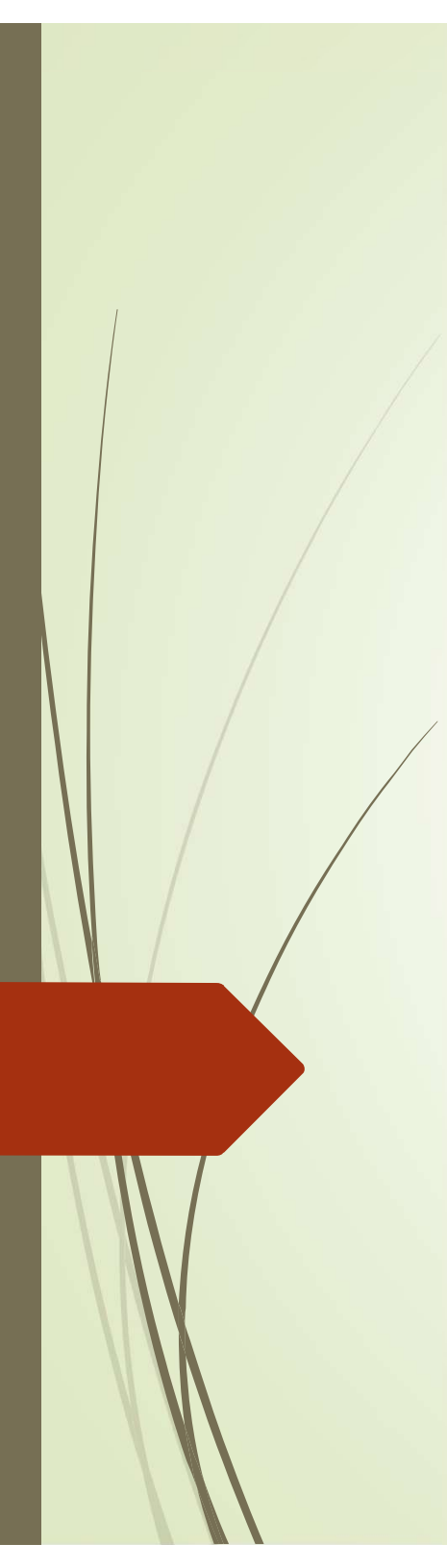




Statement by the person who cannot be called as witness

Dr. Poonam P. Nathani,
Assistant Professor,
Dayanand College of Law, Latur





Principle

- Section 32 and the subsequent section 33 deal with the relevancy of statements made by persons who cannot be called as witnesses.
- Section 60 of the Evidence Act insists that oral evidence must, in all cases, whatever, be direct. In other words, hearsay evidence is no evidence.
- But under section 32 hearsay evidence is admissible so it is an exception to section 60.



PERSONS WHO CANNOT BE CALLED AS WITNESS

- Following are the classes of persons who cannot be called as witnesses under section 32 and their statements are allowed to be proved in their absence.
 - ❖ Persons who are **dead**
 - ❖ Persons who **cannot be found**
 - ❖ Persons who have become **incapable of giving evidence**
 - ❖ Persons whose attendance cannot be procured without an amount of delay or expense.



Section 32 clause 1.

when it relates to the cause of death

- **Dying declaration**

When 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, known as dying declaration.

- **Suicide note** also comes within the purview of Dying Declaration.

Reasons for the admissibility of a dying declaration

- There are **two** reasons.
- **Firstly**, the necessity, the **victim being the sole eye witness of the crime** that has been perpetrated upon him, so excluding his evidence would violate the law of natural justice.
- **Secondly**, they are the declarations made by a person under **expectation of death** so its presumed to be true as the maxim "*Nemo Moriturus Praesumntur Mentire*" which means "**A person who is about to die, can never lie**" or the truth sits in his tongue at the time of death because of the fear of almighty God whom he will meet as soon as he will die so he always wanted to reduce his sins by saying truth as per the mythologies.



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,

➤ (1) When it relates to cause of death

When 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 expectation of death**, and **whatever may be the nature of the proceeding** in which the cause of his death comes into question.

(1) When it relates to cause of death

- (2) Or is made in course of business
- (3) Or against interest of maker
- (4) Or gives opinion as to public right or custom, or matters of general interest
- (5) Or relates to existence of relationship
- (6) Or is made in will or deed relating to family affairs
- (7) Or in document relating to transaction mentioned in section 13, Clause (a).
- (8) Or is made by several persons and express feelings relevant to matter in question

(1) When it relates to cause of death



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Conditions for Dying Declaration

1. The declarant must have died
2. Injuries must have caused the death
3. The dying declaration must be complete
4. The declarant must be in a fit condition
5. The declarant must be competent
6. Dying declaration must be in question and answer form



Evidentiary value of Dying Declaration

1. The dying declaration must have been recorded by a competent magistrate
2. The dying declaration must have been recorded in the exact words in which it is made
3. The dying declaration must have been made soon after the alleged incident that it may not be colored by impressions received from third person.
4. The incident must have occurred in a lighted place
5. Where successive declaration are made, all must be identical



Difference between English Law and Indian Law

1. English Law- Applicable in only Criminal cases

Indian Law- both criminal and civil cases

2. English Law- Expectation of Death, 100% confident of his death

Indian Law- 32(1) was or was not under expectation of death at the time when they were made admissible



Section 32 clause 2

- When the statement is made in the ordinary course of business
- Examples: Illustration (b), (c), (d), (g), (h) and (i) of Sec 32 of the Indian Evidence Act
- For example, if question is the date of birth.

if a doctor or any birth registration officer had issued a certificate then though they are dead their document is valid and admissible.



Section 32 clause 3

- When the statement is against the interest of the maker
- Examples: Illustration (e) and (f)

Clause 4

- WHEN THE STATEMENT GIVES OPINION AS TO PUBLIC RIGHT OR CUSTOM, OR MATTERS OF GENERAL INTERESTS
- Example: Illustration (i)
- Conditions:
 1. Statement must have been given by a person who belongs to above four category
 2. Statement must give an opinion as to existence of public right custom etc.
 3. The person must be aware of the existence of such right
 4. The statement must be given or made before the controversy had arisen.



CLAUSE 5

- WHEN THE STATEMENT RELATES TO EXISTANCE OF REALTIONSHIP



CLAUSE 6

- WHEN THE STATEMENT AS TO EXISTENCE OF RELATIONSHIP MADE IN WILL OR DEED RELATING TO FAMILY AFFAIRS



CLAUSE 7

- WHEN A STATEMENT CONTAINED IN DOCUMENT RELATING TO TRANSCATION MENTIONED IN SECTION 13 CLAUSE (a)



CLAUSE 8

- WHEN THE STATEMENT IS MADE BY SEVERAL PERSONS AND EXPRESSES FEELINGS RELEVANT TO MATTER IN QUESTION