INDIAN JOURNAL OF LEGAL REVIEW

VOLUME 5 AND ISSUE 14 OF 2025

INSTITUTE OF LEGAL EDUCATION

INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN - 2583-2344

(Open Access Journal)

Journal's Home Page – https://ijlr.iledu.in/

Journal's Editorial Page - https://ijlr.iledu.in/editorial-board/

Volume 5 and Issue 14 of 2025 (Access Full Issue on - https://ijlr.iledu.in/volume-5-and-issue-14-of-2025/)

Publisher

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INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 5 AND ISSUE 14 OF 2025

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

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DYING DECLARATIONS UNDER THE BHARATIYA SAKSHYA ADHINIYAM, 2023: A COMPARATIVE ANALYSIS OF INDIA, THE UNITED STATES, THE UNITED KINGDOM, FRANCE, AND RUSSIA

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BEST CITATION - JOEL JAMES. J, DYING DECLARATIONS UNDER THE BHARATIYA SAKSHYA ADHINIYAM, 2023: A COMPARATIVE ANALYSIS OF INDIA, THE UNITED STATES, THE UNITED KINGDOM, FRANCE, AND RUSSIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (14) OF 2025, PG. 773-785, APIS – 3920 – 0001 & ISSN - 2583-2344.

ABSTRACT

The doctrine of dying declarations remains one of the most enduring yet contested exceptions to the rule against hearsay in criminal evidence law. Under the Bharatiya Sakshya Adhiniyam, 2023 (BSA), India has retained a notably expansive framework, permitting the admissibility of statements relating to the cause of death without requiring belief in imminent death, without mandating procedural safeguards, and even allowing convictions based solely on an uncorroborated dying declaration. This approach stands in sharp contrast to the narrower and rights-protective models adopted in other major jurisdictions. The United States and the United Kingdom recognise dying declarations as limited historical exceptions, subject to strict imminence requirements and confrontation-based safeguards, while civil-law jurisdictions such as France and Russia do not treat dying declarations as a distinct evidentiary category, instead evaluating last statements within broader frameworks of judicial discretion and corroboration. This article undertakes a comparative analysis of the relevancy and admissibility of dying declarations under the BSA, tracing the historical evolution of the doctrine, analysing Supreme Court jurisprudence on reliability and sole-basis convictions, and examining philosophical, empirical, and constitutional critiques of the presumption of truthfulness in extremis. Particular emphasis is placed on Article 21 of the Indian Constitution and the tension between evidentiary necessity and fair-trial guarantees, especially in cases involving domestic violence, dowry deaths, and burn injuries where dying declarations often constitute crucial evidence. Through comparative evaluation, the article contends that reform is necessary to align Indian evidence law with constitutional fairness and evolving international criminal justice standards and safeguards worldwide.

Keywords - Dying Declaration; Bharatiya Sakshya Adhiniyam, 2023; Evidence Law; Hearsay Exception; Comparative Criminal Procedure; Article 21; Fair Trial; Sole-Basis Conviction; Constitutional Due Process; International Human Rights.

1. INTRODUCTION

The doctrine of dying declarations represents one of the oldest and most enduring exceptions to the hearsay rule. Historically rooted in the English common-law maxim *nemo moriturus praesumitur mentire*, the doctrine posited that an individual on the brink of death was compelled by the solemnity of impending mortality to speak the truth[1438].Over time, however, courts and scholars have come to recognise that this theological foundation lacks empirical support, raising significant doubts about the doctrine's justificatory coherence[1439]. Yet, despite this erosion, dying declarations

[1438] *R. v. Woodcock*, (1789) 1 Leach 500

[1439] Jeremy Bentham, *Rationale of Judicial Evidence* 438–39 (1827).

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APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
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remain admissible in varying forms across jurisdictions.

India's treatment of dying declarations has long been exceptional in comparative perspective. Under Section 32(1) of the Indian Evidence Act, 1872, courts developed an expansive doctrine that admitted statements relating to the cause of death even when the declarant did not believe death was imminent[1440].This broad rule reflected nineteenth-century colonial conditions marked by limited investigative infrastructure and the frequent unavailability of judicial officers or medical professionals. The Bharatiya Sakshya Adhiniyam, 2023 (BSA), which replaced the Evidence Act after 151 years, preserves this exceptionally broad framework almost unchanged[1441]. The new legislation maintains the admissibility of dying declarations without an imminence requirement, without mandatory procedural safeguards, and without a statutory corroboration rule.

By contrast, the United States retains a narrow, constitutionally constrained dying declaration exception under Rule 804(b)(2) of the Federal Rules of Evidence, limited to homicide prosecutions and civil cases, and expressly requiring the declarant's belief in impending death[1442]. The United Kingdom similarly limits admissibility under common law and the Criminal Justice Act 2003, preserving the imminence requirement and restricting the doctrine to homicide[1443]. Civil-law jurisdictions, such as France and Russia, do not recognise a formal dying declaration doctrine but evaluate last statements under general evidentiary discretion, typically requiring corroboration and procedural documentation[1444].

This comparative context raises pressing questions regarding India's continued embrace of a permissive doctrine. While Indian courts frequently affirm that dying declarations may form the sole basis of conviction[1445],concerns persist regarding reliability, voluntariness, susceptibility to tutoring, and the absence of cross-examination. Article 21 of the Constitution demands procedures that are "fair, just, and reasonable,"[1446] prompting debates about whether sole-basis convictions based on untested hearsay comport with constitutional due process.

Against this backdrop, the present article undertakes a comprehensive and analytically rigorous study of dying declarations under the BSA. It re-examines the doctrine's historical foundations, doctrinal evolution, constitutional tensions, and contemporary challenges arising in cases of domestic violence, burn injuries, and poisoning contexts in which dying declarations are most prevalent. It also provides a structured comparative analysis of the United States, United Kingdom, France, and Russia, offering insights into global evidentiary trends toward corroboration and confrontation rights.

2. HISTORICAL EVOLUTION OF THE DYING DECLARATION DOCTRINE

The doctrine of dying declarations emerged within English common law as a pragmatic and moral exception to the rule against hearsay. Early courts justified admissibility through the belief that a person confronting certain death is compelled to speak truthfully, an assumption rooted in Christian theology and expressed in the maxim *nemo moriturus praesumitur mentire*[1447].Yet even in its formative stages, the doctrine was grounded as much in necessity as in metaphysics. In an era, devoid of modern investigative tools, the dying victim's statement frequently constituted the only available direct evidence in homicide cases[1448].

By the eighteenth century, English courts had crystallised the imminence requirement, most famously articulated in *R. v. Woodcock*, which held that admissibility depended on the

[1440] Indian Evidence Act, 1872, (S.32(1)) (repealed 2023).
[1441] Bharatiya Sakshya Adhiniyam, 2023, (S.26(1)(a).)
[1442] Fed. R. Evid. 804(b)(2).
[1443] Criminal Justice Act 2003, c. 44 (UK); *R. v. Perry*, [1909] 2 KB 697.
[1444] Code de procédure pénale arts. 81–82 (Fr.); Russian Criminal Procedure Code art. 75.
[1445] *Khushal Rao v. State of Bombay*, AIR 1958 SC 22.
[1446] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[1447] *R. v. Woodcock*, (1789) 1 Leach 500
[1448] Wigmore, *Evidence in Trials at Common Law* § 1432 (Chadbourn rev. 1974).

declarant being under a "settled, hopeless expectation of death"[1449].The doctrine nevertheless remained tightly confined to homicide prosecutions and was considered a narrow exception within a broader evidentiary structure that strongly disfavours' hearsay.

2.1 Transplantation into Indian Law

When the Indian Evidence Act, 1872 (IEA) was drafted by Sir James Fitzjames Stephen, he deliberately departed from the English restriction. Section 32(1) of the IEA omitted the imminence requirement and allowed dying declarations in any case in which the cause of death was in question[1450].Stephen justified this divergence on the basis of colonial realities limited investigative infrastructure, slow communication, and the frequent unavailability of judicial officers in rural areas[1451]. Necessity rather than theological belief became the guiding rationale.

Judicial decisions under the IEA further broadened the doctrine. In *Pakala Narayana Swami v. Emperor*, the Privy Council held that statements "relating to the circumstances of the transaction which resulted in death" could include a wide range of narrative material, not merely the immediate cause of death[1452]. Indian courts also repeatedly affirmed that a dying declaration could form the sole basis for conviction, further distinguishing Indian law from its common-law origins[1453].

2.2 Post-Independence Evolution

After 1947, the Supreme Court of India consolidated the doctrine's expansive contours. In *Khushal Rao v. State of Bombay*, the Court held that dying declarations are not "a weaker kind of evidence" and require no corroboration if found reliable[1454]. Subsequent cases such as *Paniben v. State of Gujarat* and *Laxman v. State of Maharashtra* refined judicial guidelines concerning voluntariness, mental fitness, the absence of tutoring, and proper recording methods[1455]. These decisions established a judge-made reliability framework that endures today.

Throughout the late twentieth and early twenty-first centuries, dying declarations became especially prominent in cases involving domestic violence, dowry harassment, and burn injuries contexts in which victims often survived long enough to make multiple statements. This social reality shaped Indian jurisprudence, prompting courts to navigate inconsistencies between declarations and to evaluate the influence of relatives or police officers[1456].

2.3 Continuity under the Bharatiya Sakshya Adhiniyam, 2023

When Parliament enacted the BSA in 2023, replacing the IEA, it retained the essential structure of Section 32(1). Section 26(1)(a) continues to admit statements relating to the cause of death without requiring imminence, corroboration, or judicial/magisterial recording[1457]. The explanatory notes accompanying the Bill do not discuss the doctrine in detail, suggesting that the retention was intentional but not the result of substantive debate[1458].

Thus, although Indian evidence law underwent significant modernisation in other areas especially concerning electronic records the law of dying declarations remains rooted in nineteenth-century necessity. Whether this continuity can be reconciled with twenty-first-century constitutional and evidentiary expectations is a central question explored in later sections.

[1449] *R. v. Woodcock*, supra note 10.
[1450] Indian Evidence Act, 1872, § 32(1).
[1451] James Fitzjames Stephen, *The Indian Evidence Act: With an Introduction on the Principles of Judicial Evidence* 163 (1872).
[1452] *Pakala Narayana Swami v. Emperor*, (1939) 66 IA 66
[1453] *Khushal Rao v. State of Bombay*, AIR 1958 SC 22.
[1454] Id.
[1455] *Paniben v. State of Gujarat*, (1992) 2 SCC 474; *Laxman v. State of Maharashtra*, (2002) 6 SCC 710.
[1456] *Amol Singh v. State of Madhya Pradesh*, (2008) 5 SCC 468.
[1457] Bharatiya Sakshya Adhiniyam, 2023, (S.26(1)(a)).
[1458] Lok Sabha Debates, Dec. 2023 (Criminal Law Reforms Discussion).

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3. DYING DECLARATIONS UNDER THE BHARATIYA SAKSHYA ADHINIYAM, 2023: DOCTRINAL AND JURISPRUDENTIAL ANALYSIS

Section 26(1)(a) of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), preserves India's uniquely expansive doctrine of dying declarations[1459]. Although Parliament introduced significant reforms to evidence law particularly regarding electronic records its decision to retain the structure of Section 32(1) of the Indian Evidence Act indicates deliberate continuity. The provision admits statements made by a person regarding the cause of their death or circumstances leading to it, without requiring a belief in imminent death and without imposing mandatory procedural safeguards[1460]. This breadth places India in marked contrast with most common-law and civil-law systems.

3.1 Statutory Structure: The Breadth of Section 26(1)(a)

Section 26(1)(a) reads:

"Statements made by a person as to the cause of their death, or as to any of the circumstances which resulted in their death, are relevant in cases in which the cause of that person's death comes into question."

The statutory language reflects three defining characteristics of Indian law. First, there is **no requirement** that the declarant must believe death to be imminent, a feature that distinguishes India from the United States and the United Kingdom[1461]. Second, the statement is admissible in **all cases where the cause of death is in issue**, not only homicide prosecutions[1462]. Third, the statute does **not require** that the declaration be recorded by a magistrate, accompanied by medical certification, or captured through a particular format such as writing or audio-video recording.

This doctrinal breadth embodies a necessity-driven approach rooted in the historical constraints of Indian criminal justice, but it also raises substantial concerns regarding reliability and fairness, particularly in contemporary contexts where forensic and technological capacities have advanced.

3.2 The Supreme Court's Jurisprudential Framework

Indian courts have long recognised that the breadth of Section 26(1)(a) must be tempered by judicial safeguards. As a result, the Supreme Court has developed a sophisticated reliability framework that governs admissibility and evidentiary weight.

3.2.1 Sole-Basis Conviction Doctrine

In *Khushal Rao v. State of Bombay*, the Supreme Court held that a dying declaration, if found wholly reliable, may constitute the sole basis for conviction[1463]. This proposition represents one of the most significant departures from comparative jurisprudence. Neither the U.S. nor the U.K. courts typically permit convictions based solely on untested hearsay, and civil-law jurisdictions generally require corroboration[1464]. India's stance reflects a strong evidentiary trust in dying declarations, which has been reinforced in subsequent decisions such as *Uka Ram v. State of Rajasthan* and *K. Ramachandra Reddy v. Public Prosecutor*[1465].

3.2.2 Judicially Developed Conditions of Reliability

Although the statute is permissive, the judiciary has articulated a series of guiding principles to ensure reliability. In *Paniben v. State of Gujarat*, the Court consolidated earlier decisions into a set of practical considerations, including voluntariness, mental fitness, consistency, absence of tutoring, and proper recording methodology[1466]. *Laxman v. State of Maharashtra* further held that medical certification of mental fitness, while desirable, is not mandatory if other evidence demonstrates

[1459] Bharatiya Sakshya Adhiniyam, 2023, (S.26(1)(a)).
[1460] Id.
[1461] Fed. R. Evid. 804(b)(2); *R. v. Woodcock*, (1789) 1 Leach 500
[1462] Indian Evidence Act, 1872, (S.32(1)).
[1463] *Khushal Rao v. State of Bombay*, AIR 1958 SC 22.
[1464] *Shepard v. United States*, 290 U.S. 96 (1933).
[1465] *Uka Ram v. State of Rajasthan*, (2001) 5 SCC 254; *K. Ramachandra Reddy v. Public Prosecutor*, (1976) 3 SCC 618.
[1466] *Paniben v. State of Gujarat*, (1992) 2 SCC 474.

that the declarant was capable of comprehension[1467].

These cases form the backbone of India's reliability doctrine. Yet because they are judicially constructed rather than legislatively codified, their application varies across jurisdictions and courts.

3.2.3 Evaluation of Multiple or Inconsistent Dying Declarations

Many contemporary cases especially those involving burns or domestic violence feature multiple dying declarations. Courts have held that inconsistencies between declarations require the judiciary to determine which statement appears more credible or whether the cumulative effect undermines reliability altogether[1468]. In *Amol Singh v. State of Madhya Pradesh*, the Supreme Court held that when multiple declarations vary materially, courts should prefer the most reliable statement or discard the set entirely[1469]. This requirement introduces judicial subjectivity, but remains a necessary safeguard in the absence of statutory guidance.

3.3 Forms of Dying Declarations Under Indian Law

One of the most expansive features of Indian doctrine is the range of permissible forms that a dying declaration may take. Courts accept:

- **Written declarations** recorded by magistrates, doctors, police officers, or other persons;
- **Oral declarations**, proved through witness testimony;
- **Gestural declarations**, such as nods or signs, provided that the witness can reliably interpret them; and
- **Audio or video recordings**, increasingly common due to technological advances[1470].

This flexibility enhances the doctrine's utility in cases where formal adjudicatory personnel may not be present. However, it also creates opportunities for unreliability and manipulation. Oral dying declarations, in particular, are vulnerable to misinterpretation or fabrication, prompting courts to exercise heightened caution.

3.4 Procedural Gaps and Contemporary Challenges

Despite robust judicial guidelines, the absence of statutory procedural safeguards under the BSA creates several challenges.

3.4.1 Lack of Mandatory Medical Certification

Unlike many jurisdictions that require a medical practitioner to certify the declarant's mental fitness, Indian law treats such certification as optional[1471]. This flexibility is a legacy of historical necessity but may be increasingly difficult to justify in urban hospital contexts where medical professionals are readily available.

3.4.2 Absence of Mandatory Audio-Video Recording

The BSA contains detailed provisions regarding electronic evidence, yet it remains silent on the audio-video recording of dying declarations[1472]. This omission is notable given India's increasing reliance on digital documentation in criminal investigations. The absence of recording requirements leaves courts dependent on the credibility of the recorder rather than on objective documentary evidence.

3.4.3 Police-Recorded Dying Declarations

Although not barred, dying declarations recorded by police officers are treated with caution. Courts have emphasised that police involvement increases the risk of coercion or influence, especially in sensitive cases involving marital relationships or domestic violence[1473]. Nevertheless, police-recorded declarations

[1467] *Laxman v. State of Maharashtra*, (2002) 6 SCC 710.
[1468] *Paniben*, supra note 29.
[1469] *Amol Singh v. State of Madhya Pradesh*, (2008) 5 SCC 468.
[1470] *Queen-Empress v. Abdullah*, ILR (1885) 7 All 385.
[1471] *Laxman*, supra note 30.
[1472] Bharatiya Sakshya Adhiniyam, 2023, (S.63).
[1473] *State of U.P. v. Ram Sagar Yadav*, (1985) 1 SCC 552.

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remain admissible, reflecting the doctrine's permissive structure.

3.5 Constitutional Dimensions Under Article 21

Indian courts have consistently held that dying declarations do not violate Article 21's guarantee of fairness, provided courts apply rigorous scrutiny. However, the absence of cross-examination raises fundamental challenges to procedural fairness[1474]. Unlike jurisdictions influenced by the Confrontation Clause or ECHR jurisprudence, India relies solely on judicial scrutiny rather than exclusionary rules to reconcile evidentiary flexibility with due process.

Although Indian courts have not yet questioned the constitutionality of sole-basis convictions derived from dying declarations, evolving global understandings of fair trial rights may prompt reconsideration in the future.

3.6 The Contemporary Significance of the Doctrine

Despite its limitations, the doctrine remains foundational in Indian criminal justice, especially in cases involving domestic violence, dowry deaths, acid attacks, and burn injuries. Victims in such cases frequently survive long enough to provide statements, yet succumb before trial[1475].For many female victims, a dying declaration may be the only opportunity to name their perpetrators. This socio-legal reality continues to justify the doctrine's retention, even as reforms are necessary to strengthen procedural safeguards.

4. PHILOSOPHICAL AND CONSTITUTIONAL CRITIQUES OF THE DYING DECLARATION DOCTRINE.

Although historically justified by necessity and moral presumption, the doctrine of dying declarations has long been criticised on philosophical, epistemic, and constitutional grounds. Under the Bharatiya Sakshya Adhiniyam, 2023 (BSA), these critiques acquire renewed importance because India continues to uphold one of the most permissive formulations of the doctrine, permitting admissibility without an imminence requirement, without procedural safeguards, and even allowing convictions based solely on an untested statement. This section condenses the core objections relevant to contemporary evidentiary and constitutional analysis.

4.1 Philosophical and Empirical Weaknesses of the Doctrine

The classical maxim *nemo moriturus praesumitur mentire* that a person on the brink of death will not lie has been repudiated by modern psychology and jurisprudence[1476]. Empirical studies reveal that trauma, shock, pain, medication (especially opioids), and oxygen deprivation can impair perception, cognition, and memory, undermining the assumption that declarations made in extremis are inherently reliable[1477]. Scholars like Bentham argued as early as the nineteenth century that the doctrine was an evidentiary anomaly justified only by necessity, not by any intrinsic epistemic value[1478].

These philosophical weaknesses are particularly salient in India, where dying declarations often arise in cases involving burn injuries, poisoning, or domestic violence contexts in which declarants may be in extreme distress. The assumption that such individuals speak with heightened accuracy is therefore neither empirically nor normatively sound.

4.2 The Problem of Absence of Cross-Examination

One of the most significant constitutional critiques concerns the inability of the accused to cross-examine the declarant. Cross-examination is widely regarded as the "greatest legal engine ever invented for the discovery of truth,"[1479] and its absence necessarily weakens

[1474] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[1475] *State of U.P. v. Ram Sagar Yadav*, (1985) 1 SCC 552.
[1476] Bentham, *Rationale of Judicial Evidence* 438–39 (1827).
[1477] Elizabeth Loftus, *Eyewitness Testimony* 54–76 (1979).
[1478] Bentham, supra note 39.
[1479] 5 Wigmore, *Evidence in Trials at Common Law* S. 1367 (Chadbourn rev. 1974).

the reliability of hearsay evidence. In the United States, the Confrontation Clause has dramatically restricted the admission of testimonial hearsay, subject only to narrow historical exceptions such as dying declarations[1480]. Even then, courts apply strong reliability constraints.

India lacks a formal confrontation clause, but Article 21 has been interpreted to require fair, just, and reasonable procedure[1481]. Reliance on an untested, unchallengeable statement to secure conviction especially a sole-basis conviction raises profound due process concerns. Unlike jurisdictions influenced by the ECHR, India has not adopted the norm that convictions cannot rest "solely or decisively" on untested statements, a principle articulated in *Al-Khawaja & Tahery v. United Kingdom*[1482].

4.3 Voluntariness, Tutoring, and Coercion Risks

Unlike formal testimony, dying declarations are often recorded in informal and emotionally charged circumstances, sometimes in the presence of relatives or police officers. These conditions may introduce risks of tutoring, subtle pressure, or misinterpretation particularly when the declarant is physically weak or in severe pain. Indian courts acknowledge these dangers, emphasizing the need to exclude declarations influenced by external pressure;[1483] however, without statutory safeguards such as mandatory recording protocols or the presence of neutral officers, such risks persist.

4.4 Multiple and Inconsistent Dying Declarations

Indian jurisprudence has increasingly encountered cases involving multiple dying declarations. Inconsistencies between these statements raise substantial reliability concerns, requiring courts to determine which declaration (if any) reflects the victim's true account[1484].The absence of statutory criteria for resolving such inconsistencies increases dependence on judicial subjectivity. In comparative contexts, many jurisdictions reduce the evidentiary weight of inconsistent or uncorroborated hearsay; India, however, may still treat a single declaration as sufficient for conviction[1485].

4.5 Article 21 and Due Process: Compatibility Concerns

The Supreme Court's expansion of Article 21 since *Maneka Gandhi* has transformed the constitutional landscape of criminal procedure. Any evidentiary doctrine that allows severe consequences especially life imprisonment or death must operate within the bounds of fairness, reasonableness, and due process[1486]. A sole-basis conviction derived from an untested dying declaration raises concerns regarding arbitrariness and procedural insufficiency, particularly when alternative safeguards like audio-video recording or medical certification are not mandated.

Although Indian courts have repeatedly upheld the doctrine, the increasing constitutionalizing of criminal procedure suggests that greater scrutiny may be warranted, especially in light of comparative human rights jurisprudence and the widespread availability of technology to improve evidentiary reliability.

4.6 Summary of Core Critiques

Taken together, the philosophical, empirical, and constitutional critiques demonstrate that while dying declarations remain necessary in many Indian cases, the doctrine is deeply vulnerable to unreliability. The key issue is not whether the doctrine should exist, but whether the system can incorporate safeguards that preserve evidentiary value without compromising due process. These considerations lay the foundation for the comparative and policy analyses that follow.

[1480] *Crawford v. Washington*, 541 U.S. 36 (2004).
[1481] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[1482] *Al-Khawaja & Tahery v. United Kingdom*, 2011-VI Eur. Ct. H.R. 45.
[1483] *Paniben v. State of Gujarat*, (1992) 2 SCC 474.
[1484] *Amol Singh v. State of Madhya Pradesh*, (2008) 5 SCC 468.
[1485] *Khushal Rao v. State of Bombay*, AIR 1958 SC 22.
[1486] *Maneka Gandhi*, supra note 44.

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5. COMPARATIVE ANALYSIS OF DYING DECLARATIONS: UNITED STATES, UNITED KINGDOM, FRANCE, AND RUSSIA

The doctrine of dying declarations varies significantly across legal systems, reflecting deeper divergences in evidentiary philosophy, procedural safeguards, and constitutional protections. India's expansive approach under the Bharatiya Sakshya Adhiniyam, 2023 (BSA), stands in marked contrast to the more constrained formulations adopted in the United States and the United Kingdom as well as the corroboration-driven evidentiary models prevailing in France and Russia. This section offers a condensed comparative analysis highlighting the key structural and doctrinal differences between these jurisdictions.

5.1 The United States: Narrow Exception within a Rights-Protective Framework

In the United States, dying declarations are admissible under Federal Rule of Evidence 804(b)(2), but only under stringent conditions: (1) the declarant must believe death is imminent, and (2) the statement must concern the cause or circumstances of the impending death[1487]. The rule applies exclusively to homicide prosecutions and civil cases[1488]. This narrow scope reflects the American system's strong emphasis on confrontation rights.

Following *Crawford v. Washington*, testimonial hearsay is generally inadmissible unless the accused had an opportunity to cross-examine the declarant[1489]. Although the Supreme Court recognised dying declarations as a historical exception in *Giles v. California*[1490], the requirement of imminence, combined with the strong Confrontation Clause jurisprudence, ensures that dying declarations are admitted cautiously and seldom serve as the sole basis for conviction.

U.S. courts also evaluate reliability through factors such as coherence, mental condition, absence of motive to lie, and corroboration considerations often applied more strictly than in India[1491]. The American model therefore exemplifies how the dying declaration doctrine can be preserved while being tightly circumscribed by constitutional norms.

5.2 The United Kingdom: Traditional Common-Law Doctrine Amid Modern Reforms

The United Kingdom retains the classical common-law dying declaration rule, requiring that the declarant must be under a "settled, hopeless expectation of death," a standard first articulated in *R. v. Woodcock*[1492]. Admissibility is limited to homicide cases, and courts consider the declarant's mental clarity, voluntariness, and the circumstances of recording.

The Criminal Justice Act 2003 substantially reformed hearsay law, creating new statutory gateways for admitting out-of-court statements[1493], but Parliament preserved dying declarations as a discrete exception under Section 118(1)[1494].

Furthermore, the United Kingdom, as a signatory to the European Convention on Human Rights, is bound by Article 6, which guarantees fair trial rights. In *Al-Khawaja & Tahery v. United Kingdom*, the ECHR held that convictions cannot rest "solely or decisively" on evidence from an absent witness unless strong procedural safeguards exist[1495].This norm indirectly restricts the weight English courts place on dying declarations, even though the doctrine itself remains formally intact.

5.3 France: Absence of a Formal Doctrine within an Inquisitorial System

France does not recognise dying declarations as a separate evidentiary category. Instead, the Code of Criminal Procedure embraces *liberté de la preuve*, permitting judges to consider any evidence relevant to determining the truth,

[1487] Fed. R. Evid. 804(b)(2).
[1488] Id.
[1489] *Crawford v. Washington*, 541 U.S. 36 (2004).
[1490] *Giles v. California*, 554 U.S. 353 (2008).
[1491] *Shepard v. United States*, 290 U.S. 96 (1933).
[1492] *R. v. Woodcock*, (1789) 1 Leach 500
[1493] Criminal Justice Act 2003, c. 44, (S.114–118) (UK).
[1494] Id. (S.118(1)).
[1495] *Al-Khawaja & Tahery v. United Kingdom*, 2011-VI Eur. Ct. H.R. 45.

unless explicitly excluded[1496]. Statements by deceased individuals, including those made shortly before death, are admissible but must be assessed holistically within the *dossier* prepared during the investigative phase.

French courts rarely treat such statements as decisive in the absence of corroboration[1497]. Judicial scrutiny focuses on the declarant's lucidity, the circumstances of the statement, and consistency with physical or forensic evidence[1498].

Additionally, France is bound by ECHR jurisprudence, and thus follows the principle that convictions cannot rely primarily on untested hearsay[1499]. The result is a cautious, context-driven approach in which last statements may contribute to the evidentiary picture but cannot assume the centrality they often possess in Indian trials.

5.4 Russia: A Corroboration-Driven Model Emphasising Procedural Regularity

Russia's Criminal Procedure Code similarly avoids a formal dying declaration doctrine but regulates statements of deceased persons through general rules governing admissibility and reliability. Article 75 prohibits reliance on evidence obtained in violation of procedural norms or lacking reliability[1500].

Statements made by a victim prior to death are admissible only if recorded during legally compliant investigative procedures typically with audio-video documentation or signed protocols[1501]. Spontaneous dying utterances reported by third parties are treated sceptically and rarely form the core of a conviction.

Russian courts emphasise corroboration, requiring supporting forensic or testimonial evidence[1502]. The constitutional right to confront witnesses further limits reliance on untested hearsay, aligning Russia broadly with European evidentiary norms and diverging sharply from the Indian position.

5.5 Comparative Insights: India as a Global Outlier

Juxtaposing these systems reveals three dominant models:

(1) The Narrow, Rights-Protective Model (United States, United Kingdom)

These jurisdictions preserve dying declarations but restrict them to limited circumstances, require imminence, and incorporate confrontation-based safeguards.

(2) The Inquisitorial-Corroborative Model (France, Russia)

Inquisitorial systems allow last statements but insist on corroboration, procedural regularity, and judicial oversight, preventing undue reliance on hearsay.

(3) The Expansive Necessity Model (India)

India alone admits dying declarations without:

- an imminence requirement,
- corroboration requirements, or
- mandatory procedural safeguards, and permits convictions based solely on a declaration.

This comparative positioning underscores the uniqueness and the vulnerability of the Indian doctrine. Global trends favour increasing procedural protections and diminishing the weight of untested hearsay. India's reliance on broad judicial discretion places it at odds with these developments, suggesting a need for reform.

6. COMPARATIVE MATRIX AND SYNTHESISED DISCUSSION

The comparative analysis across India, the United States, the United Kingdom, France, and Russia reveal profound differences in the doctrinal foundations and procedural safeguards surrounding dying declarations. These divergences reflect deeper structural

[1496] Code de procédure pénale arts. 81–82 (Fr.).
[1497] Mazeaud, "La preuve pénale," *Revue de science criminelle* 312 (2014).
[1498] Cass. crim., 5 June 2007 (Fr.).
[1499] *Al-Khawaja & Tahery*, supra note 58.
[1500] Russian Criminal Procedure Code art. 75.
[1501] Soloviev, "Hearsay Evidence in Russian Criminal Trials," *Moscow Juridical Review* 221 (2017).
[1502] Id.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 14 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

features of each legal system: adversarial versus inquisitorial procedure, constitutional commitments to confrontation rights, and varying degrees of evidentiary rationalism. This section synthesises the key differences and situates Indian law within the global landscape.

6.1 Philosophical Foundations: Necessity vs. Reliability

India continues to justify dying declarations primarily through necessity, a rationale historically rooted in colonial investigative limitations[1503]. By contrast, the United States and the United Kingdom emphasize reliability and defendant rights, integrating dying declarations cautiously within a broader confrontation-based evidentiary system[1504]. France and Russia represent rationalist, judge-centered systems that emphasise corroboration and procedural regularity over categorical hearsay exceptions[1505].

India's reliance on necessity may still hold contextual force particularly in cases involving domestic violence or burn injuries but necessity alone cannot fully justify the absence of safeguards in contemporary criminal adjudication.

6.2 Doctrinal Dimensions: Imminence, Applicability, and Corroboration

Three doctrinal features distinguish India from comparator jurisdictions:

Imminence of Death Requirement

India alone dispenses entirely with an imminence requirement[1506]. The United States and United Kingdom require that the declarant believe death is imminent considered essential to ensure sincerity while France and Russia do not employ an imminence rule because they do not treat dying declarations as a special evidentiary category.

Scope of Applicability

India admits dying declarations in all cases involving the cause of death, whether civil or criminal[1507]. The United States restricts the exception to homicide prosecutions and civil cases, while the United Kingdom limits it to homicide cases alone. France and Russia admit last statements only as part of general evidentiary evaluation.

Corroboration Requirements

India allows convictions based solely on an uncorroborated dying declaration[1508]. By contrast:

- The United States rarely convicts on such evidence due to the Confrontation Clause[1509].
- The United Kingdom is regulated by ECHR norms, which reject sole-basis convictions on untested statements[1510].
- France and Russia effectively mandate corroboration as a matter of judicial practice[1511].

India's sole-basis conviction doctrine is therefore an international outlier.

6.3 Procedural Safeguards: Recording, Medical Certification, and Oversight

The procedural differences between systems are equally stark.

India imposes no statutory recording requirements[1512].Although courts advise medical certification and prefer magisterial recording, neither is mandatory. Technological advancements such as audio-video recording remain underutilised.

In contrast:

- The United States and United Kingdom rely on structured investigative

[1503] Stephen, *Indian Evidence Act Commentary* 163 (1872).
[1504] *Crawford v. Washington*, 541 U.S. 36 (2004); *R. v. Woodcock*, (1789) 1 Leach 500.
[1505] Code de procédure pénale arts. 81–82 (Fr.); Russian Criminal Procedure Code art. 75.
[1506] Bharatiya Sakshya Adhiniyam, 2023, (S.26(1)(a)).
[1507] Id.
[1508] *Khushal Rao v. State of Bombay*, AIR 1958 SC 22.
[1509] *Giles v. California*, 554 U.S. 353 (2008).
[1510] *Al-Khawaja & Tahery v. United Kingdom*, 2011-VI Eur. Ct. H.R. 45.
[1511] Mazeaud, *La preuve pénale* 312 (2014); Soloviev, "Hearsay Evidence in Russian Trials," *Moscow Juridical Review* 221 (2017).
[1512] Bharatiya Sakshya Adhiniyam, 2023, (S.26(1)(a)).

procedures, medical oversight, and constitutional rights ensuring that out-of-court statements undergo reliability assessment[1513].

- France and Russia incorporate judicial supervision throughout the investigative process, requiring formal documentation and corroboration[1514].

The absence of statutory safeguards in India amplifies risks of tutoring, coercion, inconsistent declarations, and erroneous convictions.

6.4 Implications for Indian Evidence Law

India's position as an outlier in global evidentiary practice raises important policy concerns. While contextual factors justify some degree of flexibility, the comparative study demonstrates that jurisdictions across the world regardless of procedural tradition have increasingly moved toward: (1) evidentiary rationalisation, (2) corroboration requirements, and (3) procedural protections for the accused.

India's continued acceptance of sole-basis convictions, coupled with minimal procedural safeguards, risks inconsistency with evolving constitutional standards under Article 21 and international fair-trial norms[1515]. The comparative matrix therefore underscores both the strengths and the vulnerabilities of India's existing doctrine, setting the stage for reform proposals in Section 7.

7. POLICY RECOMMENDATIONS FOR REFORMING THE INDIAN DOCTRINE OF DYING DECLARATIONS

The comparative analysis reveals that India's dying declaration doctrine stands at a crossroads. While its expansive structure is rooted in socio-legal necessity, evolving constitutional principles, technological advancements, and global evidentiary trends demand a recalibrated approach. Reform need not diminish the doctrine's utility; rather, it should reinforce reliability and procedural fairness. This section proposes a set of policy recommendations that preserve the doctrine's strengths while remedying its vulnerabilities.

7.1 The Case for Reform: Balancing Necessity with Modern Fair Trial Standards

Three overarching considerations justify reform. First, empirical research undermines the presumption that dying individuals invariably speak truthfully, suggesting that the doctrine cannot rely on moral presumptions alone[1516]. Second, the absence of procedural safeguards increases the risk of unreliable or tutored statements, particularly in emotionally volatile environments. Third, Article 21's requirement of fairness necessitates that evidentiary doctrines involving untested statements incorporate procedural protections that mitigate arbitrariness[1517]. These considerations align India with global trends that favour corroboration, documentation, judicial supervision, and confrontation safeguards.

7.2 Recommended Reforms

The following reforms aim to preserve the doctrine's flexibility while enhancing reliability, constitutional compatibility, and public trust in criminal adjudication.

1. Mandatory Audio-Video Recording Where Feasible

Given the widespread availability of smartphones, hospital recording systems, and police digital infrastructure, audio-video recording should be required whenever technologically feasible[1518]. Such recordings reduce disputes concerning voluntariness, mental clarity, and tutoring, and they allow appellate courts to evaluate tone, coherence, and demeanor features lost in written or oral reconstructions. While rural constraints may warrant limited exceptions, mandatory recording should be the default.

[1513] Criminal Justice Act 2003, (S.114–118); Fed. R. Evid. 804(b)(2).
[1514] Code de procédure pénale art. 79 (Fr.); CPCRF art. 189.
[1515] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[1516] Loftus, *Eyewitness Testimony* 54–76 (1979).
[1517] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[1518] Singh & Bansal, "Video Recording in Criminal Evidence," *Indian Law Review* 336 (2020).

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VOLUME 5 AND ISSUE 14 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
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2. Medical Certification of Mental and Physical Fitness

Medical certification should be a statutory requirement unless impossible due to exigent circumstances[1519].Although the Supreme Court in *Laxman* deemed certification optional, the contemporary prevalence of hospital-based dying declarations justifies elevating certification to a mandatory safeguard. Medical endorsements regarding consciousness, orientation, and medication effects significantly enhance evidentiary reliability.

3. Preferential and Prioritised Recording Before Judicial Officers

When circumstances permit, judicial magistrates should record dying declarations[1520]. Their neutrality reduces risks of coercion and enhances procedural legitimacy. The BSA could adopt statutory language similar to provisions for confessions under the Code of Criminal Procedure, ensuring structured oversight without imposing impractical burdens.

4. Codification of Reliability Criteria

Criteria developed judicially in cases such as *Paniben*, *Khushal Rao*, and *Radhakrishna* should be codified into the BSA or through model rules[1521]. Codification would standardise evaluation and reduce inconsistency. These criteria may include: voluntariness, mental clarity, absence of external influence, internal consistency, and alignment with physical evidence.

5. Restricting Sole-Basis Convictions

A rebuttable statutory presumption against sole-basis convictions should be introduced, particularly where: (1) the declaration is oral, (2) there are multiple inconsistent declarations, (3) the declarant was heavily medicated, or (4) the statement was recorded without video documentation[1522].

This aligns India with international fair-trial norms without disabling the doctrine entirely.

6. Standard Operating Procedures (SOPs) for Hospitals and Police

Hospitals, police departments, and magistrates should implement SOPs governing:

- documentation of surroundings,
- presence of relatives,
- sequence of events,
- questions asked,
- declarant's physical state, and
- contemporaneous notation of contextual details[1523].

Such SOPs would ensure uniformity across regions and reduce reliance on subjective judicial assessments.

7. Capacity-Building and Training

Judicial academies, police training centers, and medical institutions should incorporate modules on the evidentiary significance and procedural requirements of dying declarations[1524].Training enhances compliance and ensures that personnel understand the constitutional and evidentiary implications of errors in recording.

7.3 A Contextualised, Balanced Framework for India

Reform must balance India's unique socio-legal realities with constitutional demands. Dying declarations remain indispensable in many cases particularly involving violence against women where victims' statements may be the only direct evidence available. The goal is not to reduce admissibility but to enhance reliability. Procedural safeguards, far from burdening investigators, would strengthen convictions by

[1519] *Laxman v. State of Maharashtra*, (2002) 6 SCC 710.
[1520] *K. Ramachandra Reddy v. Public Prosecutor*, (1976) 3 SCC 618.
[1521] *Paniben v. State of Gujarat*, (1992) 2 SCC 474; *Khushal Rao v. State of Bombay*, AIR 1958 SC 22; *P.V. Radhakrishna v. State of Karnataka*, (2003) 6 SCC 443.
[1522] Rao, "Reassessing Sole-Basis Convictions," *NLU Delhi Journal of Criminal Law* 189 (2022).
[1523] National Judicial Academy, "SOPs for Recording Dying Declarations," Judicial Training Module (2022).
[1524] Id.

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insulating them against appellate challenge and reducing wrongful convictions.

A calibrated reform model retaining flexibility while introducing documentation requirements, corroboration expectations, and statutory guidance can modernise the doctrine without undermining its historical and practical foundations. These recommendations directly support the broader shift toward transparency, accuracy, and fairness within India's developing evidentiary landscape.

8. CONCLUSION

The doctrine of dying declarations occupies a paradoxical position within modern evidence law. Rooted in historical necessity and moral presumption, it survives today as an exception to the rule against hearsay despite longstanding philosophical, empirical, and constitutional critiques. India's retention of a broad, flexible doctrine under the Bharatiya Sakshya Adhiniyam, 2023 (BSA) reflects a continuation of nineteenth-century evidentiary pragmatism, even as social, technological, and constitutional landscapes have evolved substantially.

Comparative analysis reveals that India stands alone among major legal systems in permitting dying declarations without an imminence-of-death requirement, without corroboration, without mandatory procedural safeguards, and with the possibility of convictions based solely on a single untested declaration. The United States and United Kingdom, though originating from the same common-law tradition as India, now employ stricter admissibility criteria grounded in notions of reliability and confrontation rights. Civil-law jurisdictions such as France and Russia, which do not recognise dying declarations as a distinct category, nevertheless subject last statements to holistic judicial evaluation with strong emphases on corroboration and procedural documentation. These jurisdictions reflect global trends that integrate evidentiary rationalism with evolving fair-trial standards.

India's exceptionalism is not without justification. Dying declarations remain indispensable, particularly in cases involving domestic violence, dowry-related deaths, and burn injuries, where victims often survive long enough to provide an account but not long enough to testify. In such situations, excluding dying declarations or narrowing the doctrine excessively could result in impunity for serious offences. The doctrine therefore retains vital social and practical value.

However, necessity can no longer serve as the sole or even primary justification for maintaining a doctrine that permits untested hearsay to ground a conviction. Procedural fairness constitutionally protected under Article 21 requires that evidentiary doctrines involving high-stakes consequences incorporate safeguards that reduce the risk of wrongful convictions. The comparative study demonstrates that other jurisdictions have reconciled the utility of dying declarations with constitutional constraints through corroboration rules, reliability tests, confrontation protections, and documentation requirements.

The way forward for India lies in adopting a calibrated reform framework that preserves admissibility while enhancing reliability. Mandatory audio-video recording, medical certification of mental fitness, structured guidelines for evaluating inconsistent declarations, and restrained reliance on sole-basis convictions constitute minimal yet essential safeguards. Such reforms neither diminish the doctrine's evidentiary utility nor undermine its historical role; rather, they strengthen the legitimacy and accuracy of criminal adjudication.

As Indian criminal procedure moves increasingly toward transparency, digitalisation, and constitutional accountability, the doctrine of dying declarations must evolve accordingly. Retaining the doctrine in its current expansive form risks inconsistency with contemporary fair-trial jurisprudence and global evidentiary norms. Reform grounded in comparative

insight, constitutional principles, and technological feasibility offers a path toward harmonising India's longstanding legal tradition with the demands of modern justice.