

Dying Declaration

Procedure and Medico-legal Value

Core Definition

Dying declaration is a written, oral or verbal statement made by a person regarding the cause or circumstances of his death, when the person is dead or believes that death is imminent.

Legal provision: Section 32(1) Indian Evidence Act / Section 26 BSA

Maxim: Nemo moriturus praesumitur mentire - "No one at the point of death is presumed to lie."

1. Who Can Record It?

Can be recorded by

- Magistrate.
- Doctor.
- Police officer.
- Village headman.
- Any member of the public.

Preferred recorder

- Executive Magistrate is preferable.
- Carries greater reliability and evidentiary value in court.

2. Procedure for Recording Dying Declaration

Doctor certifies conscious, oriented and compos mentis

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Record simple narrative in same language / vernacular

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Use exact words; no oath; no leading questions

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Read over if possible and obtain signature / thumb impression

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Doctor certifies fitness again; seal and send to Magistrate

- The doctor should first examine the patient and certify that the patient is conscious, oriented and compos mentis.
- The statement should be recorded in the form of a simple narrative.
- It should be recorded in the same language / vernacular used by the declarant.
- The exact words of the declarant should be recorded without alteration.
- No oath is administered.
- No leading questions should be asked.
- If the patient cannot speak, the declaration may be made by signs and gestures.

- If the patient becomes unconscious during recording, whatever has already been stated should be recorded and signed by the recorder.
- If possible, the statement should be read over to the patient for confirmation.
- The declaration should be signed by the declarant or thumb impression should be taken.
- It should also be signed by the doctor and witnesses.
- The doctor should again certify fitness of the patient at the end of the statement.
- The declaration should be sent to the Magistrate in a sealed cover.

3. Role of Doctor

Duties of the Doctor

- Provide emergency treatment and maintain airway, breathing and circulation.
- Treatment should not be delayed for recording the statement.
- Inform the Magistrate if the patient is serious and a dying declaration is needed.
- Certify that the patient is *compos mentis* before recording.
- Certify the patient's fitness again after completion.
- If death is imminent and Magistrate is not available, the doctor may record the dying declaration himself.
- It should preferably be recorded in the presence of two or more witnesses.
- If the patient dies, the doctor should inform the police.

4. Precautions While Recording

- Patient must be in a fit mental state.
- Doctor's fitness certificate should be obtained before and after recording.
- No oath should be administered.
- No leading questions should be asked.
- Statement should be voluntary.
- No prompting, tutoring or pressure should be present.
- Statement should be recorded in the patient's own words.
- Accused or lawyer need not be present.
- Cross-examination is not done.
- Signatures or thumb impression should be obtained.
- Proper sealing and dispatch should be ensured.

5. Difference Between Dying Declaration and Dying Deposition

Feature	Dying Declaration	Dying Deposition
Recorded by	Anyone - Magistrate, doctor, police or public	Only by Magistrate
Oath	Not required	Must be administered
Presence of accused / lawyer	Not required	Required / allowed
Cross-examination	Not done	Done
Type of evidence	Documentary evidence / hearsay exception	Oral evidence
Legal value	Comparatively less	Higher; acts like bedside court
Status in India	Followed in India	Not followed in India
If declarant survives	Not admitted as dying declaration, but has corroborative value	Fully admitted; value retained

6. Medico-legal Significance

Medico-legal Value

- Dying declaration is an exception to hearsay evidence.
- It is admissible in court even though it is not made on oath and the declarant cannot be cross-examined.
- It may be the primary evidence to prove the cause or circumstances of death.
- It is especially important when the victim is the only eyewitness.
- FIR given by a dying person may be treated as a dying declaration.
- If the person survives, it loses value as a dying declaration but may be used to corroborate or contradict later testimony.
- It is invalid if the patient was not *compos mentis* at the time of making the statement.

Conclusion

A dying declaration is an important medico-legal document under Section 32(1) IEA / Section 26 BSA. It must be recorded carefully, preferably by a Magistrate, with medical certification of fitness. A properly recorded dying declaration can become strong evidence in court regarding the cause and circumstances of death.