. Presumption of Authenticity for Prompt Declarations– Declarations made immediately after the incident, when the declarant is under the immediate impact of the event, should be presumed authentic unless proven otherwise.

6. Use of Technology– Whenever possible, dying declarations should be recorded using audio or video recordings to prevent manipulation and establish the authenticity of the statement. This will provide direct evidence of the declarant's state and the voluntariness of the statement.

Implementing these guidelines would promote greater consistency and fairness in judicial interpretation, reducing the scope for subjective discretion and ensuring that dying declarations are assessed using a balanced and legally sound framework. This would enhance the reliability of dying declarations as critical evidence and strengthen the overall integrity of the legal process.