
WHETHER A SUICIDE NOTE BE CONSIDERED A DYING DECLARATION OR NOT?

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ABSTRACT

The article evaluates the concepts of dying declaration and suicide note in a legal setting, while discussing the legal and evidentiary ramifications of claiming that suicide notes are a reliable category of evidence. It discusses the similarities and differences between the dying declaration and the suicide note, noting that both are expressions disclosing the cause of death or event causing death. It discusses the admissibility to be determined when the note was found out and discusses critical issues regarding voluntariness, mental fitness of deceased, the proximate link with the death. Overall, it demonstrates through theoretical discussion and with a practical example of a recent case, that suicide notes can provide some amount of relevance and can be considered as a dying declaration under 26(a) of Bharatiya Sakshya Adhiniyam, 2023 if corroborated well.

Keywords: Bharatiya Sakshya Adhiniyam, 2023; Dying Declaration; Suicide Note; Abetment to Suicide.

Introduction

‘Evidence’ comes from a Latin term which is derived from the word ‘Evidere’ which means to show clearly, or to discover, or to ascertain or to prove something. The Black’s Law Dictionary defines Evidence as “*Any species of proof, or probative matter, legally presented at the trial of an issue, through the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.*”¹

Within the Indian legal system, the admissibility and reliability of are governed by the statutory law, *The Bharatiya Sakshya Adhinyam, 2023*. It defines evidence as “*all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence*”² and “*all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence.*”³ This term plays a crucial role in not just the Indian Judiciary but in the Global legal system. Evidence is considered to be one of the basic components on which the whole legal system and foundation stand upon as due to it, each party to the proceeding tries to prove their stand by approving or disapproving the facts in issue⁴ and relevant fact.⁵

While the general rule excludes hearsay evidence, the law carves out specific exceptions where statements of individuals who cannot appear before the court, particularly the deceased, are deemed relevant and admissible. One such critical exception is the dying declaration traditionally justified by the maxim, *nemo moriturus praesumitur mentiri*, which means “*a man will not his maker with a lie in his mouth*”⁶ or a person on the verge of death is not presumed to lie. This doctrine is of special significance in prosecution of homicidal abuse and suicide.

The determination of whether a suicide note can be elevated to the position of a dying declaration constitutes an imperative and debated issue in evidence law. The reasons,

¹ “Evidence,” *Black’s Law Dictionary* (4th rev. ed. 1968).

² *Bharatiya Sakshya Adhinyam, 2023*, & 3(i).

³ *Bharatiya Sakshya Adhinyam, 2023*, & 3(ii).

⁴ *Bharatiya Sakshya Adhinyam, 2023*, & 3(g).

⁵ *Bharatiya Sakshya Adhinyam, 2023*, & 3(k).

⁶ *Idea of acceptance of dying declaration is man will not meet his maker with lie in his mouth*, *New Indian Express* (July 14, 2022), <https://www.newindianexpress.com/nation/2022/Jul/14/idea-of-acceptance-of-dying-declaration-is-man-will-not-meet-his-maker-with-lie-in-his-mouth-sc-2476572.html>.

accusations, or personal thoughts that the deceased expressed just before dying are the ones that mainly prompt the complicated considerations about their norm under Section 26(1) of the Bharatiya Sakshya Adhinyam, 2023. Indian courts have to meticulously scrutinize such notes, for its reliability, authenticity, and corroborative value before admitting a suicide note as a dying declaration.⁷ This constant legal scrutiny brings to light a broader doctrinal debate: A suicide note may very well be the deceased's last expression, but at the same time, it could be a product of their emotional turmoil, personal bias, or even situation. It is difficult to strike the balance between the evidence and the opinions in these cases which means that sometimes the scales may tilt either ways; that is justice for the dead or the accused being protected from possible false or unproven assertions.

Legal Framework

Dying Declaration is specifically mentioned in Section 26 (a) of Bharatiya Sakshya Adhinyam, 2023⁸ which was before mentioned in Section 32(1) of the Indian Evidence Act, 1872. This section states that when a statement, either verbal or written, 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 and when the question of the death of person comes into question, those statements are considered to be a relevant fact. 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 applies to both criminal and civil proceedings. Unlike English law, Indian law with respect to dying declaration is liberal. While English law only considers dying declaration in the cases of homicide and manslaughter, Indian law includes every aspect. English law considers dying declaration when there is no hope of recovery⁹ while Indian law even considers it if there is no expectation of death.

The popular maxim *Nemo moriturus praesumitur mentiri*, which means *A man will not meet his maker with a lie in his mouth*, is also a crucial part of dying declaration as it is believed that

⁷ *Dhaneshwar Yadav & Anr. v. State of Chhattisgarh*, 2025: CGHC 27197–DB (Chhattisgarh H.C.), Once a dying declaration is found to be authentic ..., Verdictum (June 27, 2025), <https://www.verdictum.in/court-updates/high-courts/chhattisgarh-high-court/dhaneshwar-yadav-v-state-of-chhattisgarh-2025cghc27197-db-dying-declaration-1582587>.

⁸ Bharatiya Sakshya Adhinyam, 2023 s. 26(a):- 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 *R. v. Woodcock* [(1789) 1 Leach 500 : 168 ER 352]

a person on his death bed won't say a lie¹⁰ and thus, it is considered to be an exception to Hearsay. This is just a presumption and sometimes dying declaration needs to be corroborated as well depending on the facts of the case.

Suicide Note v/s Dying Declaration

A dying declaration is typically a statement made while a person is dying. It is often oral, made in gestures¹¹ or in Question/Answer format and made to a magistrate, a doctor, or responsible witness. Typically, the statement is made under the pressure of imminent death at the moment where there is no opportunity for the declarant to fabricate a story and a presumption of honesty is strong. Acceptability of dying declaration depends on various factors such as mental condition, circumstantial evidence, proximity of time.

A suicide note is normally a statement written prior to a suicide in contemplation of the act of self-destruction. A suicide note is often a product of contemplation and not made at the moment of conscious act of dying; thus, it does not have to be made at the moment the person believes he will die. Because of this, a suicide note may not only make a reference to the cause or circumstances of death, but also grievances, emotion or thoughts, without recognition of whether or not these thoughts are admissible to law.

In India, the courts have noted that a suicide note may sometimes fall under the provisions of Section 26 (a) of Bharatiya Sakshya Adhiniyam, but this is not automatic. The critical test is whether the suicide note specifically relates to the cause of death or to the circumstances of the transaction, which became the cause of his death. If the suicide note is a general complaint or an emotional outburst, there may not be evidentiary value in it. In this way a dying declaration and a suicide note have commonality, but keep in mind they are separate concepts.

Can Suicide Note be treated as a Dying Declaration?

Treating a suicide note as a dying declaration, though not explicitly present in Section 26(a), can, through interpretation of the law, be considered as a dying declaration. A suicide note (if not fabricated) reveals the cause or circumstances which compelled the person to take the extreme step. Even though it is the responsibility of the court to determine, with respect to the

¹⁰ Babulal & Others Versus State of M.P. ,(2003) 12 SCC 490

¹¹ Queen-Empress v. Abdullah, 1885 SCC OnLine All 55

facts and circumstances, whether a suicide note qualifies as a dying declaration, it cannot be said that the suicide note has no correlation to a dying declaration. Both are statements that disclose the cause of death or the circumstances of the transaction. Suicide notes are also helpful in identifying the abettors who drove the deceased to commit suicide.

Abetment to Suicide

Abetment to suicide is punishable under section 108 of Bharatiya Nyaya Sanhita, 2023¹². Anyone who instigates, aids¹³ in the commission of a person to commit suicide can be sentenced up to 10 years of either description of imprisonment and also be liable to fine. Abetment to suicide means that if a person was instigated, coerced, urged to commit suicide¹⁴, the person who abetted this suicide will be held liable for it. In most of the suicide notes cases, the death of the person is due to being abetted by the abetter which leaves no option for the deceased except for to end his life. Thus, abetment also plays a crucial role in determining the credibility of the suicide note. For a liability to arise, there has to be a proximate nexus¹⁵, a direct link with the suicide for the abetment to suicide. Circumstances which would not drive a reasonable person to commit suicide will not be considered as abetment to suicide¹⁶ and thus, the suicide note will have no role in it.

Evidentiary Concerns

While suicide note can't be treated as dying declaration, courts have held that it's evidentiary value cannot be accepted blindly. Authenticity plays an important role in deciding the credibility of the suicide note on whether the note was genuinely written by the deceased. Section 39 of Bharatiya Sakshya Adhinyam allows the court to take in the opinion of the handwriting experts for the suicide notes on whether it was genuinely written by the deceased.¹⁷

Another key issue is the mental state of the deceased at the time of writing. A person writing a note while being not in a fit mental state may exaggerate circumstances and make it less

¹² Bharatiya Nyaya Sanhita, 2023 s. 108

¹³ M. Arjunan v. State, (2019) 3 SCC 315.

¹⁴ Ramesh Kumar vs State Of Chhattisgarh, AIR 2001 SC 3837

¹⁵ R. Shashirekha v. State of Karnataka, 2025 SCC OnLine SC 671

¹⁶ M. Mohan v. State, (2011) 3 SCC 626

¹⁷ Bharatiya Sakshya Adhinyam, 2023 s. 39:- (1)When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts.

reliable. Person who are hypersensitive and then take the extreme action under the circumstances under which a reasonable person wouldn't commit suicide cannot be considered. The need for proximate nexus with the death of the deceased is also imperative.¹⁸

Although in theory a dying declaration can suffice for conviction, in practice, courts often seek corroboration through independent evidence such as witness statements, prior complaints, or medical records. The content of the note should be clear and voluntary, not under any kind of coercion or undue influence. Thus, while suicide notes can carry significant evidentiary weight, their admissibility and reliability are subject to strict judicial scrutiny.

Judicial Approach and Key Cases

Under Section 26 (a) of the Bharatiya Sakshya Adhiniyam, a suicide note can be considered admissible evidence if it communicates the cause of death or relates to the circumstances of the act causing death. However, the evidentiary value of the note is at its zenith when it is corroborated by other material evidence including evidence of the deceased's mental health at the time of writing the note, evidence that the deceased's hypersensitivity was not unwarranted, and evidence of circumstances which demonstrate suicide was the next rational action. As the section 26(a) mentions explicitly that written statements, which discloses the cause, circumstances or transaction of death, are part of dying declaration and by analogy, all these ingredients are present in a suicide note.

In *State of Maharashtra v. Anil*¹⁹, the court broadened the scope of the principle of dying declaration by holding that a suicide note written by a person prior to committing suicide can also fall within the ambit of Section 32(1) of Evidence act (now Section 26(a) of Bharatiya Sakshya Adhiniyam). But the court also emphasized that the authenticity and reliability of such a note cannot be presumed and must be carefully verified, often through forensic examination and other corroborative evidence.

Circumstantial evidence also plays a key role in the admissibility of suicide note. The Supreme Court imposed strict requirements for a conviction based on circumstantial evidence in the case of *Hanumant v. State of M.P.*²⁰, the Supreme Court imposed strict requirements for a conviction

¹⁸ State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73

¹⁹ State of Maharashtra v. Anil, Criminal Appeal No.132 of 1999.

²⁰ Hanumant v. State of M.P , AIR 1952 SC 343

based on circumstantial evidence. The Court stated that the circumstances relied upon must be evidentially proved, must form a complete chain of circumstances, and must lead only to the conclusion of the guilt of the accused. Moreover, such circumstances must exclude every possible hypothesis consistent with the innocence of the accused and must leave no reasonable ground for doubt.

In the case of *Pakala Narayana Swami v. King-Emperor*²¹, the court held that statements, though made with no apprehension of death in mind can be considered as a dying declaration if it helps in understanding the cause, circumstances and transaction of death.

In *Sharad Birdhichand Sarda v. State of Maharashtra*²², the Supreme Court instructed that Section 32 of the Indian Evidence Act is not limited to cases of homicide, but applies equally to cases of suicide. Therefore, the same principles applicable to dying declarations in homicide cases are also applicable to dying declarations when the death was caused by suicide. The Court went further, stating that a suicide note, if it indeed qualifies as a dying declaration, may be capable of supporting a conviction on its own even without corroborative evidence, if it is otherwise trustworthy and does not arouse doubt.

Mental condition or capacity of person while making a dying declaration or writing a suicide note is imperative. However, in the case of *Laxman v. State of Maharashtra*²³, the court held that mental stress or illness does not automatically invalidate the dying declaration. What matters is whether the deceased had sufficient understanding to convey the cause of death. In the same case, it was also held that doctor's certificate of deceased mental health is not necessary.

Further, it has been held in *State of M.P. Versus Dal Singh & Others*²⁴ that:-

“The law on the issue can be summarised to the effect that law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided

²¹ Pakala Narayana Swami v. King-Emperor, AIR 1939 PC 47

²² Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622

²³ Laxman v. State of Maharashtra (2002) 6 SCC 710

²⁴ State of M.P. Versus Dal Singh & Others , (2013) 14 SCC 159 Para 20.

by a doctor in respect of such state of the deceased, is not essential in every case.”

Practical Example

The treatment of suicide notes as dying declarations can be better understood through illustrations. In the recent case of Atul Subhash, the deceased left behind a 24 page note along with a video. The note explicitly mentioned years of harassment from his wife and her family and false legal cases. If the note is proven authentic along with other corroborative evidence, it may be considered a strong dying declaration and can also be the sole basis of conviction against the accused.

Conclusion

The question whether a suicide note written by the deceased person can be treated as a dying declaration reflects the frail balance between evidence and judiciary. Section 26(a) extends to both homicide and suicide, thereby allowing suicide notes to be considered as a dying declaration if they disclose the cause of death or circumstances leading to the death of the person. However, their credibility depends on strict judicial scrutiny such as proximate link, voluntariness, mental state. Courts have cautioned via judicial precedents that suicide note needs to be corroborated too to show the presence of essentials of abetment to charge the alleged abettors. Ultimately, suicide note constitutes to be a reliable dying declaration, but only when it is assessed contextually and carefully, so that justice is done both to the deceased and to the accused.