

## Critically Analyze the Evidentiary Value of Dying Declaration in India

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### **Abstract:**

*The dying declaration has now become an important part of the law for centuries.<sup>2</sup> Its usages could be seen in almost all matters ranging from criminal to civil issues as well. Furthermore, nowadays the cinematographic representative of the same presents a completely different aspect of a dying declaration than the one in reality. Under Indian Law, Section 32 (1) of the Indian Evidence Act<sup>3</sup> is answerable to all the different aspects and situations for a dying declaration. Numerous experts of dying declarations, which are in practice but not expressly in the law are also there, such as the various methods of dying declarations, etc. Therefore, in light of this, the present article shall aim to analyze the dying declaration. The article shall analyze the concept of the dying declaration itself, the definition & the underlying concept of the dying declaration. Critical analysis with a specific focus on the pros & cons of the dying declaration shall also be made. Concluding a cross-analysis with other sister common law jurisdictions and suggestions & recommendations shall be provided.*

**Keywords:** *Dying Declaration, Evidence Act, Critical Analysis, Sister Jurisdictions, Types of Dying Declaration, etc.*

### **Introduction**

Whenever any offense is committed or any crime happens, various people are witnesses to that.<sup>4</sup> In a court of law, the ultimate objective of the whole courtroom is to access and accumulate the various statements provided by the witnesses to frame the complete story and then to provide judgment accordingly. However, in case wherein, the person who is supposed to make a statement is on their death bed then, in these circumstances a unique situation presents itself.<sup>5</sup>

To take this type of situation into account, the unique aspect of the dying declaration is present under Law.<sup>6</sup> This is based upon the principle of **Compos Mentis** and states that a person, who is aware that their death is about to occur, could make a statement on their dying breath and this statement would be admissible in a court of law and treated as

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<sup>2</sup> Varma, S. (n.d.). Legality of Dying Declarations, (Oct. 15, 2020), <https://www.barandbench.com/columns/legality-of-dying-declarations> (last visited Oct. 13, 2021)

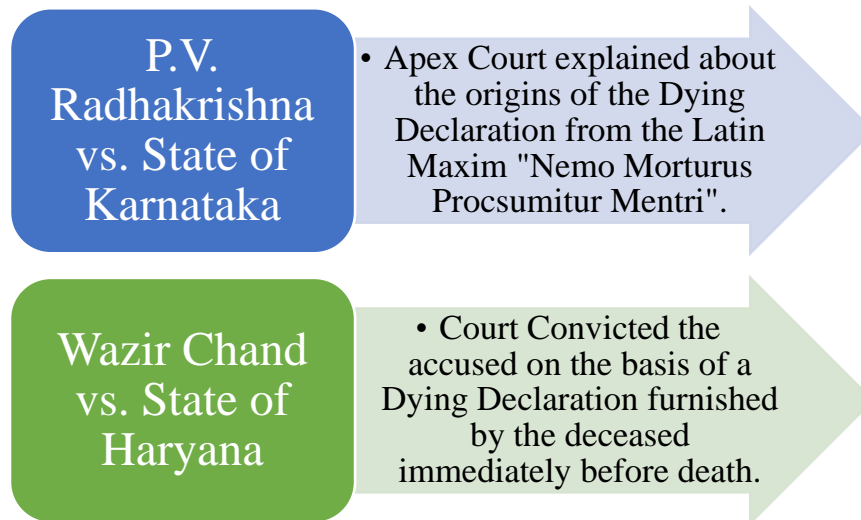
<sup>3</sup> The Indian Evidence Act, 1872, Sec. 32 (1), ACT NO. 1 OF 1872

<sup>4</sup> Legal Terms Glossary, [www.justice.gov](http://www.justice.gov), <https://www.justice.gov/usao/justice-101/glossary>, (2014)

<sup>5</sup> Simpson, W. and LMSSA, D., 1952. The Dying Declaration. *British medical journal*, 2(4798), pp.1364-1365.

<sup>6</sup> The Indian Express, explained: What is a dying declaration, and when can it be set aside, <https://indianexpress.com/article/explained/explained-what-is-a-dying-declaration-court-indian-evidence-act-7417240/>, (2021), (last visited on Oct. 13, 2021)

evidence.<sup>7</sup> The name of this principle, i.e., Dying Declaration itself explains this unique aspect of law.<sup>8</sup>



### ***“Cases of Dying Declaration in India”***

#### **Definition of Dying Declaration:**

The Definition of Dying Declaration is provided under Section 32 (1) of the Evidence act<sup>9</sup>. Under this, a statement made by a person on their death bed concerning the loss of their life or any circumstances which resulted in their death is covered. Such Statement shall be treated as evidence under law & would be admissible in a court of law concerning any court proceedings.

#### **Concept of Dying Declaration:**

The Concept of Dying Declaration is an age-old concept wherein a person who is unable to come to court to testify, which is usually because of their death, is made acceptable under court.<sup>10</sup> The reason behind this concept could be traced back to the Latin Maxim **“Nemo Mariturus Presumuntur Mentri”** which roughly translates into that a Man who is about to meet his maker, would not lie.<sup>11</sup>

Under Indian Jurisprudence, it is a recognized fact, that a man who is about to die, would not lie and only truth slips out the last breaths of a dying man. Therefore, the same is acceptable under law as evidence and subsequently is also usable as a weapon to punish.<sup>12</sup>

In the case of Uka Ram vs. the State of Rajasthan<sup>13</sup>, the jurisprudence of the dying declaration was further explained upon. The court has held that a dying declaration is accepted since it is made in extremity, in a situation wherein the person making the

<sup>7</sup> LII / Legal Information Institute. (n.d.). Compos Mentis., [https://www.law.cornell.edu/wex/compos\\_mentis#:~:text=Compos%20mentis%20is%20Latin%20for](https://www.law.cornell.edu/wex/compos_mentis#:~:text=Compos%20mentis%20is%20Latin%20for) (last visited on Oct. 13, 2021)

<sup>8</sup> Frazier, H.C., 1985. Like a Liar Gone to Burning Hell": Shakespeare and Dying Declarations. Comparative drama, 19(2), pp.166-180

<sup>9</sup> *Supra* note 2

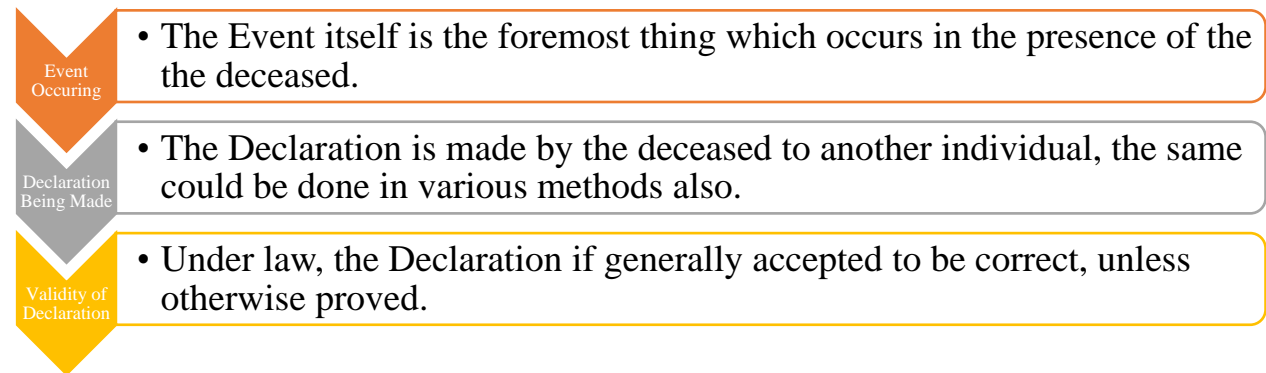
<sup>10</sup> *Supra* note 6

<sup>11</sup> “Evidence. Dying Declaration.” The Virginia Law Register, vol. 15, no. 8, Virginia Law Review, 1909, pp. 647–647, <https://doi.org/10.2307/1101834>

<sup>12</sup> Goel, S., Dying Declaration Can Be the Sole Basis for Convicting the Accused, (2018)

<sup>13</sup> Uka Ram v. State of Rajasthan, AIR 2001 SC 1814

statement is making the same at their death bed and have no further reasons or motive to lie or of falsehood.<sup>14</sup> The truth is expected to be spoken by the individual.



### ***“Cycle of Dying Declaration”***

#### **Types of Dying Declaration**

It is important to understand that a dying declaration is not limited to a simple written or spoken statement by the dying person.<sup>15</sup> This is because of a platitude of reasons, such as

- **Firstly**, The method for dying declaration is not specified under the evidence act or any other law
- **Secondly**, The person making the dying declaration could not be assumed to be fit to follow one mode only, as other situations may arise, which would make one particular mode not usable.

The only requirement with this is that the matter within the declaration must be distinct, precise, and ideally to the point. Under Law it is preferred if the mode of dying declaration is written however, other modes are also accepted under law.<sup>16</sup> These methods are as follows:

#### **Gestures and Sign**

In the Case of Queen-Empress vs. Abdullah<sup>17</sup>, the method of gestures & signs was recognized as an accepted method. Furthermore, in the recent case of the Nirbhaya Rape Case<sup>18</sup> & the Hathras case<sup>19</sup>, the declaration by Gestures & Sign of the Victim was treated as valid under Law.<sup>20</sup>

<sup>14</sup> Legal Service India, Dying Declaration-Section 32(1) of Indian Evidence Act, Legalservicesindia.com., [http://www.legalservicesindia.com/article/1682/Dying-Declaration-Section-32\(1\)-of-Indian-Evidence-Act.html](http://www.legalservicesindia.com/article/1682/Dying-Declaration-Section-32(1)-of-Indian-Evidence-Act.html), (2009)

<sup>15</sup> Introduction. (n.d.), [http://mja.gov.in/Site/Upload/GR/Title%20NO.194\(As%20Per%20Workshop%20List%20title%20no194%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.194(As%20Per%20Workshop%20List%20title%20no194%20pdf).pdf), (last visited on May. 01, 2021)

<sup>16</sup> Onkar, N., Et. Al., cogency of dying declaration: analysis, <https://ili.ac.in/pdf/don.pdf> (last visited Oct. 13, 2021)

<sup>17</sup> Queen-Empress v. Abdullah (1885) ILR 7 All 385

<sup>18</sup> Mukesh & Anr v. State for Nct of Delhi & Ors. CRIMINAL APPEAL NOS. 607-608 OF 2017 (arising out of S.L.P. (Criminal) Nos. 3119-3120 of 2014)

<sup>19</sup> Satyama Dubey & Ors v. Union of India & Ors. Writ Petition (Cr.) No.304/2020

<sup>20</sup> The Wire. (n.d.). Why the Dying Declaration of the Hathras Victim Is Legally Admissible Evidence, <https://thewire.in/law/hathras-victim-dying-declaration>

## Oral and Written:

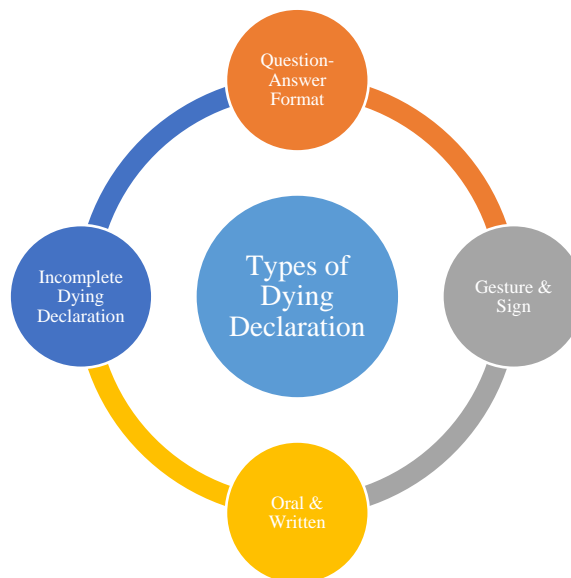
In the cases of Amar Singh vs. State of Rajasthan<sup>21</sup> & Pakala Narain Swamy vs. Emperor<sup>22</sup>, the dying declaration by oral & written was accepted as a valid mode of dying declaration and subsequently based on the same, the conviction was also done.

## Incomplete Dying Declaration:

In case the person dying without providing his complete dying declaration, even in that situation, the dying declaration could be accepted and made valid under a court of law conditional to the declaration making sense in a court of law.<sup>23</sup> The same could be seen via the case of Muniappan vs. the State of Madras<sup>24</sup>, wherein since the declaration was enough to guide the court in the situation, the same was made admissible.<sup>25</sup>

## Question – Answer Format:

This is one of the easiest formats of dying declaration. In this format, the dying person is at ease since the person has to answer specific questions, which results in less tension for that individual.



## Recording of Dying Declaration:

Under the law, every individual can record the dying declaration.<sup>26</sup> No special procedure or need is necessary. However various specific criteria of people have been spoken of, who

<sup>21</sup> Amar Singh v. State of Rajasthan, CRIMINAL APPEAL No. 854 of 2004

<sup>22</sup> Pakala Narayana Swami v. Emperor (1939) 41 BOMLR 428

<sup>23</sup> Exploring the concept of Dying Declaration, IJLMH, <https://www.ijlmh.com/paper/exploring-the-concept-of-dying-declaration-2/> (last visited on Oct. 13, 2021)

<sup>24</sup> Muniappan v. State of Madras AIR 1962 SC 1252

<sup>25</sup> Solanki, Raju, Et. Al., Dying Declaration, Indian Literature 47, no. 1 (213) (2003): 27–27 <http://www.jstor.org/stable/23341714>

<sup>26</sup> Dhananjay Mahapatra, Anyone can record a dying declaration, Supreme Court rules, (May 24, 2013) [http://timesofindia.indiatimes.com/articleshow/20237310.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/20237310.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (last visited on Oct. 13, 2023)

when record the dying declaration would hold more value than that of a normal person.<sup>27</sup>  
The persons are as follows:

### **Recorded by Normal Person:**

A normal person can record a dying declaration, it is admissible in a court of law, but it must be proved that the declaration provided is made by the deceased in a fit and conscious state of mind.

### **Recorded by Doctor/Police:**

The statement can be taken by a doctor or a police officer in case no time to call a magistrate is there. In this type of recording, one witness must be present in the room whilst the recording of the statement is being done. More explanation has been done in the case of N. Ram vs. State wherein the superiority of a medical opinion on the mental state over a witness's opinion was held to be affirmative and therefore the presence of a witness is compulsory.

### **Recorded by Magistrate:**

Under Section 164 of CrPC<sup>28</sup>, a magistrate is empowered to record a statement. Under the law, the statement recorded by a magistrate is treated as the best form of dying declaration. In the case of Mahabir Singh vs. the State of Haryana<sup>29</sup>, it was held that the statement being recorded by Magistrate must be with the pre-condition that the magistrate is aware that the statement is being provided voluntarily.<sup>30</sup>

### **The Exception of Hearsay Evidence:**

Section 60<sup>31</sup> provides that oral evidence must always be direct and must not be hearsay. However, the relevancy of a dying declaration is an exception to the rule of inadmissibility of hearsay evidence. A dying declaration made by the deceased is not a statement on oath and the deceased cannot be cross-examined in a court of law.<sup>32</sup> Yet the maxim stated above holds strong footing and therefore a dying declaration is made admissible and relevant under the Indian law.<sup>33</sup> A special exception has been given to the concept of dying declaration as it is believed that the person who died is the best person to give evidence and sometimes the only person who witnessed the occurrence. Moreover, it is believed that the person who died had lost his motive of speaking falsehood and the same was reiterated by the apex court in Jai Karan v State of NCT, Delhi<sup>34</sup> where it was further held that it is a kind of the last opportunity for the victim to reveal the truth. In light of the same reasons, a dying declaration has been admitted by the courts and given an exception to the rule of hearsay. <sup>35</sup>

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<sup>27</sup> Cheema, S.A. and Khan, S.U., Dying Declaration and Its Corroboration in Pakistan and India: An Analytical Study of Case Law, (2012)

<sup>28</sup> The Code of Criminal Procedure, Sec.164, 1973 ACT NO. 2 OF 1974

<sup>29</sup> Mahabir Singh v. State of Haryana Appeal (crl.) 471 of 1998

<sup>30</sup> "Evidence: Admissibility of Dying Declaration." Michigan Law Review 20, no. 6 (1922): 671-72. <https://doi.org/10.2307/1278306>

<sup>31</sup> Section 60, *Supra* note 2

<sup>32</sup> English, W.D., 1935. Evidence-Dying Declaration-Preliminary Questions of Fact. BUL Rev., 15, p.380

<sup>33</sup> Ghosh, R., Importance of Dying Declaration: Indian Scenario, (2021)

<sup>34</sup> Jai Karan v. State of NCT, Delhi, (1999) 8 SCC 161

<sup>35</sup> Gorea, R.K., Et. Al. 2004. Critical appraisal of dying declaration. Journal of Indian Academy of Forensic Medicine, 26(1), pp.24-26

## **Critical Analysis of Evidentiary Value of Dying Declaration in India:**

The Dying Declaration holds evidentiary value under Indian law. A multitude of cases could be completed solely based on a dying declaration, however, some thought is provided to the circumstances & surrounding under which the said declaration has been made.<sup>36</sup>

Several Issues are also present under the Indian Dying Declaration. The prime issue is the fact that it is believed that “truth sits upon the lips of the dying men”, however under Section 32(1)<sup>37</sup>, it can be understood that the declaration need not be made when the actual death of the individual will occur, instead it is made upon the anticipation of death. The idea that a man meeting his maker, and therefore he will not lie also could not be stated to hold complete value under law, this is a problematic instance for the modern society wherein we exist.<sup>38</sup> No protection from the dying declaration made in situations of hatred or revenge is also present.<sup>39</sup>

Under Indian Law, the dying declaration presents a guarantee that the dying statement is correct, the circumstance & the environment under which the dying declaration presents themselves as important factors to be covered.<sup>40</sup> The question which then presents itself is that whether the dying declaration itself could be completely trusted as people might give a declaration utilizing which they want to harass or damage the reputation of their rival.<sup>41</sup>

The Situation of a dying declaration’s evidentiary value does not hold many conflicts, it is regarded as complete proof and a solid foundation. Although from time to time the same has been used solely as the means for the conviction of the accused, the same is not a hard written rule under law.<sup>42</sup> This fact makes it imperative for the justice system to make decisions on a case-by-case basis, and thus the job itself becomes more difficult.<sup>43</sup> The Dying declaration of two individuals together also presents a unique situation for our analysis. In such a situation, the declaration of only the individual who is the subject matter of the charge shall be provided the evidentiary value of a dying declaration, whilst the other one shall be ignored.<sup>44</sup>

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<sup>36</sup> Nabi, I. (n.d.). Dying Declaration: A comparative Study, [www.academia.edu.https://www.academia.edu/9267517/Dying\\_Declaration\\_A\\_comparative\\_Study](https://www.academia.edu/9267517/Dying_Declaration_A_comparative_Study) (last visited on Oct.13, 2021)

<sup>37</sup> *Supra* note 2

<sup>38</sup> Swancara, F., 1932. Religion in the Law of Dying Declarations. USL Rev., 66, p.192

<sup>39</sup> Panfile, L.A., 2015. Recent Development: Hailes v. State: The State May Appeal a Trial Court's Ruling Excluding a Dying Declaration; The Length of Time Between a Declarant's Statement and Death is Irrelevant in a Dying Declaration Analysis; The Confrontation Clause is Inapplicable to Dying Declarations, (Vol. 46, No. 1, p. 7)

<sup>40</sup> Jasdev Singh Mehndiratta, Basic Principles of Dying Declaration, (Apr. 30, 2020) (last visited on Oct. 13, 2021)

<sup>41</sup> Mckee, R. (n.d.). What Everyone Should Know About Trusts <https://www.uwyo.edu/uwe/passiton/passingitonchapter7d-trusts.pdf> (last visited on Oct. 13, 2021)

<sup>42</sup> Liang, B.A., Shortcuts to Truth: Law's Anti-Rational Hegemony Illustrated by Dying Declarations, (1997)

<sup>43</sup> Spencer, C.E., 1929. Dying Declarations in Civil Cases. Or. L. Rev., 9, p.174.

<sup>44</sup> Smith, A.L., 2015. Constitutional Law-Confronting Confrontation: Testimonial Dying Declarations. Am. J. Trial Advoc., p.465

## K.R Reddy vs. Public Prosecutor

- The Dying Declaration as a form of evidence is undoubtedly acceptable.
- Satisfaction about the mental health & firm mind of the deceased is necessary.

## Khusal Rao vs. State of Bombay

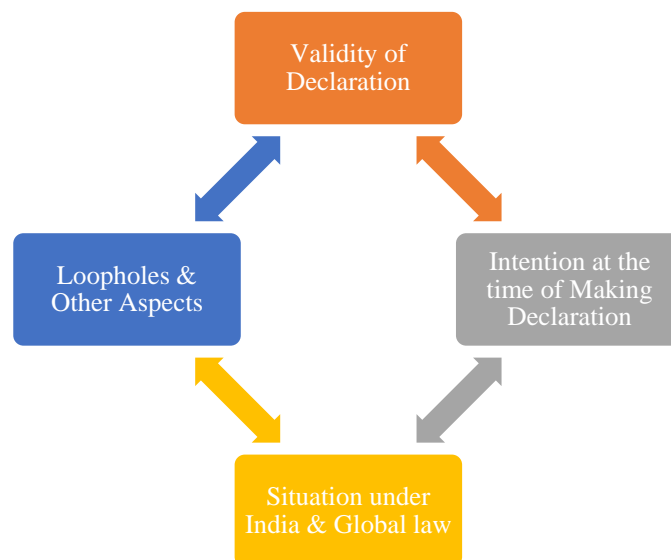
- Principles of Dying Declaration's Evidentiary Value laid down by Supreme Court, the principles are:
- Needs no corroboration, not a weaker form of evidence, to be dealt in a case to case basis, circumstances of Death to be kept in mind.

## State of U.P vs. Madan Mohan

- Court needs to satisfy that no possibility of tutoring or prompting was present.
- Doctor's Certificate needs to corroborate the mental condition of the Deceased.
- The Dying Declaration needs to be in the words of the deceased.

### ***“Major Case laws of Evidentiary Value of Dying Declaration”***

Furthermore much more criticism has also been done of the present theory.<sup>45</sup> The prime reason for the same is the validity of the declaration and the other being the kind of evidence which a dying declaration itself is. Furthermore, the Physical, Mental, Social, Economical & Psychological aspects of the person making & the person noting the declaration are always present.<sup>46</sup> Elements such as that of a desire for Self-vindication, the desire to impute responsibility for wrong done & the fact that these declarations are made in absence of the accused is omnipresent.<sup>47</sup>



### ***“Critical Aspects of Evidentiary Value of Dying Declaration in India”***

<sup>45</sup> Klugman, R.H., 1948. Some Factors Affecting the Admissibility of Dying Declarations. J. Crim. L. & Criminology, 39, p.646

<sup>46</sup> Liang, A.C., Et. Al., 2001, Lies on the lips: dying declarations, western legal bias, and unreliability as reported speech. Law Text Culture, 5(2), pp.113-156

<sup>47</sup> Adelkoff, S.K., 1997. Dialing M for Murder: Analyzing the Admissibility of the Telephone Dying Declaration. Duq. L. Rev., 36, p.545

## **The Situation of Dying Declaration under other Jurisdictions:**

For a complete understanding of the present issue, the situation of the same in sister jurisdictions also needs to be examined. It is also pertinent to note here that dying declaration is a phenomenon primarily existing in Common Law Nations only.<sup>48</sup> Other Jurisdictions are as follows:

- **England & Wales:** Under English Law, a dying declaration is covered under the “unavailability” exception of the Criminal Justice Act 2003<sup>49</sup>. It would be correct to state that the English Law on dying declaration is much narrower than the Indian law. The Distinction between the two has been made in the case of Rajindra Kumara vs. State<sup>50</sup>.
- **United States:** The Dying Declaration is governed by the Federal Rules of Evidence. The Dying Declaration is similar to Indian Law. Furthermore, mostly general rules of admissibility are also applicable. The Major American cases regarding this are Crawford v. Washington<sup>51</sup>, Giles v. California<sup>52</sup> & Michigan v. Bryant<sup>53</sup>, etc.

## **Suggestions and Recommendations:**

After a thorough analysis of the Dying Declaration’s evidentiary value, the following suggestions & recommendations could be looked & researched upon for successful implementation in India:

- **Dying Declaration to Police Officers:** Dying Declarations to police officers also present a unique perspective, due to the presence of Section 162 (1) of CrPC<sup>54</sup> which states that a statement to police officers during an investigation is inadmissible. If the same is viewed from the perspective of a dying declaration then it creates a situation of a possible miscarriage of justice. This issue needs to be looked upon.
- **Doctor’s opinion regarding deceased’ mental capacity:** The situation wherein a doctor may provide a report stating that the deceased mental state was not well when the declaration was made, then creates another issue. The law is silent on this aspect & therefore this needs to be looked upon.
- **Increment in the Scope of Section 32(1)<sup>55</sup>:** The Current section was made for old age and there is a multitude of reasons due to which the same needs to be relooked upon.
- **Inclusion of Modern technology:** Texts, Audio & Video Messages send by electronic gadgets also need to be recognized by the current law.<sup>56</sup>

## **Other Views:**

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<sup>48</sup> McNamara, T.J., 1961. Dying Declarations in Louisiana Law. La. L. Rev., 22, p.651

<sup>49</sup> Criminal Justice Act 2003, Chapter 44

<sup>50</sup> Rajinder Kumar and Another v. The State of Punjab 1966 AIR 1322

<sup>51</sup> Crawford v. Washington, 541 U.S. 36

<sup>52</sup> Giles v. California, 554 U.S. 353

<sup>53</sup> Michigan v. Bryant, 562 U.S. 344

<sup>54</sup> Sec.162(1), *Supra* note 27

<sup>55</sup> *Supra* note 2

<sup>56</sup> Karnika Seth, Evidentiary Value of Sms, Mms And E-Mail, (2015), <http://www.karnikaseth.com/evidentiary-value-of-sms-mms-and-e-mail.html> (last visited on Oct. 13, 2021)



On a personal understanding, the theory & the concept of dying declaration could be stated to align with the needs of the society at large. In situations, wherein the witnesses are about to perish, it becomes important that their statements should be recorded, furthermore, the evidentiary value granted to the same showcases how proper protection is granted to that statement under the law since the original maker of the statement is unavailable to defend their statements. However, on the other side of the coin, several issues are also present, upon which a need of further deliberation is needed at present. The same could be resolved in India by collaborating with the ground level situation & further research on the issue. It is pertinent to note that although the Cinema has presented a rough view of the aspects of dying declaration, the same needs to be informed correctly to the people, this would also result in assistance of the Justice System in an overall manner, this is especially important for nations like India, wherein the masses are governed by several biased beliefs, etc.

### **Conclusion:**

A detailed analysis of the statements made as a dying declaration indicates that such statement has a great evidentiary value under the Indian Law owing to the maxim “Nemo moriturus praesumitur mentire”. Even though such a statement is neither made orally nor allows conducting a cross-examination, it holds much weight. The evidentiary value of a dying declaration is equivalent to any other form of evidence and a judgment may be delivered solely based on such evidence upon the satisfaction of the court without any need of corroboration. The evidentiary value attached to this kind of evidence may also increase in different forms.

On the forefront, it would be correct to state that the Indian understanding of the dying declaration is much larger than the English one.<sup>57</sup> Yet still, several backdrops exist in the current system, which is needed to be looked upon and other limitations removed. The aim of the dying declaration needs to shift from a legal perspective to one which is aimed at Justice. However, the current law on the same could be stated to be one which although is in a solid-state but lacks protection from the inside.

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<sup>57</sup> Turner, S., 1946. Dying Declaration. the New Zealand Medical Journal, 45, p.180