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Dying Declarations; Assessing Its Probative Value under Legal Systems of United Kingdom, United States of America, India & Pakistan

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ABSTRACT

Evidence is regarded as an eye and ears of justice. Without apt appreciation of evidence justice can't be dispersed spiritually. Evidence is vital for conducting both types of litigations either civil or criminal. Dying Declaration is considered as vivacious form of evidence as asserted by person himself. Research endeavors to understand the scope of the declaration's applicability as far as perquisites are concerned, its basis in criminal justice system along with its evidentiary worth for forming base for conviction. Recognition of Dying declaration in other criminal justice systems of developed countries is also taken into account for true understanding its efficacy and sanitizing the criminal justice system of Pakistan. Qualitative research methods i.e. available relevant provisions, research articles, case laws and literature available for other countries are studied in depth. Efforts are made to develop understandings about the cannons of recognition, acceptance and legitimacy of dying declaration as a valid piece of evidence. The multi-dimensional and diverse approaches of legal frameworks of stated countries are taken into consideration in context with admissibility of Dying Declaration, Declarant death & transactions causing the death, Competency of Declarant & to assess the probative value of deathbed Declaration.

Keywords: Criminal justice, Competency, Dying Declaration, Corroborative evidence, evidentiary value, Deathbed declaration & Conviction.

INTRODUCTION

Justice is said to be done when administered on the merit of the case. This is legitimate requirement in both proceedings that evidence must be produced or provided for satisfying the gist of justice. Evidence in legal parlance we can say that supportive material to claim and facts. Various types of evidences in primary and secondary capacities are available but the premier valued is carried by primary sources only owing to their admissibility as original. Other types of evidences are also taken into consideration on different legal grounds with same admissibility and authenticity but still caution is taken (Gupta, 2020). Dying declaration is a kind of testimony, under the legal assumption it is known as admissible evidence but with weak weightage and subject to conditional approach if met properly. Dying declaration is accepted on the assumption of person having assertions experiencing it on its own sense as dying men always speaks the truth. The expression dying declaration emanates from the Latin saying

Leterm Mortem, means as Words before dying(Thakar,).Nemo moriturus praesumitur mentire, means a man will not face his maker with a lie in his mouth, is the Latin idiom forms basis for the recognition of dying declaration in conviction. A dying declaration is a proclamation asserted by a person irrespective of its form regarding the facts of his death and transaction amounting to cause of his death (Agarwal, 2021).In 1202 dying declaration was recognized in England as evidence and as for Islamic law, it derives its acceptability from the primary sources of Islamic jurisprudence and accords a high degree of inviolability to a person's final words. As a result, the acceptance and value of dying proclamation has greatly increased in Islamic Fiqh. Possible grounds for acceptability depends on the context of necessity and sense to speak truth at the time of approaching death (Rana,2020).Forms of dying declaration are immaterial, the major requirement is that content must be explicit and affirmative. Under the rule of practice a magistrate, doctor, or police officer would record such declarations verbally and then reduce them to writing. Additionally, no oath is required nor is the magistrate's presence necessary for its recording; nonetheless, for the purpose of genuineness, paramounted if the magistrate is present when the statement is recorded. Under the law it is highly recommended that anybody may record it but the person recording necessities to be connected in some way to the declarant (Saxena, 2021). Once William Shakespeare in the of his popular telecast dramatize the sentimentality of person dying,

“What is the world should make me now deceive,

Since I must lose the use of all deceit?

Why should I then be false since it is true

That I must die here and live hence by truth?” (Act II, King Richard II)

Religious aphorism is captured by Shakespeare exquisitely that how dying person's sentiments at the time of approaching death differs from a living person. Significance of truth has been appreciated by a dying person is more realistic than a living person. The reliance on dying declaration is save when maker is sensible and has control over his emotions and nervous. The justice system should culture to take into considerations the conditions for recognizing the dying declaration in order not to be misled (Muhammad Riaz and another, 2020).Veracity of Dying declaration must be assessed by the court in the light of guiding norms extended by The Apex court of Pakistan in the judgment of Abdul Ghafoor vs The State, 2020 that maker must be of sound mind and enabled physically and mentally to record the statement. It is also crucial that maker before dying is able to identify the attacker and dying declaration must in consonance with other collaborative evidence (Hassan, 2021).Study on comparative analysis of the evidentiary value of dying declarations is crucial because it apprises how diverse systems assess the usage of such assertions as evidence in criminal trails. A testimonial regarding the reason of one's death or any other events that led to it may be made by a person who is dying and suggests they are dying. Understanding the similarities and differences in how different legal systems see such utterances may be helped by doing a comparative analysis. The admissibility and probative significance of dying remarks might depart vividly under various legal systems. Legal professionals, judges, and legislators can utilize the information from this study to make educated choices on the admissibility and probative value of dying declarations in their respective legal systems. Further the efforts are made to make dying declaration as a cogent and reliable piece of evidence for soundness of justice system.The necessity that why a dying declaration is to be recognized as evidence? So we can say that its need primarily stems from the fact we don't want to compromise the interests of justice because by not admitted it into evidence or by doing otherwise we would compromise the purpose. Although the admissibility of dying declaration or deathbed declarations is very controversial, it is

nonetheless recognized as a reliable piece of evidence by British, Americans, Indians, and Pakistanis as well as by all significant legal systems of the contemporary world. However, this research is limited to only four legal systems, and while each of them accepts it as an exception, the factors that give birth to this exception vary greatly (Rana, 2020).

LITERATURE REVIEW

APPRISE THE REGULATING LEGAL FRAMEWORKS OF DYING DECLARATION AMONG U.K, U.S.A, INDIA & PAKISTAN:

Ahmad in his work on admissibility draws legality of dying declaration in diverse legal systems with particularly focused on its permissibility in Pakistan (Ahmad,2020).Gupta justified the evidentiary value of dying declaration under legal system of India(Gupta,2020).Research conducted by The University of Kentucky terms the significance of dying declarations under U.K. common law along with tenets for admittance by the courts (Dawson).Irfan analyze the variables that exist between Indian and U.K common law in terms of scope, sense of approaching death and the way of recording of dying declaration as a valid piece of evidence. Successfully identified the variable areas of operational approach of both systems (Nabi, 2022).Shipra discussed various types of dying declarations in the light of judicial rulings of the Supreme court of India and find out the ratio of acceptability of dying declaration in aligned with legal frame keeping in view the ethnic, chronological, and legitimate reflections of India and other legal systems (Arora, 2022).

In order to analyze the dying declarations under said legal systems as evidence, study is carried in terms of its conditions of admissibility. "Criminal Justice Act 2003" , "Rule 804(b) (2) of the Federal rules of evidence,1975", "Article 32(1) of the Indian Evidence Act, 1872" and "Section 46(1) of the Qanun-e-Shahadat Order 1984 (QSO)"provide legal frame work on Dying declaration and extends the criteria for its admissibility as an evidence in said countries respectively(Nath,2023).Scope of Dying declaration also varies in terms of proceedings concerned under legal systems of said countries. Agarwal expounded that Justice system in United Kingdom espouses the admissibility of dying declaration in the cases of murder or manslaughter only and up to the trial for the murder of the declarant or where the substance related of the trial is the death (Agarwal,2016).

Three multi-dimensional approaches are in vague in United States of America in respect of admissibility of dying declaration i.e. basic approach admits dying declarations as evidence only in slaying prosecutions, only in homicide cases it has validity. Second approach is about the admissibility of dying declaration in both civil and criminal proceedings. Under third approach federal operational scope of dying declaration has been extended in the light of judicial rulings, the same is currently practiced under American legal system. However some States have embodied the federal norm with minor reorient, other States are still preferring common law approach in order to avoid the inconvenience and jeopardizes. Under the Indian justice system of admissibility of dying declaration scope of its acceptance in extended even to individual capacity where death of declarant direct involved. Acceptability has aligned with conditions and other corroborative evidences(Agarwal,2021).Alike in Pakistan dying declaration criteria depends on the fulfillment of the conditions for its appreciation as a valid evidence in both trails where death of person itself direct involved(Rana,2020).

Devm, 2020 opines that Declarant death is one of the key elements in admissibility of dying declaration in all legal systems of justice of said countries with minute variation. In United Kingdom declaration is admissible where death has occurred (Pendleton v. Commonwealth,1921).Under United States of America the declarant actual death and risk or actually in danger of death formed the different scorer of the admissibility of dying

declaration. Under Rule of evidence situations may happened for the cases of deathbed declaration i.e. The declarant has firm believe in his imminent death is and must have explicit the reason(s) or events that led to it. There is no requisite under this rule that the declarant must die (Rule 804(b)(2), 2020). In this context in one of the land mark case, the court ascertained and uphold the rule of evidence carried under 804(2) that, the Declarer's fear of approaching death is more significant than Declarer's actual demise (State v. Penley, 1986). Bafna, 2022 analyzed that declarer's death is constituent factor under Indian law for dying declarations to be acknowledged. A clear indications are made by Indian legal system for admissibility that the declarant must die owing to wounds and injuries (Article 32(1) of the Indian Evidence Act). The same Act recognizes if the declarant survives as a corroborative evidence (Article 157) as the Supreme Court of India decided that even though the declarant had not died, the statement could be employed as corroborative evidence in accordance with Article 157 rather than a dying declaration (Ram Prasad vs State of Maharashtra, 1999). In Pakistan the declarant's death must archetypal before the declaration of death's veracity can be examined (Rana, 2020). In one of the judicial case, the prisoner was accused of killing a woman who has accused him of the crime as she was lay dying. She asserted that she has given her statement with no chance of recovery and it was recorded. She added the phrase "at present" before signing it. The court declared the statement to be inadmissible after concluding that there was still a chance of recovery (R v Jenkins, 1869). The phrase "imminent believe" does not connote that the declarant must believe that they will pass away right away while making the statement the circumstances surrounding the declarant's injuries are typically used to develop the belief. In addition, the declarant must be cognizant that they are likely to pass away while making the statement (Rule 804(b)(2), 2020). It plainly meant that the declarant must be aware that a death could occur at any point in the approaching time. In the light of one of the judicial rulings admission of dying declaration under the evidence law, it suffices if the declarant is aware of his impending death where he has a sense of impending death then in such case being in actual act of dying is not essential (State v. Stevens, 1978). Contrariwise, 'Indian law does not have such a provision'. According to section 32(1), the "anticipation of death" has no bearing on whether a declaration of intent to die is admissible (Sinha & Bagree, 2023). This is strange because the Indian Supreme Court has cited numerous times when explaining why dying declarations are admissible stating that "the general principle on which this species of evidence is admitted is that, they are the declarations made in extremis, when the party is at the point of death, when every hope of this world has passed, when motive of falsehood is silence, and the mind is induced by the most puissant condition to speak to truth." When the Indian legislation permits admission, it is difficult to defend such justification (Agarwal, 2021). The court held that the declarant did not necessarily need to be expecting to die when recording the statement in order for it to be admissible into evidence (Sharad Bhirde Chand Sardar v. State of Maharashtra). Under Pakistani legislation there is no such provision regarding such status. There are rulings of The Supreme Court which addressed this in the stated way that a statement to be treated as a dying declaration, no immediate fear of death is required. The deceased's final incriminating statement can legally be viewed as a declaration of death (Rana, 2020). The instance is decided by the court in the judgment that when making the statement, the deceased was not experiencing mortal fear or apprehension of death. Such a claim cannot serve as the foundation for conviction in the absence of supporting evidence. The court ruled that the requisite to believe in approaching death is not necessary for a dying declaration to be admissible into evidence (1973 P.Cr.LJ 1 812 Bagh Ali).

Under the British criminal Scheme, the statement of declarant directly connected to the cause of death is admissible and is one of the conditions must be stringently followed. Everything else, it means any other issues which are not directly connected to the cause of death of declarant are immediately disregarded (Agarwal, 2021). The identical affairs are under United States of America criminal justice system. As long as the declarant complies with this criterion when documenting the cause or circumstances, he or she must, for example, name the attacker or other witnesses, describe the nature of the harm, or specify when, where, and why the unexpected incident occurred (Rule 804(b)(2), 2020).

Under the Indian Evidence Act "the cause of death" of the declarant must be itemized for being admitted. The law also concedes "the circumstances which leads to death" in tallying the cause of the death. If the declaration of the declarant relates to circumstances that are in some way associated that led to the death of the dead rather than the cause of his death directly, those testimonies are how so ever admissible. To put it in other words we can guess that in Indian law, the "circumstances" and "the cause" does not always have to have direct relation between them. It suffices "if the remarks of dead make reference to any of the transaction which led to the deceased's death". So, in this case we can say that India has broader latitude than that of the United Kingdom, because "the India also accepts the events, surrounding the transaction of death" (Gupta, 2020).

The Indian Supreme Court ruled that a declaration made by a person about the cause of death or the occasions pursuing death of declarant. These are the statements that the court delineates as "dying declarations," according to its ruling (Ulka v. State of Rajasthan).

Under Pakistani law Dying Declaration of a person is taken into two sanities i.e. a statement about the cause of declarant death and when a person makes a statement about any of the transactional state of affairs that led to his death. If a statement is related to the events surrounding the transaction that led to the maker's death but not to the cause of that person's death, it may still be admissible. However, the circumstances must be meticulously linked to the real occasion (Rana, 2020). According to judicial ruling in Nisar Muhammad v. Khan Ali 1955 case, the court ruled that statements linked to the deceased person's cause of death are allowed into evidence, but those pertaining to the events leading up to his death are also acceptable in dying declarations as long as the case is connected to the declarant's cause of death (Arora, 2022).

Competency of Declarant is also one the vital area in order to adjudge the authenticity of dying declaration. Under both British and United States of America legal systems the declarant must be competent in terms of mental health and age; it means that he must be sane and major. Under Indian justice system the statement made by a person of tender age is taken into consideration by the courts in India, despite the fact that the declarant's competency is crucial. There will be a more thorough examination of the data obtained from a child (Sathish). Under Pakistan a person who is qualified to testify as a witness under Article 3 of the Q.S.O. may make a dying declaration. Therefore, a lunatic's or a young child's death declaration is not acceptable, but according to the rulings of the court it was categorical that a minor's dying declaration is also significant (Rana, 2020).

Evidentiary value of deathbed declarations have about the identical evidential worth in all legal systems, however notable differences in terms of forming base for conviction are also there. Under legal system of United Kingdom the dying declaration is regarded as a secular critique of faith and is allowable into evidence with significant weight attached to it. It means that a conviction under U.K. law might be given entirely on a dying assertion and is not subject to substantiation. Since the 19th century, when it was ruled that a dying declaration has the

same evidentiary value as testimony provided under oath, the dying declaration has been given the prominence that it does today. Due to the expectancy of death, a deathbed declaration is accepted as reliable evidence in the U.K (Agarwal, 2021). In U.S.A, the State courts disagree on the admissibility of deathbed declarations as a reliable evidence. However, Common law is applied by some courts. According to these courts, a dying declaration has equal evidentiary value to that of testimony delivered under oath, and is therefore accorded alike weight on the basis of Notion of Necessity. This departure from the common law rule demonstrates unequivocally that the latter no longer accorded the same evidential weight and value to the dying declarations. It also exhibits that they have qualms about the veracity of the dying declaration and believe it to be inherently unreliable (Agarwal, 2021).

Under Indian legal framework, a deathbed declaration is considered as a reliable piece of evidence, and a conviction may be reached solely on the basis of it if no other supporting evidence is offered. As long as the court is categorically mollified that everything contained therein is the absolute truth and the court may rely on it. The inability of the accused to conduct a cross examination in this circumstance is the cause. As a result, it has evident worth based on the conditions and ambiances in which it was created (Dube & Yadav, 2016). Although both India and the U.K. came to the same assumptions, yet with distinct approaches. However, both countries' convictions could be made solely on the basis of a deathbed pronouncement. However, in India, the weight of the evidence is determined by the circumstances and the environment in which it was made (Agarwal, 2021).

The assertions made by the deceased have a considerable legal sanctity attached, irrespective of statement being cross examined. In general, confirmation is not necessary if the statement gratifies all gauges for a deathbed declaration. However, because the dying individual may belong to a different faith, certain claims require confirmation. Because a dying man's integrity also affects the validity of his dying declaration as evidence. The sanctity of the dying declaration should be upheld, The Apex Court of Pakistan tinted in its rulings, it was decided that where there is no prima facie lie in the dying declaration, it shall be taken into consideration as honorable piece of evidence. For secure reliance of conviction, a dying declaration ought to be flawless and empirically proved. Moreover, a conviction should only be supported by a deathbed declaration, which must be clear of all flaws in this particular instance. It is perilous to establish a conviction merely on a dying declaration if there are questions about its veracity without any supplementary corroboration. It was risky to rely on a dying declaration of the deceased to support a conviction if it didn't seem to be true, wasn't recorded in accordance with accepted procedures, and wasn't supported by additional evidence. A dying declaration that is accurate and genuine is sufficient for conviction, according to the Lahore High Court division bench that was decided (Rana, 2020).

CONCLUSION & RECOMMENDATION:

The appraisal among said legal regulations identify that a dying declaration is a statement of fact that is product of persuasion. It indicates that a man won't go to his Maker with a falsehood in his lips if he is at the verge of death, when his mind is entirely consumed with the desire to talk to the Creator, when all optimism for this world has absolutely extinct, and when he has a complete awareness of impending death. Under judicial systems of above stated states, the assertion that one is dying is usually putative legally (Saxena, 2021). A declaration of impending death is perceived as credible evidence since it is commonly agreed that most people who are preparing to pass away don't lie. It is an exception to the hearsay rule, which vetoes the use of a statement made by anyone other than a witness who reproduces it while testifying during a trial. This is because of its inherent unreliability. No matter how absurd, the

remark is not admissible into evidence as a dying pronouncement if the individual who made it had even the slenderest chance of retrieval. However, in order for a statement to be accepted, the speaker must be proficient at the time of the statement (Rana,2020).

The U.K., permits dying declarations only in homicide cases where the declarant has already passed away. The U.K. maintains a strict standard for admission. On the grounds that there is no chance for cross-examination of the accused and there is no taking of oaths, the U.K. has retained the narrowest scope. Moreover, the risk of an irreversible correction exists in the event of an error. But in cases of homicide where it is permitted it does not need to be validated (Agarwal,2021).In India, such declarations are more acceptable than in the U.K. because they can be used in any kind of trial as long as it's one where the declarant's death is at issue. One of the key points of this agreement between India and the U.K. is that under Indian law, there is no requirement that a statement or declaration be made in the face of imminent death, which raises questions about whether it is reliable. Instead, a conviction can only be based on a declaration if the court is convinced that it is true, reliable, and not the result of coercion. As a result, it serves as auxiliary substantiation in India (Agarwal,2021).

The standards for the admission of dying declarations vary depending on the jurisdiction in the US. While some States have widened the parameters for the acceptance of dying pronouncements and treat them as corroborative evidence, others still adhere to the common law rule and maintain the restrictive scope of applicability. However, as a result of this disagreement amongst the state authorities, the evidentiary weight assigned to dying declarations has dropped and questions about its validity have also been raised (Agarwal,2021). Death pronouncements are admissible as evidence under Pakistan's evidence law as an exception to the hearsay rule. As long as the charge in the case is the declarant's death, it is allowed in all forms of trials in Pakistan. For the acceptability of dying declarations, India and Pakistan have rules that are essentially identical. In Pakistan, the court must be satisfied with the veracity of the dying declaration before a conviction can be granted; otherwise, the evidence is viewed as corroborative (Rana,2020).

To sum up by saying that depending on their beliefs and the significance attached to a dying man's final words, every state has opined that the dying proclamation is a unique by its sanity. One important consideration to keep in mind while deciding whether to give the dying declarations significant weight in the evidence or to disregard their significance is to maintain a coherence between the rights of both the accused and the deceased so that justice may be served (Agarwal,2021).

Keeping in view the technological era it is recommended that the dying declaration be recorded by a magistrate or a police officer or a physician, preferably in writing and with a full transcript of the statement. This warrants that there is an official record of the declaration, plummeting the chances of it being misrepresented or misquoted. It could be beneficial to host audio or video recordings of dying declarations. This would aid sanctuary the rigorous jargons of the declarant, curtailing the risk of distortion or misinterpretation of the statement. Such soundtracks can also serve as a safeguard against allegations of handling otherwise. For reliability of dying declarations mental and physical state also considered as a major factor that the person must be sensible, intelligible, and aware of their surroundings for the assertion and made statement well in time.Lastly, comparison among the legal frameworks of admissibility and assessing probative value of dying declarations will prove beneficial in the administration of justice.

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