

The background features a dark blue gradient with faint, light-colored circular patterns and a scale on the left side. The scale has markings from 140 to 260 in increments of 10. The text is centered and reads:

INDIAN EVIDENCE ACT, 1872

UNIT 3

“DYING DECLARATION”

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Dying Declaration

'A person , who is about to die , would not lie''.

" Truth sits on the lips of a person who is about to die "

- The maxim "**Nemo moriturus praesumitur mentire**" is basis for "dying declaration", which means " a man will not meet his maker with a lie in his mouth"
- A dying declaration is called as "**Leterm Mortem**". The word " Leterm Mortem" means " Words said before death".
- Hearsay evidences are not given any weightage in the courts because the person who is giving this evidence is not telling his experiences but that of another person and who cannot be cross examined to verify the facts.

- Dying declaration is an exception to this rule because if this evidence is not considered very purpose of the justice will be forfeited in certain situations when there may not be any other witness to the crime except the person who has since died. Sometimes it the best evidence in such situations.
- Its admissibility have been explained in the section 32(1) of Indian Evidence Act.
- According to the section when the statement made y the a person as to the cause of his death or any of the circumstances of the transactions which the resulted in his death in cases inn which the cause of that persons death comes into question. Such statements are relevant whether the person who made this was expecting death or not.

A dying declaration may be in the following forms

1. Written form;
2. Verbal form;
3. Gestures and Signs form. In the case "*Queen vs Abdulla*", it was held that if the injured person is unable to speak, he can make dying declaration by signs and gestures in response to the question.
4. If a person is not capable of speaking or writing he can make a gesture in the form of yes or no by nodding and even such type of dying declaration is valid.
5. It is preferred that it should be written in the vernacular which the patient understands and speaks.
6. A dying declaration may be in the form of narrations. In case of a dying declaration is recorded in the form of narrations, nothing is being prompted and every thing is coming as such from the mind of the person making it.

who may record dying declaration?

Any person can record dying declaration. it is not necessary that only govt. employee, magistrate, or police officer or concern person should record it.

Exceptions of Dying Declaration

- The exceptions of 'Dying declaration' stipulate that where the statements made by dying persons are not admissible:
 1. If the cause of death of the deceased is not in question: If the deceased made statement before his death anything except the cause of his death, that declaration is not admissible in evidence.
 2. If the declarer is not a competent witness: declarer must be competent witness. A dying declaration of a child is inadmissible. In *Amar singh v. State of Madhya Pradesh*, 1996 Cr LJ (MP) 1582, it was held by M.P. High Court that without proof of mental or physical fitness, the dying declaration was not reliable.
 3. Inconsistent declaration: Inconsistent dying declaration is no evidentiary value.

4. **Doubtful features:** In **Ramilaben v. State of Gujarat** it was held by the court that second degree burn injuries, the injured dying 7-8 hours after the incident, four dying declarations recorded but none carried medical certificate. There were other doubtful features, evidence not taken into account.
5. **Uninfluenced declaration:** it must be noted that dying declaration should not be under influence of any one.
6. **Untrue declaration:** it is perfectly permissible to reject a part of dying declaration if it is found to be untrue & if it can be separated.
7. **Incomplete declaration:** dying declaration must be complete.
8. **if the statement relates to the death of another person:** If the statement made by the deceased does not relate to his death, but to the death of another person, it is not relevant.
9. **Contradictory statements:** if a declarant made more than one dying declarations & all are contradictory, then those all declarations lose their value.

11. If dying declaration is not according to prosecution: in the case of State of **U.P. v. Madan Mohan** the Apex Court held that:

1. It is for the court to see that dying declaration inspires full confidence as the maker of the dying declaration is not available for cross-examination.
2. Court should satisfy that there was no possibility of tutoring or prompting.
3. Certificate of doctor should mention that victim was in a fit state of mind. Magistrate recording his own satisfaction about the fit mental condition of the declarant was not acceptable especially if the doctor was available.
4. Dying declaration should be recorded by the executive magistrate & police officer to record the dying declaration only if condition of the deceased was so precarious that no other alternative was left.
5. Dying declaration may be in the form of questions & answers & answers being written in the words of the person making the dying declaration. But court cannot be too technical.

Conclusion

- “Dying Declaration” is a legal concept refers to that statement which is made by a dying person, explaining the circumstances of his death.
- Dying declaration is admissible on the sole ground that it was made in extremis. And in India, its admissibility is explained in Sec-32(11) of Indian Evidence Act. It is cleared by the above mentioned statements given by different courts that dying declaration can be in any form but it must be recorded carefully & duly proved, which the courts make admissible as the “DYING DECLARATION” .



Thanks...!!!