

## SCOPE OF DYING DECLARATION & ADMISSIBILITY OF SUICIDE NOTE UNDER SECTION 32 OF THE IEA

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### ABSTRACT

Dying declaration in common parlance is the statement made by a dying person in his last few moments about the circumstances and facts which ultimately led to his demise. These types of statements have been given a weightage of their own under Section 32(1) of the Indian Evidence Act, 1872 carving a path out for justice to prevail. The law believes that no lie can sit on the lips of a dying man; which raises the question about the admissibility of a suicide note before the court of law since that also is made by a man in his last moments.

Analyzing the various similarities between the various components of a suicide note with the essentials of a dying declaration, the article aims to answer the question of the amount of weightage that can be put on a note written by a person who personally ended his life. The authors have managed to focus and highlight the wide arena of factors that are involved in such circumstances, ultimately seeing the limit to which a suicide note can be relied upon especially when there is a lack of corroborative evidence.

**KEYWORDS:** Indian Evidence Act, 1872; Dying Declaration; Suicide note; Sole evidence.

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### INTRODUCTION

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‘Evidence’ comes from a Latin term derived from the words ‘*Evident*’ or ‘*Evidere*’ which means to show clearly, or to discover, or to ascertain or to prove. The term denotes an important aspect of the judicial system, the role of which is as significant as a statute is, providing the proper foundation to every legal structure. In India, the enforcement of the Indian Evidence Act (hereinafter “IEA”) has drastically positively altered the judiciary. With

a lack of a proper act precedent to this, its enactment contributed largely to our legal system by providing rules and regulations which are paramount in a trial of any nature.

The reason behind evidentiary law's importance is that in the absence of this law the whole process of proving any claim during a proceeding will fall apart, making it even more challenging and cumbersome. If IEA or even an alternative to it was not in existence, modulating and regulating evidence would have been an impossible task. It would be almost next to impossible to determine whether a case has been completely solved or not. Thus, the rules and regulations under the IEA that govern the admissibility of any evidence are essential for putting an end to any dispute, especially in criminal cases.

The IEA provides a variety of stark boundaries while also sardonically spreading into new ambits for determining the value of certain evidence in any particular case. This means IEA is strict as well as flexible as per the need and requirements of different cases. Furthermore, a parallel can be drawn during the application of Section 32 which provides for an exception to the hearsay rule and the rule of cross-examination.<sup>1</sup> Thus, it can be said that there is always a grey area regarding the use and the application of this particular section, which in turn is the primary question in the majority of cases.

The authors in this paper have tried to determine the nature, boundaries, and the ambit of dying declaration within the periphery of Section 32 of the Indian Evidence Act, 1872. The primary objective is to understand not only the meaning but also analyze the applicability of the phrase "*Leterm Mortem*" in the Indian judicial system. The legally accepted meaning of the phrase is "*whatever is said before the death*",<sup>2</sup> which is commonly interchangeable with the term "dying declaration" in the common legal parlance. The prospect of a suicide note within section 32(1) of IEA has also been comprehensively looked into. In the length of this paper the issues related to the legal aspects of dying declarations, highlighting the admissibility of suicide notes under the IEA are dealt with.

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<sup>1</sup> RATANLAL & DHIRAJLAL, LAW OF EVIDENCE (PB) 213 (27th ed., LexisNexis 2020).

<sup>2</sup> Members of criminal core group, *Workshop Core Paper On Dying Declaration*, Maharashtra Judicial Academy and Indian Mediation Centre and Training Institute, available at [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 January 22, 2021).

Dying declaration as the name suggests is the last declaration made by the deceased right before he passes away. It, however, cannot be any statement that is made but instead has to be something that is concerning the facts and circumstances that led to his death. Considering the various factors that are at play in such situations it can be very hard to determine and single out the actual truth behind an incident. In many instances, in fact, the use of dying declaration may also be seen to be even unjust and unfair because of how easy it is to fabricate the statements and the context under which they were said, written, or meant to be.

Therefore, if the statements made in the form of a suicide note are considered to be a dying declaration it comes with their own form of complication. Even though a note written by the deceased themselves may help reveal the cruel and true nature of the incidents which led to that person's demise some pointers just cannot be ignored. It cannot be ignored that usually, the notes written are mainly from one person's perspective<sup>3</sup> and under an exaggerated mindset where the person is highly confused or even angry.<sup>4</sup> Sometimes, revenge can also be the main aim behind some suicide notes which can lead to the conviction of innocent individuals.

It is not unusual that the Indian legislation has adopted several various aspects of the English law even if it is not exactly the same. Under the English law dying declaration is considered to be admissible only in the cases of homicide thereby completely disregarding it in civil cases and other criminal cases. This is where Indian law is seen to be diverging from that of its counterpart, as a dying declaration if true and voluntary can even be considered in civil cases as well. On the other hand, in Indian law one of the essentials of the statement to be admissible for conviction is the element of the expectation of death. This aspect however is not given that much focus in English law where it is not insisted on as much.

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<sup>3</sup> Garza v. Delta Tau Delta Fraternity National, 916 SO 2D 185; People v. Bartelini, 35 NE 2D 29.

<sup>4</sup> Kushal Rao v. State of Bombay, 1958 AIR 22.

## Section 32(1) of the Indian Evidence Act

Section 32 of IEA covers the cases related to the statement of a person who is dead or cannot be found. The first portion of which specifically deals in the case where the statement in question has been made before the death of the person stating the same.

*“Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the cases where..... 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 the expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”<sup>5</sup>*

Even though the Act in itself does not exclusively use the terms “dying declaration” the implied intention points towards it. Looking into the intent the statute clearly and concisely paints a scenario where the statement by the deceased made has to be explaining the cause, reason or any relevant fact about the circumstances due to which death occurred.<sup>6</sup>

The Supreme Court while explaining the meaning of dying declaration under the scope of Section 32(1) of IEA observed that *“when a declaration is made by way of a man or woman as to the purpose of his demise or as to any situations of transaction which resulted into his death, in the case in which purpose of his death comes in question is admissible in evidence, such statement in law are compendiously known as dying declaration.”<sup>7</sup>* Moreover, it was highlighted and reiterated that information provided by a person, who died just after

<sup>5</sup> The Indian Evidence Act, 1872, § 32.

<sup>6</sup> Daniela Berti, *Suicide Notes under Judicial Scrutiny in India*, South Asia Multidisciplinary Academic Journal, 2018, available at <http://journals.openedition.org/samaj/4481> (Last visited on January 21, 2021).

<sup>7</sup> Ulka Ram v. State of Rajasthan, Criminal Appeal No. 749 of 2000.

providing it, related to the cause of his/her death, is admissible as evidence under Section 32 clause 1 of IEA.<sup>8</sup>

Some requirements need to be met for a statement made to fall within the preview of dying declaration. It must be made when he is conscious and knows that his/her death is imminent. Only when he/she is under a belief that something is or can be the cause of his/her death, then this statement can be considered to be admissible as a piece of evidence during a proceeding. The reason why the law considers the same to be trustworthy and credible as a piece of evidence is because of the assumption that a person who is about to die will never lie. The principle governing this belief is “*nemo mariturus presumuntur mentri*” which means that a man will not tell a lie while meeting with his maker.<sup>9</sup>

In India, the law understands the possibility of the fact that a person dying will seldom lie, giving a benefit of the doubt that truth comes out of the mouth of a dying man. As a product, it becomes an exception to the hearsay rule which does not allow the use of any statement made by a person other than the person who first said it. The rule usually ensures that during a proceeding any statement made in the course of any offense is not admissible due to the untrustworthiness of humans in general. A person at the time of making a dying declaration must be competent or else the statement will not be considered in the court of law. However, if the person making the statement has even a small chance of recovery then the statement will no longer avail the exception of dying declaration.

One of the major questions which usually come forward in these circumstances is, whether there is any certain type of statement in the form of a dying declaration that is admissible in proceedings. The court has addressed the same several times by mostly answering in the negative. Thereby, the declaration can be oral or written, or in the form of questions and answers despite it being in long or short paragraphs. Signs and gestures or even any statement made in any language known by the statement maker can be considered to fall within the wide ambit of what can be considered to be a dying declaration.<sup>10</sup>

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<sup>8</sup> P.V. Radhakrishna v. State of Karnataka, 2003 ALL MR (Cri) 1792 (SC).

<sup>9</sup> *Id.*

<sup>10</sup> Shivam Goel, *Dying Declaration Can Be the Sole Basis for Convicting the Accused*, December 1, 2018 SSRN, available at <https://ssrn.com/abstract=3294189> (Last visited on January 22, 2021).

## **Factors Attached to the Admissibility of Dying Declaration**

The admissibility of a dying declaration depends on certain factors; this is because the court cannot give the same weightage and consideration under the scope of section 32 of the IEA to any statement that is made by a dying individual. Therefore, the court before relying on a declaration analyses the circumstances under which the declaration has been made.

### **Death must be imminent**

For a statement to be a dying declaration it must be made under the belief that death is imminent. The person must be with the impression that his or her demise is the only possible outcome of the circumstances created. This principle was highlighted and looked into with great detail in the case of *R. v. Jenkins* where a person was charged with the offense of homicide. The victim was attacked by the person accused in between night hours who she ends up recognizing in the end.

When the statement of the lady was being recorded by the clerk of the magistrate to report the person who attacked her, she named the Accused, Jenkins. When it was asked by the clerk that declaration was made under the impression of no hope of any recovery then the lady answered with an affirmative. But later, for clarification when the declaration was read by the clerk to the lady, before her signing on it, the lady asked the clerk to add the words “at present” in the declaration. It was observed by the court that the statement was not a dying declaration since the words “at present” suggested that she has some chances of recovery.<sup>11</sup>

### **Use of Signs & Gestures**

Any form of communication done through means of signs and gestures when a person is about to die will fall within the ambit of dying declaration. This is done in cases where the person is unable to speak. The court has many times said that the evidentiary value of signs

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<sup>11</sup> *R. v. Jenkins*, (1869) 1 C.C.R. 187.

and gestures will rely upon some particular factors. For instance, the relevance of the questions which were answered, whether the questions asked were complex or straightforward, what were the signs made, who recorded the declaration, etc.<sup>12</sup> Signs can sometimes be very tough to interpret but it doesn't make them inadmissible. This principle is applied with the pretext that if it is considered as a dying declaration then the accused will be freely roaming around despite how obvious the situation might be.

In the Nirbhaya case, a three-judge bench comprising of Justice Ashok Bhushan, R Banumathi, and Deepak Mishra concluded that a dying declaration can be made by the use of signs and gestures. Moreover, it was held that there's no compulsion of it to be made in writing or by words as long as the signs very clearly showcase what the victim truly wanted to say in his or her last moment.<sup>13</sup>

In a scenario where the deceased girl's throat was cut by the accused which rendered her unable to speak at all, taking the help of signs and by the use of her hands, she gave her statement. It was held by the Allahabad High Court, full bench, if the person injured is unable to say anything then he/she by using gestures and signs in response to questions asked can make a dying declaration.<sup>14</sup> The Apex court also interpreted that the evidentiary value of signs and gestures would rely on the factor that who the person was that recorded the gestures; what nods, signs or gestures were made, and how effectively and understandably the nodes and signs were made.<sup>15</sup>

Certain standards for a statement to be admissible as a 'dying declaration'

1. A dying declaration is admissible by itself and there no need for it to be made along with some corroborative evidence.<sup>16</sup> Therefore, it can be said that a dying declaration can be the sole basis for conviction if made without any corroboration provided it is real & voluntary.<sup>17</sup>

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<sup>12</sup> Aniket Dhawaj Singh, Vipasha Verma, *Nemo Moriturus Praesumitur Mentire: Admissibility of Dying Declaration under the Indian Evidence Act* Journal of Global Research & Analysis (A Multi-Disciplinary Refereed Research Journal) Volume 5 (2) RNI-HARENG/2012/59126 ISSN – 2278-6775.

<sup>13</sup> Mukesh & Anr v. State For NCT of Delhi & Ors, S.L.P. (Criminal) No. 3119-3120 of 2014.

<sup>14</sup> Queen Empress v. Abdullah, (1885) ILR 7 All 385.

<sup>15</sup> State of Rajasthan v. Darshan Singh @ Darshan Lal, Criminal Appeal No. 870 of 2007.

<sup>16</sup> Munnu Raja & Anr. v. State of M.P., 1976 SCR (2) 764.

<sup>17</sup> Mallella Shyamsunder v. State of Andhra Pradesh, (2015) 2 SCC 486.

2. The evidentiary value of a dying declaration is not lesser than any other kind of evidence.
3. Every case is to be decided on basis of the facts and circumstances that occurred. The same has to be kept in mind while checking the credibility of any dying declaration.<sup>18</sup>
4. A dying declaration is at par with any other piece of evidence and, apart from its credibility; its value is also needed to be adjudged in the light of surrounding circumstances of the case. This has to be seen with the precept governing the weight of evidence.
5. A dying declaration when recorded by a Magistrate having proper authority has to follow a standard procedure. The format of question & answer, and, to the extent possible in the words of the person making the declaration stands. It has to be ensured that the statement in consideration has to be on a far greater ground ensuring there are no discrepancies which otherwise may also deteriorate the credibility of it because of the infirmities of human character & human reminiscence.<sup>19</sup>
6. A statement can't be held to be inadmissible only on the basis that the statement is in brief. Furthermore, the shortness of a declaration shows its genuineness.<sup>20</sup>

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### Suicide Note under Section 32(1)

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A dying declaration is a statement that is usually made orally or in writing by any person who died after making the statement that is related to the relevant facts and circumstances of his/her death.<sup>21</sup> The statement will only be relevant if it is related to the reason or circumstance of death, or to any such circumstances of the transaction which was behind the reason for the death.<sup>22</sup>

The question that comes in regarding a suicide note is that whether it can be considered as a valid dying declaration or not, under Section 32 of IEA, for the investigating authorities or the police to act upon. This query for admissibility of suicide note has been discussed by the Hon'ble Supreme Court of India in the case of *Sharad Birdhi Chand Sarada vs State of*

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<sup>18</sup> Ramawati Devi v. State of Bihar, (1983) 1 SCC 211.

<sup>19</sup> Khushal Rao v. State of Bombay, 1958 AIR 22.

<sup>20</sup> Surajdeo Ojha & Ors. v. State of Bihar, 1979 AIR (SC) 1505.

<sup>21</sup> Sant Gopal v. State of Uttar Pradesh, 1995 CriLJ 312.

<sup>22</sup> State of Haryana v. Mange Ram, (2003) 1 SCC 637.



*Maharashtra.*<sup>23</sup>

While discussing the scope of Section 32 of the IEA, the court observed that the law in the Indian system is very different from the English law when the question of the interpreted ambit and nature of ‘dying declaration’ is considered. In English law, the statement in the declaration is only relevant and admissible when it is directly related to the reason and circumstances of death. But Indian law provides for a departure from this boundary since there is no clause similar to the second part of Section 32(1) that states “*the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question,*” is present in any part of English Law.

Further, after reviewing multiple cases like *Pakala Narayana Swamy v. Emperor*<sup>24</sup> and the *Locus Classicus* of their own earlier judgment in *Hanumant v. State of M.P.*<sup>25</sup>, alongside considering the interpretation of S 32(1) Abide as made in *Ratan Gond v. State of Bihar*<sup>26</sup> and other authorities present in the judicial system; the court clarified the language of Section 32(1) of the IEA. In the end, the very scope of the provision was widened with the main goal of providing justice to all the citizens of the country. It was observed that:

“(1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies. Whether the death is a homicide or a suicide, provided the statement relates to the cause of death or relates to circumstances leading to the death. In this respect, Indian Evidence Act, given the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of s.32 to avoid injustice.”<sup>27</sup>

If there is no doubt on the reliability of the statement made and if, while comparing it from any other evidence, hearsay evidence is found to be more probative on the point for which it is offered, while its admission would also serve the best interests of justice; only then does residuary hearsay exception allows admissibility of hearsay evidence.<sup>28</sup> Hence, a suicide note

<sup>23</sup> Sharad Birdhi Chand Sarda v. State of Maharashtra, (1984) 4 SCC 116.

<sup>24</sup> Pakala Narayana Swamy v. Emperor, AIR 1939 PC 47.

<sup>25</sup> Hanumant v. State of M.P., AIR 1952 SC 343.

<sup>26</sup> Ratan Gond v. State of Bihar, AIR 1959 SC 18.

<sup>27</sup> Sharad Birdhi Chand Sarda v. State of Maharashtra, (1984) 4 SCC 116.

<sup>28</sup> United States v. Laster, 534 U.S. 1151 (2002).

is admissible as a dying declaration under the ambit of section 32(1) of IEA when there is no other evidence available even if the only evidence present is hearsay in nature.

## **Death under section 32 clause (1) includes suicidal deaths**

A suicide note in common parlance is known as a letter that somebody leaves before, they kill or try to kill themselves. As per Section 32, to qualify a statement under the ambit of sub-clause 1, the statement made orally or in writing must be made by a person who died afterward. The term death is wide in its interpretation including both homicidal and suicidal deaths within its periphery.<sup>29</sup> Therefore, by that principle, a note written by any person before committing suicide should be considered under the scope of section 32(1) of IEA. Along with this, a suicide note is considered to fall within the purview of Section 32 since it is an exception to the rule of hearsay evidence.<sup>30</sup>

As per the case of *State of Maharashtra vs. Anil*, the court extended the ambit of the principle of dying declaration by observing that the suicide note written, by the person who subsequently committed suicide, before the commission of suicide can also be admitted as a dying declaration. However, the validity and the trustworthiness of the suicide note have to be checked which can be done with the help of forensic examination.<sup>31</sup>

The major requirement for a suicide note to be considered as a dying declaration is that a suicide note must be connected to the cause or any such circumstances of the transaction which was the reason for the death.<sup>32</sup> A suicide note can be considered as a dying declaration<sup>33</sup> if the person who wrote the suicide note<sup>34</sup> was in the belief that there was no other option left with him/her except that of ending his life.<sup>35</sup> There are circumstances where a person sees no other viable option but to just end their own life to relieve them of their pain or humiliation that might have been caused by the accused.

However, it does not mean that if a suicide note is found then it can be directly admitted as

<sup>29</sup> Deepak v. State of Madhya Pradesh, 1994 CriLJ 767.

<sup>30</sup> Pittman v. City of Madison, 2015 WL 557248; United States v. Jordan, 2014 WL 1796698; Bray v. Ingersoll-Rand Co., 2015 WL 728515.

<sup>31</sup> State of Maharashtra v. Anil, Criminal Appeal No.132 of 1999.

<sup>32</sup> P Bikshapathi v. State of Andhra Pradesh, (1988) SCC OnLine Andhra Pradesh 317.

<sup>33</sup> Ratan Gond v. State of Bihar, AIR 1950 SC 18.

<sup>34</sup> Rachana Ravindra Jain v. State of Gujarat, (2019) SCC OnLine Gujarat 744.

<sup>35</sup> Miss Rashika v. The State of Goa, (2014) SCC OnLine Bombay 40.

evidence in the court of law. It is true that any statement given by an individual, who died after making the statement, which is related to the reason for the death of the person, is admissible as evidence in the court of law.<sup>36</sup> But the declaration in the suicide note must be credible,<sup>37</sup> such that the court considers it in confidence to be bearing and truthful.<sup>38</sup> The court should come to a definite conclusion after going through various circumstantial factors involved in a case, that what the note claims are true and are dependable enough to convict the accused without causing injustice to any innocent man.

### **The Suicide Note as the Sole Evidence for Conviction.**

Generally, suicides are committed in isolation with a minimal chance of any other human interference. Due to this common factor in almost all the cases of suicides, there are always less or sometimes even no evidence or witnesses around. Thus, a suicide note becomes an important piece of evidence in such scenarios. Despite that, there are still several nuances that need to be ironed out since a suicide note is merely focused on only one person's perspective.

The conflict before the court, while serving the justice, arises when the only evidence available in the cases of suicide is a piece of paper that contains a statement written by the deceased themselves. The conflict leads to a question of whether the suicide note alone can be considered as the sole evidence of passing a judgment against the accused or not. The Indian criminal justice system works on the concept of proving the guilt beyond any reasonable doubt, thus in such a system a question arises, that is whether a person can be convicted solely based on a suicide note.

Admissibility of Dying declarations and Suicide Notes without any Corroborative Evidence

<sup>36</sup> Emperor v. Mohammad Shaikh, AIR 1943 Cal 74.

<sup>37</sup> Laxman v. State of Maharashtra, (2002) 6 SCC 710.

<sup>38</sup> Chairman & Managing Director v. Goparaju Sri Prabhakara Hari Babu, (2008) 5 SCC 468.

A Dying declaration, if reliable and true, is admissible *ipso facto* as evidence in the court of law.<sup>39</sup> The essential condition regarding it is that the statement in question must not be given under any sort of duress<sup>40</sup> or torture<sup>41</sup> and it must inspire the full confidence of the court.<sup>42</sup>

The principle of corroboration of evidence along with any dying declaration is a mere rule of prudence.<sup>43</sup> The court of law must admit any statement made by the deceased, even in the form of suicide notes, as far as the declaration is free from any inconsistency or infirmity which might create a genuine question regarding its credibility.<sup>44</sup> It is because the position of a dying man is regarded as solemn and serene,<sup>45</sup> and due to this reason the Court of law accepts the veracity of his/her declaration.<sup>46</sup> In case of genuine doubt, the court can ask for any corroborative evidence and if the evidence is not presented, the court is in the power to disregard such declaration.

In the absence of any other evidence, the rule of law is that the court must consider all the statements in the declaration regarding the facts and circumstances of the transaction due to which death occurred.<sup>47</sup> The reliability of the same is also looked into by the court to ensure proper passage of justice to the victim.<sup>48</sup> Nonetheless, there are no essential requirements of any corroborative evidence with the dying declaration. Thus, an accused can be convicted solely based on a dying declaration of the deceased while considering the facts and circumstances of every particular case.<sup>49</sup> The suicide note will be considered only under the pretext that it must have some proximate link and a nexus with the actual occurrence of the death<sup>50</sup> and is related to the transaction which concluded in the death of the maker of the dying declaration.<sup>51</sup>

The position of law for a dying declaration to be a piece of sole evidence is very clear, but the

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<sup>39</sup> Kundula Bala Subrahmanyam v. State of Andhra Pradesh, (1993) 2 SCC 684.

<sup>40</sup> Atbir v. Government of Delhi, (2010) 9 SCC 1.

<sup>41</sup> Mallella Shyamsunder v. State of Andhra Pradesh, (2015) 2 SCC 486.

<sup>42</sup> Laxman v. State of Maharashtra, (2002) 6 SCC 710.

<sup>43</sup> Munnu Raja v. State of Madhya Pradesh, AIR 1976 SC 2199.

<sup>44</sup> Mehiboobsab Abbasabi Nadaf v. State of Karnataka, (2007) 13 SCC 112.

<sup>45</sup> Laxman v. State of Maharashtra, (2002) 6 SCC 710.

<sup>46</sup> Kans Raj v. State of Punjab, AIR 2000 SC 2324.

<sup>47</sup> Patel Hiralal Jottaram v. State of Gujarat, AIR 2001 SC 2944.

<sup>48</sup> Ramawati Devi v. State of Bihar, (1983) 1 SCC 211.

<sup>49</sup> Lakhan v. State of Madhya Pradesh, (2010) 8 SCC 514.

<sup>50</sup> Rattan Singh v. State of Himachal Pradesh, (1997) 4 SCC 161.

<sup>51</sup> Tehal Singh v. State of Punjab, AIR 1979 SC 1347.

question which arises is whether it is the same while taking a suicide note into account. So far, the stand of the court regarding this question is not concrete and includes various factors while considering the guilt of a person especially in the cases of abetment of suicide cases as per the provision of Section 306 of the Indian Penal Code, 1860.<sup>52</sup>

The case of *Sharad Birdhichand Sarda vs. State of Maharashtra* highlighted and interpreted that “Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.”<sup>53</sup> Hence, a dying declaration in the form of a suicide note is also admissible under Section 32(1) of IEA. Therefore, whatever are the rules and procedures that have been laid down to admit any other dying declaration, the same will be applied in the case of a suicide note as well. It can be concluded that a suicide note, in the form of a dying declaration, can be taken as the sole evidence for convicting the accused,<sup>54</sup> even without the presence of any corroborative evidence.<sup>55</sup> However, despite the above-mentioned case, the stance of the courts in the cases of the suicide note is not that clear and straight forward as of yet.

### **Factors Involved in Convicting a Person Solely Based on a Suicide Note**

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A suicide note, similar to a dying declaration, cannot directly be admitted as the sole evidence behind the conviction of an accused. A note when is written by the deceased in his or her last moments can vary depending on their capacity to handle things as some may handle things better than others. On the other hand, the veracity or even the seriousness of the situation which led to the victim taking such a drastic step has to be analyzed as well. Therefore, many factors are to be fulfilled before considering such a statement to be admissible under Section 32 of the IEA.

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<sup>52</sup> The Indian Penal Code, 1860, § 306.

<sup>53</sup> *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116.

<sup>54</sup> *Mehiboobsab Abbasabi Nadaf v. State of Karnataka*, (2007) 13 SCC 112.

<sup>55</sup> Law Commission of India, *Review of the Indian Evidence Act 1872*, Report No. 185, Part IIIA (March 2003).

## *Mental Condition of the declarant*

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The sound mental condition of the maker of the dying declaration is one of the most important criteria for the acceptability of a suicide note as that of a dying declaration. It was observed by the Hon'ble Apex Court in the case of *Laxmi v. Om Prakash & Ors.* that if the court believes that at the time of making the statement, the capacity of the person making the declaration, regarding the facts and circumstances, was impaired, or if there are some serious doubts regarding the maker being in a fit mental and physical state; then the court may, without any corroborating evidence which gives the assurance to the authenticity of the content present in the statement, disregard the declaration and refuse to act upon it.<sup>56</sup>

## *Suicide as the last alternative*

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It is clear that if a suicide note is found anywhere, like in the clothes of the deceased person, it will be considered under the scope of dying declaration as a piece of valid evidence as per section 32 of IEA.<sup>57</sup> But for it to become the sole evidence for a conviction other evidence or material apart from the suicide note must be there to sufficiently prove that “*the deceased was left with no other alternative than to commit suicide*”.<sup>58</sup>

As per the case of *Rachana Ravindra Jain v. State of Gujarat and others*, the court concluded that the suicide was committed by the deceased due to mental torture inflicted by the accused. And it was written by the deceased that the accused is the person who is responsible for the death. This note was written hardly a week before the commission of suicide. Thus, this suicide note can be considered as a dying declaration of the deceased, in which the deceased has provided to the court with the name of the accused. Under this observation, the court found that the case was not a case where a complaint can be dismissed at an early stage.

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<sup>56</sup> *Laxmi v. Om Prakash & Ors.*, AIR 2001 SC 2383.

<sup>57</sup> *State v. Maregowda*, 2002 (1) RCR (Criminal) 376 (Karnataka) (DB).

<sup>58</sup> *Miss Rashika @ Rishigandha Shetye v. The State of Goa*, Criminal Appeal No. 32 of 2012.

Further, the court acknowledged that there existed a *prima facie* case against the accused and that investigation was needed to find the true reality of the situation at hand. In the end, the person accused was required to defend himself in a trial against the charges framed.<sup>59</sup>

Even after this observation, it cannot be confidently said that a suicide note made under a belief that ‘the suicide was the only left option for the deceased’ is sufficient for a conviction. However, it is sufficient to build a *prima facie* case against the accused since a conviction solely based on this factor cannot be given.

### *Nexus Between the Act of the Accused and the Commission of suicide*

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The court while taking a suicide note into account always tries to find a nexus or a proximate link between it and the actual commission of the suicide. This becomes the final deciding factor for a conviction solely based on a suicide note. It is important because the court would undoubtedly discount hypersensitivity<sup>60</sup> and if a victim committing suicide was hypersensitive to ordinary petulance,<sup>61</sup> the Court would not be satisfied in holding the accused guilty.<sup>62</sup> This principle has been lined up under the belief that a person may die because of weak hearted personality but because of his/her foolish decision, another person cannot be blamed.<sup>63</sup>

Lodging a false case,<sup>64</sup> harassment,<sup>65</sup> defamation,<sup>66</sup> and feeling of shame which becomes the

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<sup>59</sup> *Rachana Ravindra Jain v. State of Gujarat and others* (2019) SCC OnLine Guj 744.

<sup>60</sup> *Ashok Kumar Gupta v. State Government of Delhi*, (2018) SCC OnLine Delhi 11591.

<sup>61</sup> *Shubham v. The State of Madhya Pradesh*, Miscellaneous Criminal Appeal No. 111 of 2017.

<sup>62</sup> *Sharad Birdhichand v. State of Maharashtra*, (1984) 4 SCC 116; *S.S.Chheena v. Vijay Kumar Mahajan & Ors.*, (2010) 12 SCC 190.

<sup>63</sup> *Naresh Marotrao v. Union of India*, 1995 CriLJ 96.

<sup>64</sup> *MGB Gramin Bank v. Chakrawarti Singh*, (2014) 13 SCC 583.

<sup>65</sup> *Mahendra Singh v. State of Madhya Pradesh*, (1995) Supplementary 3 SCC 731; *Amalendu Pal v. State of West Bengal*, (2010) 1 SCC 707; *Kishangiri Mangalgiri Goswami v. State of Gujarat*, (2009) 4 SCC 52.

<sup>66</sup> *State of Gujarat v. Pradyuman*, (1998) SCC OnLine Gujarat 227.

cause of suicide does not amount to abetment.<sup>67</sup> Further, humiliation from the blame of crime,<sup>68</sup> misbehavior,<sup>69</sup> insults,<sup>70</sup> reprimanding,<sup>71</sup> and using abusive language does not constitute abetment of suicide either.<sup>72</sup>

Under the case of *Munshiram v. State of Rajasthan*, the Supreme Court dismissed the order of the High Court under which the High Court had quashed the complaint filed for several offenses against the accused, including offense under Section 306 of IPC. The Supreme Court instead held that the High Court was erroneous in dismissing the FIR filed because the FSL report on which the prosecution had relied proved that the suicide note under question was written by the person who committed suicide, the facts and the matrix of circumstances were also taken into consideration in the case. Therefore, in the end, the court allowed the investigating authority to complete the investigation of the case relying solely on the suicide note and FSL report.<sup>73</sup>

In the case of *Rajesh v State of Haryana*, the judgment of which was given by a two-judge Supreme Court bench comprising of Justice MR Shah and Justice L Nageshwara Rao, it was very convincingly and held that the conviction under Section 306 of the IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide.

The court had allowed an appeal against the judgment of the High Court that Rajesh is liable for the abetment of suicide of his brother-in-law, Arvind. In his suicide note, Arvind had disclosed that false allegations of demand of dowry were made against him and that he was slapped by the accused in a Panchayat. Seeing no other viable option, he decided to take the extreme step of committing suicide as he was unable to withstand the harassment. The suicide note, in the end, mentioned that the accused and his in-laws were responsible for his death. The High Court concluded that there was no error in convicting the accused thereby

<sup>67</sup> Madiya Mahadev v. State of Madhya Pradesh, (2006) 1 Madhya Pradesh Law Journal 583.

<sup>68</sup> Neelam v. State of Andhra Pradesh, (2002) SCC OnLine Andhra Pradesh 233.

<sup>69</sup> Utkal v. State of Madhya Pradesh, Miscellaneous Criminal Appeal No. 11749 of 2014.

<sup>70</sup> Gulab v. The State of Maharashtra, (2016) SCC OnLine Bombay 2165.

<sup>71</sup> Swamy Prahaldas v. State of Madhya Pradesh, (1995) Supplementary 3 SCC 438.

<sup>72</sup> M. Arjunan v. State, (2019) 3 SCC 315.

<sup>73</sup> Munshiram v. State of Rajasthan, (2018) 5 SCC 678.



upholding the conviction of the accused only on the ground that the accused had slapped the deceased during the Panchayat.<sup>74</sup>

Therefore, it can be said that as a suicide note falls under the ambit of dying declaration within the scope of Section 32(1) of the IEA, similarly a suicide note can also be a ground for conviction as observed by the court in several cases. Nonetheless, the court is much more cautious and circumspect when it comes to analyzing a suicide note as evidence. This is because a court cannot convict a person merely based on a suicide note if there is a probability that the person who committed suicide was weak-hearted and just overreacted on circumstances that weren't that grave, to begin with.

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## CONCLUSION

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The set of rules and the law governing the law of evidence considers dying declarations as a form of evidence because the statements are made in extremity; when the same cannot be taken on the point of an oath; and when every hope of survival in this world is gone with every motive of falsehood silenced; and the mind is induced by the most powerful consideration to speak the truth; a situation so awful and solemn is considered by law as creating an obligation equal to that which is imposed by a positive oath administered in the court of justice.

Thus, a dying declaration under Section 32(1) of IEA is one of the most important pieces of evidence that is admissible in a trial as this statement can be the sole reason for the conviction of the accused. The meaning and scope of Section 32(1) of the IEA are very wide which includes within its ambit the use of signs & gestures and many other factors attached to the admissibility of dying declaration such as fear from the imminence of death. But the court does not admit any declaration blindly, in fact, certain standards for dying declarations are to be maintained. If the declaration fulfills all the given requirements prescribed by the law, a conviction can be given based on this declaration only without any corroborative evidence.

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<sup>74</sup> Rajesh v. State of Haryana, SLP (Cri) No. 8867 of 2016.

The case of suicide note under the ambit of Section 32(1) of IEA as a dying declaration is almost the same but not exactly. The court has always been very particular about the cases involving suicide notes as the sole evidence. Admissibility of suicide note under Section 32 clause (1) has always been the primary question whenever a case is registered with abetment to suicide as one of the charges. The court's stand at present is very clear that death under section 32(1) includes suicidal deaths, however, the latest query before the Indian court is about considering the suicide note as the sole evidence for a conviction.

While dealing with this problem the court through various judgments has laid down several requirements for the admissibility of dying declarations and suicide notes without any corroborative evidence. A few of the factors involved in convicting a person solely based on a suicide note are the mental condition of the declarant; whether suicide was the last alternative available for the deceased; and lastly by analyzing the nexus between the act of the accused and the commission of suicide. But these factors are not exhaustive, it cannot be said that if these factors are fulfilled the accused will be convicted. The facts and circumstances of each case for a conviction against the accused must be proved beyond reasonable doubt as seen in every other case of the criminal justice system of India.

Therefore, it can be concluded after discussing the technicalities and requirement on various grounds and factors that dying declarations and suicide notes may state the exact reason for the death, suicidal or homicidal; still, the truth in these statements cannot always be used as the way towards justice. But the court after analyzing with enough scrutiny, if satisfied, may convert the truth present in the declaration and note it into the way towards justice.